



**ABORIGINAL AFFAIRS PORTFOLIO  
EVALUATION  
Final Report**

**November 2015**

**Evaluation Division  
Corporate Services Branch**



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## ACRONYMS

AAP	Aboriginal Affairs Portfolio
AANDC	Aboriginal Affairs and Northern Development Canada
ADAG	Assistant Deputy Attorney General
ALC	Aboriginal Law Centre
DG	Director General
DR	Dispute Resolution
FNCIDA	First Nations Commercial and Industrial Development Act
FTE	Full-Time Equivalent
GOC	Government of Canada
HQ	Headquarters
INAC	Indigenous and Northern Affairs Canada
LMRB	Litigation Management and Resolution Branch, AANDC
LSU	Legal Services Unit
SCT	Specific Claims Tribunal
SGC	Senior General Counsel
TAG	Treaties and Aboriginal Government, AANDC
TBS	Treasury Board Secretariat

# EXECUTIVE SUMMARY

## 1. Introduction

The overall mandate of the Aboriginal Affairs Portfolio (AAP) is to provide high quality legal services and legal policy advice in relation to Aboriginal Peoples (i.e., Indian, Métis and Inuit peoples of Canada) to the Deputy Minister and Minister of Justice, and to federal departments and agencies. The AAP also provides legal services on northern development issues within the mandate of Aboriginal Affairs and Northern Development Canada (AANDC). The evaluation of the AAP was conducted for the Department of Justice between January 2013 and June 2015. This is the first evaluation of the Portfolio and will serve as a baseline for future evaluations of the Portfolio. The evaluation covers fiscal years 2008-09 to 2012-13.

## 2. Methodology

The evaluation methodology consisted of (1) a literature review, (2) AAP document and data review, (3) a review of iCase data, (4) a survey of AAP legal counsel, (5) key informant interviews, (6) a review of closed litigation, legal advisory and legal policy files, and (7) five case studies. Triangulation was used to verify and validate findings obtained through these multiple lines of evidence.

## 3. Findings

### 3.1. Relevance

*Continued Need.* The AAP is highly relevant. Thousands of files are opened each year where AANDC is either the primary or secondary client. Litigation files in particular demonstrate continued growth. Value-added services provided by the AAP in response to need are expansive and include expertise pertaining to duty to consult, Specific Claims Tribunal work, interpretation, legal opinions, legal risk assessments, and judicial reviews. Legal services offered

by the AAP address increasingly complex federal issues concerning Aboriginal Peoples and continue to result in major developments in Aboriginal law and legal policy, possibly the single largest growth sector in the legal industry in the area of public law. Existing and projected areas of legal work concern the Indian Residential Schools Settlement Agreement, Aboriginal children's experiences outside of Indian Residential Schools, Specific Claims Action Plan, the Federal Framework for Economic Development, the Federal Comprehensive Land Claims Policy, Treaty and Self-government Negotiations, Aboriginal Rights and Title, and Consultation and Accommodation.

***Alignment with Government Priorities.*** The AAP purposely aligns its activities with federal government priorities and departmental strategic outcomes including supporting the AANDC Minister's long and short-term Aboriginal agenda (with particular emphasis on supporting the Aboriginal Economic Development Framework), the Justice Minister's and Deputy Minister's priorities with respect to Aboriginal legal issues, as well as managing key horizontal issues and providing whole of government advice. Over the five-year evaluation period, AAP suitably recalibrated its activities in response to changing priorities and strategic outcomes. The Portfolio remained aware of high priority areas and demonstrated a practical understanding of what services were required by clients, such as those pertaining to human rights and SCT work and those addressing program and policy modernization. Highly collaborative approaches, good working relationships, and solid in-house expertise enabled the Portfolio to be responsive to changes in federal government priorities and departmental strategic outcomes.

***Alignment with Federal Roles and Responsibilities.*** The AAP supports the Minister in fulfilling his duties as Minister of Justice and Attorney General of Canada under the *Department of Justice Act* and other relevant federal statutes, as well as the Government of Canada's long- and short-term agenda with respect to Aboriginal Peoples. Alignment of the Portfolio's legal services with the *Department of Justice Act* is achieved through the Portfolio's successful management of cross-cutting legal issues and the provision of legal advisory and litigation services that assist client departments and agencies in the management of legal risk, being ever mindful of its obligations to protect the Crown.

### **3.2. Portfolio Design**

***Clarity of the Mandate and Objectives of the AAP.*** While roles and responsibilities in connection with specific units of the AAP were clear and appropriate towards the achievement of the mandate and objectives of the Portfolio, responsibilities of various groups in providing

litigation support were perceived by legal counsel to be somewhat unclear. The evaluation found differing views with respect to the functioning of AAP governance functions and mechanisms. While practice and working groups and some committees were perceived as supporting the achievement of AAP objectives, others were perceived to not function as well as intended.

***AAP Change Management Plan’s Ability to Support the Achievement of the AAP Mandate.***

During the evaluation period the AAP change management plan was implemented, including a Modernization Strategy that involved a major reorganization of Headquarters functions and significant reductions in the cost structure of these functions. Multiple lines of evidence suggest that the AAP mandate continued to be supported; although some duplication of roles and responsibilities in the delivery of high quality legal services was observed.

***AAP Performance Monitoring and Evaluation Capacity.*** AAP continues to engage in various efforts that guide and support ongoing quality improvement and performance measurement. A number of client committees, Justice working groups, Legal Services Units (LSUs), practice groups and interdepartmental committees have been established to sustain such efforts. The implementation of the new business analytic model/evidence-based approach to identifying key priorities, as well as peer reviews and other committees also ensure ongoing quality assurance and consistency in legal positioning and reporting practices.

### **3.3. Performance**

***Production of High-Quality Legal Services Related to Aboriginal Law, Legal Policy and Northern Development Legal Issues.*** Multiple lines of evidence indicate that the services of the Portfolio were well coordinated, useful, timely, highly responsive, and appropriate to the needs of clients and their policy and program objectives. The services provided by the AAP during the evaluation period covered a broad range of significant legal issues, including those pertaining to treaty land entitlement, specific claims, fiduciary duty, and consultation and accommodation. Importantly, the majority of files that were closed during the evaluation period achieved Crown success.<sup>1</sup>

***Enhanced Capacity to Deliver Legal Services Related to Aboriginal Law, Legal Policy and Northern Development Legal Issues in an Integrated/Consistent and Responsive Manner.*** By 2012-13, several AAP initiatives were underway towards the further attainment of

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<sup>1</sup> “Crown success” represents a complete win as based on data entry instructions in iCase.

integration/consistency and responsiveness of legal services moving forward. During fiscal year 2012-13, the Aboriginal Law Centre (ALC) was established to ensure consistency of legal advice and the AAP's continued ability to provide responsive services. As a result of AAP efforts, effective consultations across a range of relevant stakeholders, briefing processes, and how risks are conveyed and approaches proposed through effective dialogue, certain language is being developed and applied across similar cases to ensure consistency of legal positions. Established client committees, working groups or practice groups and interdepartmental committees, as well as cross country calls, peer reviews, template opinions, and guidelines further help to ensure the integrated delivery of legal services and that legal counsel speak with one voice. In general the evaluation found that legal counsel had the appropriate resources to conduct their work, although a few areas for improvement were noted in connection with access to tools, resources and processes.

***Enhanced Awareness and Understanding within the Federal Government of Issues, Options, and Approaches to Aboriginal Law, Legal Policy and Northern Development Legal Issues.***

The AAP has been successful at increasing awareness and understanding of nuanced legal issues, innovative options, and approaches to Aboriginal law, legal policy and northern development legal issues horizontally across government. Furthermore, the AAP is continually relied upon as the expert source of legal advice across a broad spectrum of legal issues. Areas of enhanced awareness and understanding include duty to consult in relation to comprehensive funding arrangements, breach of treaty and fiduciary duty with respect to surrender, and applicability of the Specific Claims Process. The Portfolio has several working groups, training and professional development activities and products to assist with information dissemination and knowledge exchange. Particularly useful mechanisms include access to supervisors/mentors, the AANDC LSU, practice or working groups and regional Aboriginal Law Sections. Moving forward, more job shadowing/training opportunities in specialized legal areas are required to promote further development of legal practice skills, and to support enhanced awareness and understanding of issues, options, approaches to Aboriginal law, legal policy, and northern development legal issues.

***AAP's Contribution to Aboriginal Law and Legal Policy Issues and Claims Being Effectively Addressed, Litigated and Resolved across Government.***

The Portfolio has contributed in important ways to Aboriginal law and legal policy issues and claims being effectively addressed, litigated and resolved across government. Overall, clients are satisfied with the rate of settlement that has been achieved. Most cases settled out of court involve attempts at dispute resolution, especially in relation to medium risk and low complexity files, and attempts at dispute resolution

have increased over time. Clients are regularly encouraged to settle disputes and feel that the AAP is directly responsible in the successful conclusions being generated and negotiations taking place around reconciliation principles.

***AAP's Contribution to the Ability of Government Departments and Agencies to Better Manage Their Legal Risks on Aboriginal Issues.*** AAP is engaged in concerted efforts to assist government departments and agencies in their ability to better understand, manage and mitigate their legal risks and has effective practices in place to support the identification of these. Legal risk is regularly communicated to client departments and agencies through formal and informal means (for instance through written briefings, lawyer explanations and information sessions), and as a result clients are able to better manage/mitigate legal risks on a variety of Aboriginal issues.

***The Appropriateness of AAP's Resource Utilization in Relation to the Resources Planned and Allocated to Activities and Outputs Produced and Progress Toward Expected Outcomes.*** Multiple lines of evidence indicate that AAP files are assigned based on expertise to maximize efficiency in the delivery of legal services while maintaining quality. Over the course of the evaluation period, several discussions, reviews and activities took place that aimed to enhance AAP resource utilization efficiencies. Average hours per file where AANDC was either the primary or the secondary Client steadily decreased over time, as did the percentage of time spent by legal counsel and paralegals on low complexity advisory files and low-risk litigation files. The highest percentage of time spent on litigation files was spent by junior legal counsel (relative to more senior counsel or paralegals), regardless of level of legal complexity or risk.

In general, the evaluation found that the Portfolio had engaged in comprehensive efforts to ensure its continued capacity to provide national strategic coordination and legal risk management, and to deliver appropriate/sufficient legal services given existing and future demand for such services, including the implementation of a Professional Development Integration Plan and employment engagement strategies.

Overall, the funding model being utilized by the AAP appears to be appropriate and sufficient to meet current demand for legal services. However, challenges were noted, especially in connection with legal advisory services, and the fact that the model is not conducive to mentoring or job shadowing opportunities. There is also the sense that further reductions in the Portfolio's funding will negatively impact its ability to meet demand.

## 1. INTRODUCTION

This document constitutes the final report for the evaluation of the Aboriginal Affairs Portfolio (AAP), whose mandate is to provide high quality legal services and legal policy advice in relation to Aboriginal Peoples (i.e., Indian, Métis and Inuit peoples of Canada) to the Deputy Minister and Minister of Justice, and to federal departments and agencies. The AAP mandate also includes providing high-quality legal services on northern development issues within the mandate of Aboriginal Affairs and Northern Development Canada (AANDC).<sup>2</sup>

### 1.1. Purpose of the Evaluation

In accordance with the 2009 Treasury Board *Policy on Evaluation*, the primary purpose of this evaluation was to assess the relevance and performance of the AAP. In terms of relevance, the evaluation considered the continued need for the Portfolio and alignment of the AAP 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 examined the legal services delivered and the structures to support their delivery, including those at Headquarters, within the AANDC Legal Services Unit (LSU) and in the regional offices. The evaluation covers the work during fiscal years 2008-09 to 2012-13. An advisory group with representatives from the Portfolio provided ongoing input into the evaluation, which was conducted between January 2013 and June 2015. This is the first evaluation of the Portfolio.

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<sup>2</sup> In November 2015, the Department's name changed to Indigenous and Northern Affairs Canada.

## **1.2. Structure of the Report**

This report contains five sections, including the Introduction. Section 2.0 provides the background on the AAP, describing its structure, resources and services. Section 3.0 describes the methodological approach used in the evaluation. Section 4.0 summarizes the key findings, while Section 5.0 presents the conclusions and recommendations.

## 2. PROFILE OF THE ABORIGINAL AFFAIRS PORTFOLIO (AAP)

The AAP is one of six portfolios within Justice that offers specialized legal services to federal client departments and agencies. In supporting the Minister of Justice's priorities with respect to Aboriginal issues, the work of the AAP contributes to the following Strategic Outcomes of the Department of Justice:

- A fair, relevant and accessible Canadian justice system; and
- A federal government that is supported by high-quality legal services.<sup>3</sup>

The AAP supports the Minister of Justice and the Attorney General of Canada in accordance with the responsibilities set forth in the *Department of Justice Act*, and within other relevant Acts of Parliament.

The AAP mandate also includes providing high-quality legal services on northern development issues within the mandate of AANDC. Among the 34 departments and agencies delivering Aboriginal and northern programs and services, AANDC is the primary recipient of AAP's legal services.

The specific objectives of the AAP are to:

- Ensure that federal legal policy, legal positions and advice in the field of Aboriginal law, as well as AANDC-related northern development legal issues, are consistent and integrated across the federal government;
- Contribute to the resolution of Aboriginal legal issues and claims; and

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<sup>3</sup> Quality legal services are defined by the Department of Justice as: accurate in law; consistent and coordinated across Justice; meeting/exceeding established client service standards for timeliness, responsiveness and usefulness; and consistent with the *Hallmarks of Well-drafted Acts and Regulations* with respect to legislative services. The evaluation of legal services will address all aspects of quality other than accuracy in law.

- Contribute to the development of Aboriginal legal policy and national law practice management.

The AAP supports the Government of Canada's (GOC's) long- and short-term policy agenda with respect to Aboriginal peoples, by strategically managing key cross-cutting legal issues.<sup>4</sup>

## **2.1. Structure**

### **2.1.1. Organizational Structure of the AAP**

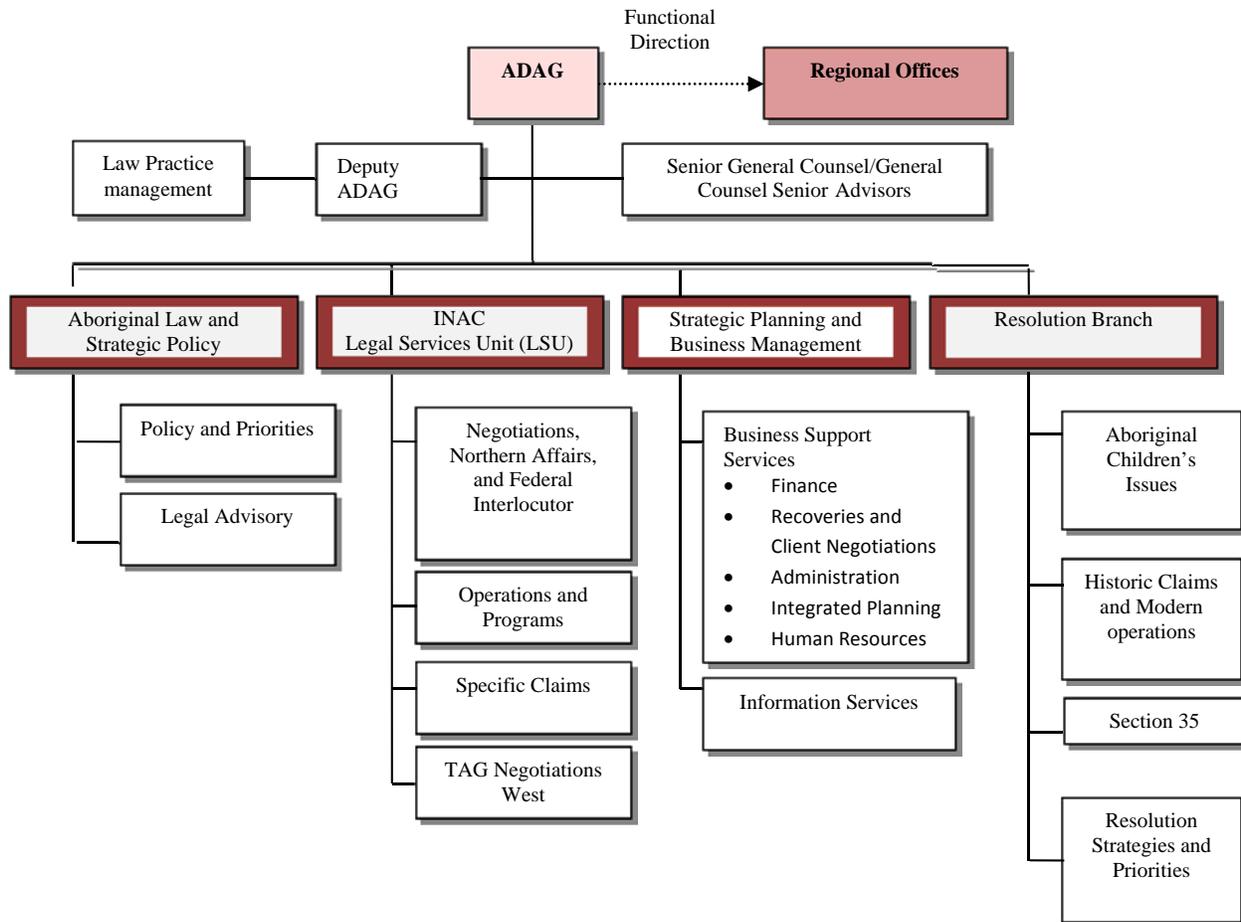
Recently, the AAP participated in the Department of Justice Modernization Strategy, which included a review of its core functions, particularly in relation to its HQ functions supporting the national practice of Aboriginal law. Implementation of this strategy has resulted in a major reorganization of HQ functions with significant reductions in the cost structure of these functions.

As can be seen in the following organizational charts (Figure 1 and Figure 2), the Aboriginal Law and Strategic Policy section and the Resolution Branch were replaced with the Aboriginal Law Centre (ALC). This change occurred during fiscal year 2012-13. Changes to business processes designed to support the Modernization Strategy were refined to ensure essential core capacity was maintained, but at a significantly lower cost than under previous approaches. For this reason the AAP's design was examined under the current evaluation.

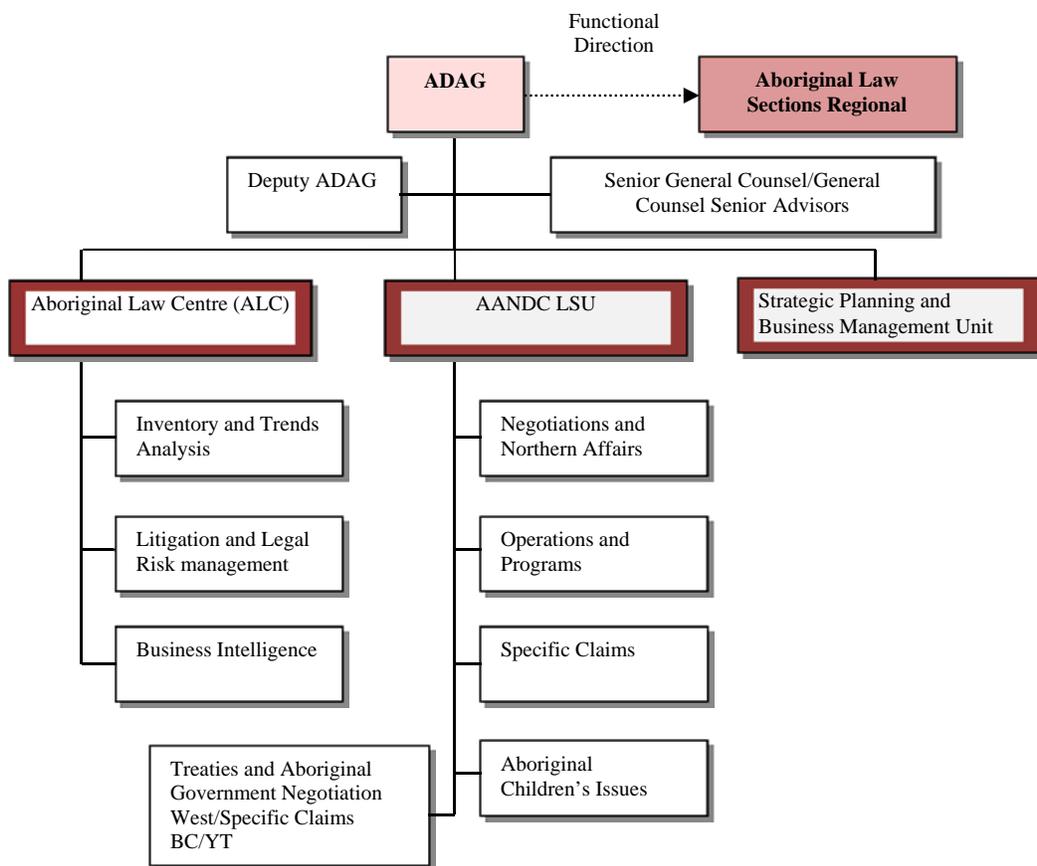
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<sup>4</sup> Department of Justice Canada (2012). *The Aboriginal Affairs Portfolio Evaluation Strategy: Final Report*. Ottawa, ON: Evaluation Division, Office of Strategic Planning and Performance Management.

**Figure 1: Former Organizational Structure**



**Figure 2: Current Organizational Structure (effective November 2012):**



**2.1.2. Governance Structure of the AAP**

The AAP is headed by the Assistant Deputy Attorney General (ADAG) who reports to the Associate Deputy Minister of Justice. Two strategic-level committees oversee the AAP: the AAP Management Committee; and the Law and Policy Committee. In addition, the ALC Expert Advisory Group plays a number of important strategic and leadership functions to enable the AAP to fulfill its mandate. Ad-hoc working groups and committees are also struck as needed to help govern specific issues.

The AAP Management and the Law and Policy committees as well as the ALC Expert Advisory Group are described in further detail below:

- The AAP Management Committee provides a forum for Portfolio Direct Report Managers to discuss, plan and make decisions on Portfolio-wide operations and management issues related to finance, human resources, administration and information management. The Committee also meets to share best practices that support the effective use of Portfolio resources, and where partnership-based approaches to Portfolio challenges can be developed. Membership on the Committee includes the ADAG, Deputy ADAG and Direct Reports to the ADAG, including the Business Director. Broader meetings include the Aboriginal Law Section Regional Directors. The AAP Management Committee meets every month.
- The Law and Policy Committee is the decision-making body that provides the ADAG with a senior forum for discussion, making decisions or recommendations, when appropriate, regarding the legal and legal policy orientation of the Portfolio. Its mandate is to inform the ADAG with respect to key legal issues, significant ongoing files in the Portfolio with cross-cutting issues, and Supreme Court of Canada matters. The Committee acts as an internal mechanism for substantive legal matters that help to shape definitive legal positions for both advisory and litigation files.<sup>5</sup> Membership includes the ADAG, the Deputy ADAG, senior practitioners recognized for their expertise in Aboriginal law, two representatives from the regions (appointed for two years on a rotational basis), one representative with training in Civil Law, and the Secretary of the Committee. This committee meets monthly (as well as on an *ad hoc* basis as appropriate).
- The ALC Expert Advisory Group is comprised of a diverse and national group of senior advisors, litigators and advisory lawyers, including civil law representation, who work with the Senior General Counsel/Director General (SGC/DG), and through the SGC/DG in consultation with ALC senior management to perform several functions. These include: early identification of emerging priorities, and the provision of a feedback loop on how existing priorities are unfolding/developing; reinforcement of the distinction between priority work relating to high risk and work relating to important but more standard matters; guidance on how ALC's work on priority issues could bear upon key decisions in the courts and central agencies, and coordination of the flow of work through regional committees, Law and Policy, client committees, and other departmental and government structures; representation of the ALC in strategic discussions with client departments regarding key high-risk priorities; examination of legal work prepared by the ALC on priority issues and advice to the SGC/DG

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<sup>5</sup> *Source:* Small group telephone interview with members of the AAP Working Group (February 27, 2013).

in this regard; contribution to the role of the ALC through observation of the effectiveness of the priority approaches; and leadership in helping the ALC implement its mandate.

In addition to committees and working groups, the AAP has implemented several vehicles for communication and collaboration within the AAP, with AANDC and other departments and agencies. Quarterly AAP Senior Management Meetings address portfolio-wide legal and management issues, including short- and long-term planning and priority-setting. These meetings are attended by the ADAG, Direct Reports to the ADAG, and Regional Aboriginal Law Section Directors. Weekly Cross Country Calls provide a forum for the ADAG, Deputy ADAG and Direct Reports to the ADAG, as well as Regional Directors, to share information on active files, and issues on a more frequent basis. Weekly Direct Report meetings between the ADAG and her Direct Reports allow for discussions and the exchange of information on current management and legal issues.

## **2.2. AANDC Committee Participation**

AAP counsel and managers participate in a number of AANDC Committees where legal advice and legal policy advice are requested and/or considered. These committees are, for the most part, the direct link between the AAP and AANDC, and represent governance and accountability mechanisms. The Portfolio's AANDC LSU Head participates in the following AANDC Committees, which are all chaired by the Deputy Minister of AANDC:

- the Financial Management Committee;
- the Policy Committee; and
- the Senior Executive Committee.

In addition, the ADAG is the Department of Justice member sitting at the Federal Steering Committee for Comprehensive Land Claims and Self Government Negotiations – a Cabinet-mandated interdepartmental committee chaired by the AANDC. The ALC DG sits at the DG level Federal Steering Committee.

Regional litigation counsel, ALC counsel and managers participate in AANDC's Directors General Litigation Committee chaired by the DG of AANDC's Litigation Management and Resolution Branch.

The Directors of each section of the Portfolio's AANDC LSU attend their respective client sectors management meetings. The Director of the Operations and Programs Section represents AAP's AANDC LSU at the AANDC Operations Committee, chaired by the Associate Deputy Minister of AANDC. The Committee provides management direction on departmental operations, and on the implementation of departmental and risk management matters that require the attention of the Deputy Minister and Associate Deputy Minister. The Director of the Specific Claims Section participates in the AANDC Claims Advisory Committee, which considers all lawful obligation opinions and financial mandates for claim settlements, and makes recommendations to the Minister of AANDC whether to accept claims for negotiations and financial mandates for settlement.

### **2.3. Resources**

The AAP budget and staffing levels were reduced in several increments, so that by 2012-13, the Portfolio had a complement of 612 full-time equivalent (FTE) staff. The total AAP planned spending budget was \$65.6M with cost-recovery accounting for approximately 97% of the services. Regions accounted for 60% of the spending forecasts, compared to 40% for HQ divisions. Like other Department of Justice legal services, AAP operates on a hybrid funding model combining Justice A-base allocations and cost recovery from client departments and agencies. However, cost recovery accounts for nearly all of the Portfolio's funding due in part to instances of initiative-based funding (e.g., funding for legal services related to the implementation of the Indian Residential School Settlement Agreement).

### **2.4 Key Activities**

The following subsections provide descriptions of the key activities of the AAP.

#### **National Strategic Coordination and Legal Risk Management**

The AAP plays a national, strategic coordination role regarding Aboriginal law and Aboriginal legal policy, and is responsible for northern development legal issues under the AANDC mandate.<sup>6</sup> AAP works collaboratively across the Portfolio, the Department and in consultation

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<sup>6</sup> The Aboriginal justice policy function was included in the *Evaluation of the Aboriginal Justice Strategy*. Responsibility for this policy work has shifted from the Aboriginal Law and Strategic Policy section of the AAP

with client departments. Consistent with the Department's legal risk management approach, the AAP counsel identify and assess legal risks related to Aboriginal legal issues that involve/may have an impact on the federal Crown or on federal policy. They also take into consideration wider-ranging impacts (e.g., on other levels of government). Strategic coordination and legal risk management are thus integral to all AAP activities, and essential to the horizontal management of Aboriginal law and northern development legal issues from a 'whole of government' perspective.

### **Litigation Services**

Litigation services comprise a major element of the Portfolio's activities. They consist of several key activities, including: working collaboratively with client departments on legal issues; developing and providing litigation strategies and advice; conducting litigation; developing dispute resolution (DR) options and strategies; and making recommendations and pursuing them as appropriate. Activities related to litigation fall within the broader framework of strategic coordination and legal risk management described above. The framework represents a critical approach and integral tool for the Portfolio's legal services, as Aboriginal law and northern development legal issues arise in multi-layered and complex public policy environments, influenced by historic and current social, cultural, environmental and economic factors, with potentially profound future impacts. The AAP counsel consult with, and seek the advice of, other counsel within the Department as appropriate to each file.

### **Management and Support of a National Law Practice**

The AAP undertakes many activities to ensure the effective management and support of a national law practice pertaining to Aboriginal law and northern development legal issues. This includes ongoing tracking and analysis of trends, drivers, risks, and other themes related to relevant legal issues through the completion of in-house data analysis, as well as national consultation and coordination and environmental scanning. These efforts assist the AAP in managing, forecasting and resourcing its work, and in providing effective services to client

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(see the former organizational structure of the AAP in Figure 1 above) to the policy team within the Aboriginal Justice Directorate. Consequently, this evaluation – which covers five years of AAP activity (2008-09 to 2012-13) – will include the Aboriginal legal policy work of the AAP, which to date has not been evaluated.

departments. The ALC maintains a national litigation inventory, which provides critical data for trend analysis and forecasting purposes.

In managing the national law practice, the AAP engages with partners and stakeholders through various information-sharing and coordination mechanisms, such as inter-departmental committees (e.g., the Strategic Intake Committee for litigation). Managing the national law practice also involves providing training opportunities and information sharing to develop knowledge and understanding within Justice, AANDC and other client departments, where Aboriginal law and northern development legal issues frequently emerge (e.g., legal project management training for counsel and paralegals; labour relations training for managers and supervisors; law and policy professional development sessions for the Portfolio, regions and clients; publisher training for support staff; ongoing lunch-and-learn sessions on specific aspects of Aboriginal law).

To ensure the provision of high-quality legal services, the AAP utilizes various knowledge and practice management tools and products. For example, there is an online tool accessible by both AANDC and AAP to track requests and deliver opinions. AAP has also piloted approaches for legal risk management to legal advisory services in both the ALC and LSU. Other tools, such as Justipedia (an online research and precedent database launched in 2012) are used to assist with the management and coordination of the Aboriginal law practice.

### **Legal Advisory Services**

Legal advisory services are integral to the management and resolution of legal issues within the federal government. Recently, a National Advisory Deskbook was developed and became available online to all counsel offering legal advisory services. Advisory services encompass legal advice, litigation support and drafting of commercial and legislative documents, and negotiations support. Within the AAP, advisory services are provided by the ALC, the AANDC LSU and the Aboriginal Law Sections in the regional offices. Each performs a different role within this function:

- The ALC focuses on national coordination and strategy, legal trends and forecasting;
- The AANDC LSU provides advice to AANDC as a government department; and
- The Aboriginal Law Sections in the regional offices are more “transactionally-oriented.”

Specific activities can include:

- Providing legal analyses, legal options and advice on issues related to the AAP mandate;
- Developing and providing dispute prevention options and strategies, as well as resolution options and strategies, as appropriate;
- Supporting negotiations;
- Fulfilling the role of Department of Justice under the *Federal Real Property and Federal Immovables Act* (and regulations under this Act) relating to the acquisition and disposition of interests in real property;
- Supporting legislative drafting; and
- Drafting commercial documents.

Legal advisory services may be called upon, for example, to identify National Coordinators who are experts in substantive areas of law to develop legal templates and benchmarks pertaining to these areas. Through legal advisory activities and outputs, government decision-makers are informed of legal risks and options through various communication mechanisms (e.g., meetings, fora, committees).

### **3. METHODOLOGY**

The AAP evaluation made use of multiple lines of evidence including: a literature review, a document review, a review of iCase data, a survey of legal counsel, interviews, a file review, and case studies.

The evaluation matrix (which links the evaluation questions, indicators, and lines of evidence and the data collection instruments were developed with the input of the Evaluation Working Group. The evaluation matrix is included in Appendix A and the data collection instruments in Appendix B.

Each of the evaluation methods is described more fully below. This section also includes a brief discussion of methodological challenges.

#### **3.1. Literature Review**

Major developments (e.g., trends in scope, nature and complexity of issues) that have occurred since the 1970s in the areas of Aboriginal law, Aboriginal legal policy and northern development legal issues in Canada were explored to inform the evaluation through critical information concerning historical context, and to contribute to the development of case study options for the evaluation.

#### **3.2. AAP Document Review**

The purpose of the document review was to both inform the development of data collection instruments and to address the majority of the evaluation questions. The document review contributed to a better understanding of how the AAP was administered, managed and monitored over the course of the evaluation period. Key AAP files, reports and documents were reviewed for the purpose of exploring the AAP's contextual, managerial and operational frameworks and to gain insight into AAP's mandate and business processes.

Documents reviewed included administrative and publically-available information. The document review included financial data, business plans, Reports on Plans and Priorities, Departmental Performance Reports, information on training, Justice Client Feedback Survey results, Public Service Employee Survey results, Budget Speeches and Speeches from the Throne.

### 3.3. Review of iCase Data

iCase is an information management tool that is used by the Department of Justice Canada for case management, timekeeping and billing, document management and reporting. The iCase data were used to examine trends over time in the demand for AAP legal services, level of legal risk and complexity, and level of counsel assigned to case files.

### 3.4. Legal Counsel Survey

A web-based survey was used to gather information about the performance of the AAP from the perspectives of legal counsel across the Portfolio. The survey was online for nine weeks and included 38 questions.

Table 1 provides a profile of the legal counsel from across the AAP who completed the online survey. In total, 145 out of 296 potential legal counsel respondents completed the online survey (representing a survey response rate of 49%).

**Table 1: Profile of AAP Legal Counsel Survey Respondents**

	<b>Number Distributed</b>	<b>Number of Completions</b>	<b>Response Rate</b>
ADAG	3	2	66.7%
ALC	14	11	<b>78.6%</b>
Atlantic Regional Office	9	2	22.2%
British Columbia Regional Office	43	14	32.6%
Aboriginal Affairs and Northern Development Canada Legal Services Unit	88	44	50.0%
Northern Regional Office	10	7	<b>70.0%</b>
Ontario Regional Office	26	23	<b>88.5%</b>
Prairie Regional Office	81	29	35.8%
Quebec Regional Office	22	13	59.1%
<b>Total</b>	<b>296</b>	<b>145</b>	<b>49.0%</b>

### **3.5. Key Informant Interviews**

Key informant interviews were conducted to gather in-depth information about the performance of the AAP from the perspectives of various individuals associated with the Portfolio. Interview guides were tailored to each key informant group and were developed in consultation with the Evaluation Working Group. A total of 58 interviews were completed representing Justice officials (n=6), clients (n=18), AAP Management/Senior Counsel (n=17), AAP Legal Counsel/other AAP professionals (n=15), and external partners/stakeholders (n=2).

### **3.6. File Review**

Fifty-one legal files were selected for review to represent the range of services provided by the AAP. The review was conducted to allow for more in-depth understanding of the life of a file, the types of requests made for AAP services, as well as associated complexities. This method allowed the evaluation to explore the extent to which the information obtained from key informants about how the AAP conducted its work was in evidence in the files. The case studies were chosen from the 51 files reviewed. Though preference was given to legal files where the work was completed during the five-year evaluation period under study (i.e., 'closed'), drawn from AANDC and AAP's other client departments, several files that were closed beyond of the five-year evaluation window were also included.

The selection of files for review included litigation cases of various risk and complexity levels. Advisory files were selected to include a range of requests and topics, including assertion of rights and title, environmental agreements, and duty to consult. The sample of files was chosen with the input of the Evaluation Working Group and was considered to provide a good selection of the broad spectrum of the Portfolio work. As the files were not chosen randomly, and as the sample is not large, the file review sample cannot be construed as being representative. Rather, the file review was intended to be illustrative of the AAP's approach to its work.

In order to protect confidential information and solicitor-client privilege, the files were reviewed by Department of Justice officials. The file review data collection template was used to ensure comparable information was collected.

Table 2 presents the breakdown of the files that were reviewed by region and service type. Court fora included Supreme Court of Canada, Federal Court, Federal Court of Appeal, British Columbia Court of Appeal, Supreme Court of British Columbia, Alberta's Court of Queen's Bench, Provincial Superior Trial and Appeal Divisions, as well as Tribunals.

**Table 2: AAP Legal File Review Breakdown**

<b>AAP Unit</b>	<b>Number of Advisory Files</b>	<b>Number of Litigation Files</b>	<b>Number of Aboriginal Legal Policy (General) Files</b>	<b>Total</b>
BC Regional Office (Aboriginal Law Section; Business and Regulatory)	5	3	-	8
Northern	4	4	-	8
Prairies – Alberta	0	6	-	6
Prairies – Saskatchewan	3	6	-	9
Prairies – Manitoba	3	4	-	7
National Capital Region (including ALC, AANDC LSU, ADAG/ Consultation Secretariat)	7	1	5	13
<b>Total Files</b>	<b>22</b>	<b>24</b>	<b>5</b>	<b>51</b>

### 3.7. Case Studies

The AAP evaluation included five case studies for the purpose of providing a more nuanced analysis of the legal services being offered by the AAP, as well as their associated complexities. Due to solicitor-client privilege, the Evaluation Division was also responsible for extracting pertinent information on selected case study files. While the case study focused on activities taking place from 2008-09 to 2012-13, a few files were initiated prior to this time frame because of the long time to complete the file. Each case study involved three to five interviews with participants closely associated with the files. Interviewees included Portfolio counsel, counsel from other Justice sections, and client representatives. A total of 20 case study interviews were completed. Where feasible and appropriate, small group discussions were conducted.

### 3.8. Limitations

A few limitations associated with the evaluation were noted. Key methodological limitations have been listed below by line of evidence.

#### 3.8.1. Literature Review

The literature review focused on landmark court cases, key Aboriginal legal policy decisions and salient northern development legal issues that were significant in terms of changing the face of Aboriginal law and legal policy in Canada with regard to Aboriginal peoples. Locating detailed

information on less notable court cases proved difficult as there were few publically available sources and the information that was available across different sources was inconsistent. Pinpointing beginning and end dates in connection with key cases was challenging at times.

### **3.8.2. AAP Document Review**

It is important to note that many changes to AAP's organizational structure and related business processes were implemented during the evaluation period. As such, the generation of critical documents, and use of reporting mechanisms and implementation of performance monitoring activities, for example, were not consistently available for each year of the five-year evaluation period making it difficult to methodically track changes in certain areas or as pertaining to certain issues. As such, AAP documents were used to provide snapshots or samples of the types of documents, reporting and mechanisms that were being employed between 2008-09 and 2012-13.

### **3.8.3. iCase**

Overall, iCase was a useful source of information for the evaluation. There were, however, some limitations. Minimal legal risk information was available concerning advisory files, as the Department did not require counsel to assess legal risk on all advisory files.<sup>7</sup> A finding that is supported by the Department of Justice's 2008 report, *Legal Risk Management in the Department of Justice - Formative Evaluation: Final Report*, which states, "litigation files are more likely to have risk assessments than other areas of legal practice"(p.iii). Additionally, the 2008 evaluation noted that different risk assessment tools were being used to ascertain level of legal risk, which might help to explain the high numbers associated with the "not estimable" (NE) category across time, and overall, for advisory files, and also as pertaining to litigation files (though decreasing numbers associated with the NE category were noted over the five year window). For this reason, a thorough analysis of legal risk and complexity trends was not feasible. Any findings reported on in the current report with reference to level of legal risk and level of legal complexity are to be interpreted with caution.

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<sup>7</sup> As of September 2013, counsel are required to assess legal risk on all advisory files department-wide.

#### **3.8.4. Interviews, Case Studies and Survey of Legal Counsel**

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

It is also important to note that the AAP was undergoing a period of transition at the time of data collection, including a reorganization of the HQ sections and efforts to increase efficiency. Thus, respondents' perceptions may have reflected activities taking place just beyond the evaluation period (fiscal years 2008-09 to 2012-13). For this reason, findings from the survey alone are to be interpreted with caution.

#### **3.8.5. File Review**

The file review was limited to the extent that only a small portion of possible files was selected for review. To obtain a representative sample was not feasible. Instead, the evaluation relied on the Evaluation Working Group to select files that reasonably represented the Portfolio's work.

### **3.9. Mitigation Strategy**

The mitigation strategy for the methodological limitations was to use multiple lines of evidence. The evaluation gathered information from the Portfolio and those using the Portfolio's services, from management and practitioners, from a review of files, iCase data and a literature review. The mitigation strategy also included using both qualitative and quantitative data collection methods to answer evaluation questions. By triangulating the 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 AAP with respect to the continued need for its services given the demand for legal services; the responsiveness of the Portfolio to federal government priorities, roles and responsibilities; as well as the AAP'S support of Justice Canada's strategic outcomes.

#### 4.1.1. Continued need for the AAP

A noticeable acceleration in the demand for legal services concerning Aboriginal peoples began in the 1970s following the Supreme Court of Canada's confirmation of the existence of Aboriginal title as a concept in Canadian common law (see *Calder et al. v. Attorney-General of British Columbia*). The demand continued to increase following the formal establishment of the *Constitution Act*, 1982, which includes Section 35 that provides protection to the Aboriginal and treaty rights of Aboriginal peoples in Canada.

The refinement of the definition of Aboriginal rights and title is an example, demonstrated through the ruling of *Lax Kw'alaams Indian Band v. Canada* (2011), which articulated how a modern right might evolve from historical practice, the importance of pleadings and characterization of Aboriginal rights, and key restrictions concerning commercial rights.<sup>8</sup> With reference to *Tsilhqot'in Nation v. British Columbia*, though the case culminated in a court decision beyond the evaluation period (2014), the ruling confirmed that the Tsilhqot'in had title to a 1,750 square kilometre track of land which the band had historically occupied.<sup>9</sup> Evaluation

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<sup>8</sup> Retrieved online January 27, 2015 at <http://www.weirfoulds.com/case-law-update-lax-kwalaams-indian-band-v.>

<sup>9</sup> See *Tsilhqot'in Nation v. British Columbia*, <https://www.canlii.org/en/bc/bcsc/doc/2007bcsc1700.html>.

evidence demonstrated that critical AAP activities taking place between 2008-09 and 2012-13 assisted with the development of a clearer conceptualization of Aboriginal title that will serve to hone Aboriginal law and legal policy practices of national relevance moving forward.

The evaluation evidence (document review and iCase data) pointed to the growing need for legal services by AANDC. As seen in Table 3, a total of 23,733 files were opened between 2008-09 and 2012-13 where AANDC was either the primary or the secondary client. Of these, a total of 16,165 files (representing 68% of the total files opened during the evaluation period) had closed by the end of the evaluation period. Total time spent on these files in hours was 1,615,258 [932,170 which were spent on litigation (58%), 652,767 on advisory (40%), and 30,320 on legislative files (2%)]. Litigation files demonstrated a 63% growth in the number of opened files by 2012-13 as compared to 2008-09 (total files – advisory, legislative and litigation combined – demonstrated a 32% growth].

**Table 3: ‘OPENED’ File by Type and Status (2008-09 – 2012-13)**

File Type	File Status	2008-09	2009-10	2010-11	2011-12	2012-13	Grand Total
	Active	648	778	872	836	1021	4155
	Closed	1005	1123	1163	913	547	4751
	Other	13	85	49	3	3	153
<b>Advisory</b>		<b>1666</b>	<b>1986</b>	<b>2084</b>	<b>1752</b>	<b>1571</b>	<b>9059</b>
	Active	5	4	3	7	15	34
	Closed	40	31	50	33	28	182
<b>Legislative</b>		<b>45</b>	<b>35</b>	<b>53</b>	<b>40</b>	<b>43</b>	<b>216</b>
	Active	218	389	563	776	1248	3194
	Closed	1903	2399	2251	2450	2229	11232
	Other	17	14			1	32
<b>Litigation</b>		<b>2138</b>	<b>2802</b>	<b>2814</b>	<b>3226</b>	<b>3478</b>	<b>14458</b>
<b>Grand Total</b>		<b>3849</b>	<b>4823</b>	<b>4951</b>	<b>5018</b>	<b>5092</b>	<b>23733</b>

*Source: iCase data*

*Notes: Table includes files that were opened during a fiscal year within the five-year evaluation period (where AANDC was either the primary or secondary client). CLOSED files refer to files that were closed during a particular fiscal year. ACTIVE files are files that were not closed. Data are based on fiscal year periods. File counts are based on unique 'file numbers'.*

The demand for litigation and legal advisory services by AANDC (the primary client of the AAP) has increased substantially since 2000 in response to the dramatic growth in litigation claims by Aboriginal peoples, as well as increasing scope and complexity of Aboriginal law, legal policy and northern development legal issues. Evaluation evidence (document review and stakeholder interviews) pointed to the growing need for legal services in relation to Aboriginal

title, Aboriginal rights, duty to consult and accommodate, treaty rights, Métis, self-government, modern treaties, equality, funding, compensation for historic wrongs, railway issues, children's issues, judicial reviews, class actions, and an increase in commercial development on reserve. Key informants indicated that the Portfolio had been highly relevant, and all thought that the AAP had been responsive to GOC and federal departments/agency needs.

Key informants provided several examples of AAP's effective response to the demand for legal services over the evaluation period. One example concerned the duty to consult, which impacted AANDC in particular as the lead department on coordinating for the GOC on the duty to consult, as well as on their own regional activities. It was perceived that the legal policy work by AAP had played a significant role in helping clients clarify the Crown's positive legal obligations to consult with Aboriginal people and accommodate their rights.

In addition to the increased volume of legal work, evidence pointed to an increase in the complexity of legal issues and in the number of high impact files. Key informants identified the increased number of stakeholders involved in certain files as one aspect increasing the complexity of the work. Another example of the increased complexity relates to the emerging work on large resource and commercial development projects (e.g., liquefied natural gas reserves, shopping malls, and leases). The level of legal risk was perceived to be somewhat unchanging relative to previous years, however, there was the perception that the immediacy of risk to government operations had increased somewhat during this timeframe.

AAP documentation revealed existing and projected areas of legal services over the coming years, including the following:

- With reference to the Indian Residential Schools Settlement Agreement (and given the September 19, 2012 deadline to file a claim), over 36,000 Independent Assessment Process applications were received by the Adjudication Secretariat, and based on projections at that time, it was anticipated that the program would not sunset until at least 2016-17. In light of this forecasting, the AAP was tasked with balancing the need for continued legal services to AANDC for the duration of the Indian Residential Schools Settlement Agreement with the plan for 'sunsetting' and transitioning its labour force to other areas of legal priority.
- Claims pertaining to Aboriginal children's experiences outside of Indian Residential Schools filed against the federal government for the loss of cultural identity by Aboriginal children during the 1960s to the 1980s when thousands were taken from their homes and placed into non-Aboriginal homes.

- The Specific Claims Action Plan (funding for which was renewed for 2013-14 to 2017-18), provides for the acceleration of the resolution of specific claims in order to provide justice for First Nation claimants and certainty for government, industry and all Canadians. Specific claims are based on allegations that the Crown has breached a lawful obligation to a First Nation in relation to the provision or administration of land, monies or other assets. Between 2010 and 2012, approximately 33 specific claims were settled at a total value of over \$1 billion. In 2013-14, there were approximately 320 specific claims in the federal inventory that were under assessment/in negotiations.
- Together the Federal Framework for Aboriginal Economic Development,<sup>10</sup> Federal Comprehensive Land Claims Policy,<sup>11</sup> Treaty and Self-Government Negotiations,<sup>12</sup> the North,<sup>13</sup> and Modernizing Legislation represent key federal initiatives underway towards the end of the evaluation period to reduce barriers to Aboriginal economic development and promote opportunities to help Aboriginal peoples participate more fully in the economy and benefit from its growth. In response to national efforts in this regard, AAP's continued focus is to ensure opportunities are considered in daily legal work for economic development as seen through an Aboriginal law lens.
- Canadian courts continue to be major drivers of Aboriginal policy, implicitly limiting government's ability to control how issues can be framed and resolved. More and more Aboriginal peoples are seeking substantial improvements in their socio- economic circumstances and increased involvement in law and policy decisions that have a direct bearing on them. As such, there has been a greater push to use alternative fora that are considered quicker and more cost-effective than traditional litigation processes (e.g., administrative tribunals, judicial review applications, regulatory panels, class actions, the Canadian Human Rights Tribunal, and the Specific Claims Tribunal).
- Finally, issues of Aboriginal rights and title (and duty to consult and accommodate) continue to be of major importance.

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<sup>10</sup> See <https://www.aadnc-aandc.gc.ca/eng/1100100033498/1100100033499>, retrieved online February 22, 2015.

<sup>11</sup> See <https://www.aadnc-aandc.gc.ca/eng/1405693409911/1405693617207>, retrieved online February 22, 2015.

<sup>12</sup> See <https://www.aadnc-aandc.gc.ca/eng/1346781914593/1346782141075>, retrieved online February 22, 2015.

<sup>13</sup> See <http://www.northernstrategy.gc.ca/index-eng.asp>, retrieved online February 22, 2015.

#### **4.1.2. Alignment with government priorities and Justice’s Strategic Outcomes**

AAP documents show that the activities of the AAP were purposely aligned with shifting GOC priorities and the strategic outcomes of Justice over the course of the evaluation period, and suitably calibrated to respond to current and projected demand. For example, in 2012, AAP outlined several strategic directions and related priorities that were somewhat different from those identified in previous years to form a framework for ongoing discussion with AANDC to ensure the continued relevancy of the Portfolio’s work at a sustainable cost, while maintaining core capacity to provide high-quality legal services.

Examination of documents revealed that AAP successfully supported AANDC in managing and implementing the federal government’s Specific Claims Action Plan (i.e., *Justice At Last*) in terms of the progress to clear the backlog of claims awaiting Justice legal advice by October 2011 and providing forward-looking advice in preparation for start of hearings before the Specific Claims Tribunal in 2011. As another example, AAP supported the Aboriginal agenda as outlined in the Justice Report on Plans and Priorities 2011-12, and in particular it supported the Policy Sector in the design and implementation of the Aboriginal Justice Strategy renewal beyond 2012. In addition, the Portfolio supported GOC’s Aboriginal agenda through high-quality legal advice and services with particular emphasis on improving Aboriginal economic development and managing risks to its strategic outcomes.

Overall, key informants thought that the AAP had responded well to changing GOC priorities during the evaluation period. They believed that the AAP had consistently demonstrated a practical understanding of what assistance was required, and a willingness to share expertise and to work collaboratively with clients to effectively respond to changing GOC priorities. For example, in response to evolving GOC priorities concerning economic development, there was an increased demand for services in connection with commercial development on reserve. There were also focused efforts towards certain areas of priority at different times over the course of the evaluation period, such as increased emphasis on modern litigation (e.g., human rights and SCT and addressing program and policy on modernization). Some key informants described AAP as being a “leader getting in front of changes” and a Portfolio of “profound relevance” towards the fulfillment of broader GOC priorities.

### **4.1.3. Alignment with federal roles and responsibilities**

AAP supports the Minister in fulfilling his duties as Minister of Justice and Attorney General of Canada under the *Department of Justice Act* and other relevant federal statutes. A review of the literature revealed the need to balance efforts to support natural resource exploration/development with the rights of Aboriginal people and efforts to improve their social/economic outcomes in keeping with the Federal Framework for Aboriginal Economic Development. AAP legal advisory work in relation to First Nations Commercial and Industrial Development Act (FNCIDA) is an example that demonstrates alignment with federal roles and responsibilities. The FNCIDA was established to close the regulatory gap on reserves and help expedite the implementation of commercial and industrial development projects through the establishment of federal regulations.<sup>14</sup>

## **4.2. Portfolio Design**

### **4.2.1. Organization design**

Over the course of the evaluation period, the Portfolio evolved in important ways towards the continued achievement of AAP's mandate and objectives. For example, several significant changes were implemented during 2009. The first comprehensive national AAP Integrated Human Resources Plan was developed to align AAP operations with AANDC and government priorities and to address pressing HR risks, including the management of sunseting programs. An AAP-wide Project Management Framework was also implemented to provide oversight of key AAP legal and business priorities consistent with the assessed level of complexity and risk and in line with the legislation, regulations and Treasury Board policy. A shift in organizational focus was implemented to ensure the structure and work of the AAP demonstrated relevance and fully supported the Government's Aboriginal Agenda in AANDC's key priority areas. A national collaborative management strategy toward fiscal sustainability and "smart budgeting" with the client was also pioneered. Evidence clearly indicates that progress has been achieved in these areas.

In 2010, strategic direction in the modernization, amalgamation and downsizing of the AAP took place. Proactive measures were taken to set cost containment on human resources to achieve

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<sup>14</sup> For more information, please see <https://www.aadnc-aandc.gc.ca/eng/1100100033561/1100100033562>.

reduction targets. Throughout 2011-12, approaches to realize efficiencies were implemented with the result that Portfolio spending was decreased by \$6.9M (8.9%) in comparison to 2010-11. As part of its modernization, the Aboriginal Law and Strategic Policy Section and the Resolution Branch were replaced with the Aboriginal Law Centre. This reorganization reduced the number of staff and costs associated with these HQ functions. The AAP also implemented the departmental Law Practice Model, which limits the staffing of the senior complement and enhances recruitment of LA1 level. The Integrated HR Plan was developed to guide staffing and classification actions and support longer term planning. Moreover, during the year, an AAP-wide Integrated Learning and Professional Development Framework was implemented to ensure strategic investments in training were carried out in a time of limited resources and to build a flexible, responsive workforce in an environment of change. Several consultation efforts took place to enhance understanding and use of the Project Management Framework, with the Law Practice Management group taking a leadership role across the Department with respect to training.

The modernization of the Portfolio also placed greater emphasis on business analytics, which included an examination of capacity, technology, processes and practices to gain insights into emerging areas of risk, complexity and impact, as well as priorities, and to drive business planning. Following the implementation of the new business model, interviewees observed increased requirements regarding standardized tools, benchmarking and blended practices.

In terms of governance structures, the evaluation found differing views. Some key informants and survey respondents identified several processes/mechanisms to be effective in supporting the achievement of AAP's mandate and overall objectives; specifically, legal advisory practice and other working groups, Cross-Country Calls, and the National Litigation and Law and Policy Committees. On the other hand, a number of key informants observed some redundancy in existing fora (e.g., the Law and Policy Committee and Experts Committee) and only 56% of survey respondents agreed that the governance/organizational structures that were in place for their unit were functioning as intended.

Most (77%) legal counsel from across the Portfolio agreed that roles and responsibilities of their specific unit were clear and appropriate towards the achievement of the mandate and objectives of the Portfolio. Only 34% of legal counsel agreed that roles and responsibilities of the AAP more broadly in the provision of litigation support were clear. Survey respondents identified the ALC as one section of the AAP whose roles and responsibilities were unclear and where they perceived a duplication in the provision of litigation support and management between HQ and regional counsel on similar issues/files. Given that the ALC was a newly formed section at the

time of the evaluation, it is likely that this uncertainty was due to the recent changes and a lack of internal communication with respect to ALC's role.

With a reduction in human resources as part of AAP's change management plan, overall workload pressures (72%), and lack of availability of resources more specifically (75%), were seen by the majority of survey respondents as negatively influencing the Portfolio's continued ability to meet clients' requests for high-quality legal services. Some counsel perceived the limited availability of paralegals and administrative assistants to assist with administrative work, resulted in counsel completing tasks possibly more suited to research assistants and paralegals. Additionally, there was the perception that legal counsel were also expected to become experts in emerging areas of law in absence of any senior counsel/practitioner assistance (e.g., due to the loss of senior expertise), and/or lack of sufficient professional development opportunities. Furthermore, a number of interviewees felt that the budget restrictions on travel, thereby limiting counsel's ability to engage in face-to-face interactions, were negatively impacting relationships and consequently lengthening negotiations.

Almost half (47%) of survey respondents identified the timeliness of instructions from AANDC (likely addressed by the new client instructions template developed after the data were collected) as also impinging upon the ability to meet clients' requests for high-quality legal services.

#### **4.2.2. AAP performance monitoring capacity**

The AAP undertakes many activities to ensure the effective management and support of a national law practice pertaining to Aboriginal law and northern development legal issues. These activities include ongoing tracking and analysis of trends, cost drivers, risks, and other relevant themes, completion of in-house data analysis, as well as national consultation and coordination and environmental scanning. These efforts assist the AAP in managing, forecasting and resourcing its work, and in providing effective services to client departments. The ALC maintains a national litigation inventory, which provides critical data for trend analysis and forecasting purposes.

Evidence of AAP's continued and sustained efforts to guide and support ongoing quality improvement and performance measurement over the course of the evaluation is derived from a variety of sources that outline directives and suggestions in relation to each of these areas. The AAP applies various knowledge and practice management tools and products to ensure the provision of high-quality legal services, including the national litigation inventory; a

‘collaboration’ online tool accessible by both AANDC and AAP to track requests and deliver opinions; application of legal risk management principles and approaches to legal advisory services. Other tools, such as Justipedia (an online research and precedent database launched in 2012), are also used to assist with the management and coordination of the Aboriginal law practice.

While iCase was mentioned by a few legal counsel as a system that offered a variety of timekeeping, billing, case management, document management, and case reporting functions in support of a meaningful quantitative performance analysis, participants indicated problems with the iCase tracking system, and the quality of information being stored in the system between 2008-09 and 2012-13. Specific problems included lack of consistency in data entry, and the type of information being stored therein, which carries important implications in terms of effective performance measurement. Though it is beyond the scope of the current evaluation, it is important to note that the Department is implementing a new protocol to standardize data entry in iCase across the Department in 2015-16.

In managing the national law practice, the AAP engages with partners and stakeholders through various information-sharing and coordination mechanisms, such as inter-departmental committees and meetings (e.g., the Strategic Intake Committee for litigation). AAP counsel and managers participate in a number of AANDC Committees where legal advice and legal policy advice are requested and/or considered. Managing the national law practice also involves providing training opportunities and information sharing to develop knowledge and understanding within Justice, AANDC and other client departments, where Aboriginal law and northern development legal issues frequently emerge.

#### **4.3. Performance: Achievement of Expected Outcomes (Effectiveness)**

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 Aboriginal Affairs Portfolio – in other words, the extent to which the Portfolio is achieving its expected outcomes.

##### **4.3.1. Quality of AAP legal services**

AAP legal services are guided by the Departmental Service Standards. These standards demonstrate the Department’s commitment to delivering high-quality (i.e., timely, responsive

and useful) services to government departments and agencies. The evaluation found a high level of satisfaction with the overall quality, responsiveness and usefulness – indicating that the AAP is upholding this multifaceted departmental commitment to the provision of high-quality legal services.

Satisfaction with the quality of AAP services is confirmed by multiple lines of evidence. Most key informants agreed that the AAP had produced high-quality legal services related to Aboriginal law, legal policy and northern development legal issues during the evaluation period regardless of organization changes and cost-cutting measures. AAP's ability to provide timely and high-quality legal services was largely supported by the subject matter expertise it housed. Clients believed that AAP housed expert lawyers who were highly responsive and provided high-quality legal services throughout the duration of the evaluation period (e.g., they felt negotiations and complex tribunal files were going well). Overall, case study participants (both AAP and client representatives) felt services were well coordinated, (by way of effective consultation practices and working relationships, for instance). From the client's perspective, AAP services were useful (e.g., in terms of formulating briefing notes, generating documentation describing processes, informing decisions) and appropriate to client's policy and program objectives. These services were not only accurate in law, but also able to predict court outcomes. Over the evaluation period, some interviewees perceived that the AAP had become more practical in the delivery of its legal service. An example given to demonstrate AAP's strong performance was with respect to the SCT work, in which over 500 files were cleared between 2008 and 2011, which was considered to be a "monumental effort and success."

A few challenges were identified by interviewees, including the loss of a core group of senior practitioners through retirement. Examination of data emerging from open-ended survey questions revealed that lack of access to specific information (e.g., specialized libraries for research purposes, specific online articles, up-to-date legal opinions and risk assessments) and/or absence of specific information (e.g., legal positions such as draft pleadings, sovereignty and Aboriginal title, case theories or other resources) was perceived by certain legal counsel to have impeded their ability to provide high-quality legal services related to Aboriginal law and northern development issues at one or more times over the evaluation period under study.

Several documents that were reviewed suggest that the AAP produced high-quality legal services related to Aboriginal law, legal policy and northern development legal issues, including results from the Department of Justice Canada's 2011 Client Feedback Survey (AAP). Accessibility/responsiveness of legal services were rated 8.3 out of 10, exceeding the departmental target of 8

out of 10; timeliness of legal services, legal risk management and usefulness of legal services were each rated 7.8 out of 10.

Successful outcomes in litigation files can be viewed as an indicator of effective legal service provision, and the Department has used this measure for departmental performance reporting. Successful outcomes can be achieved through settlement or adjudication. Results are recorded in iCase as successful (a complete win for the government’s position), unsuccessful (a complete loss), or partially successful. As shown in Table 4, iCase data showed that most (86%) litigation files closed during the evaluation period achieved Crown success.

**Table 4: Crown Result for Closed Litigation Files (2008-09 – 2012-13)**

<b>Crown Results</b>	<b>2008-2009 (n=3,773)</b>	<b>2009-2010 (n=1,749)</b>	<b>2010-2011 (n=2,590)</b>	<b>2011-2012 (n=2,137)</b>	<b>2012-2013 (n=2,491)</b>	<b>Grand Total (n=12,740)</b>
Successful	96%	82%	74%	79%	91%	86%
Partially Successful	2%	8%	13%	13%	8%	8%
Unsuccessful	2%	10%	13%	8%	1%	6%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

*Source: iCase data*

The file review revealed that AAP advisory and litigation services covered a broad range of issues related to Aboriginal law, legal policy and northern development, including Aboriginal and treaty rights, specific claims, Aboriginal rights and title, consultation and accommodation, treaty land entitlement, and fiduciary duty. The review also revealed that these services were of significant consequence to Canada in that emerging issues carried with them potential client impacts, including impacts on relationships across governments, legislation, precedents, and fiscal resources.

#### **4.3.2. Capacity to Deliver Legal Services in an integrated, consistent and responsive manner**

The evaluation found evidence that participation on client committees, working groups or practice groups and interdepartmental committees helped to ensure the integrated delivery of legal services and that legal counsel were speaking with one voice. Towards the end of the evaluation period, several initiatives were underway towards the further attainment of integrated, consistent and responsive legal services. Examples of such initiatives underway during 2012-13 are provided in Table 5 below.

**Table 5: Examples of initiatives for enhancing integration, consistency and responsiveness of legal services**

Benchmarks/Performance Targets (risk, complexity, impact)	Development of benchmarks for litigation (effort commensurate with risk, impact, complexity)
Settlement Agreement and Annotated Template	Template to be reviewed and completed
Out-of-court Settlement – Legal and Policy Framework	Guidelines relating to the authority to settle and authority to pay (includes reference to TB <i>Policy on Claims and Ex Gratia Payments</i> ). Legal opinion and position relating to exploratory discussions, negotiations and bad faith negotiations
Updating iCase Business Standards	Review and update of iCase Business Standards to meet the needs of the AAP in terms of reporting on inventory, activity, trends, effort etc.
One file/one matter	Consolidation throughout Justice of litigation files to a single litigation file per matter.

Overall, key informants felt that the AAP had become more practical in the delivery of its legal services over the evaluation period, maintaining a synthesized view of what legal issues might arise in the future and what advice to provide to clients. AAP staff consciously strived to “speak with one voice”, and provide integrated, consistent services to clients. While some counsel noted that at times the number of counsel involved in complex issues could pose as a barrier in developing an opinion, others thought there could be more integration across regional offices and with other Portfolio units.

Most legal counsel (60%) felt they received training that was relevant to their practice area, and slightly more than one-half of legal counsel (55%) felt that the training they received promoted the further development of their legal practice skills. Still, less than one-half of legal counsel (45%) believed they received sufficient training from mentors, and training that built their leadership and management skills in particular (28%).

A review of the AAP documentation revealed that over the evaluation period, several working groups, training and professional development activities had transpired, and products developed, to increase capacity to deliver legal services in an integrated, consistent and responsive manner. For example, the implementation of improved information management measures served to ensure knowledge transfer and access to materials, such as opinions. These measures included access and use of electronic tools. The Portfolio also reviewed different processes to identify ways to expedite the files.

With regard to current tools, resources and processes, a little more than one-half of legal counsel (55%) believed they contributed to the development of consistent and integrated legal advice, and 47% perceived they contributed to the development of consistent and integrated legal

positions in litigation files. Less than one-third of legal counsel (31%) felt current tools, resources and processes had contributed to the development of consistent and integrated legal policy.

However, the majority (74%) of legal counsel did find existing electronic tools useful. Fewer (55%) found Deskbooks useful, a finding which might be explained by comments made by legal counsel regarding the absence of specific Deskbooks to assist with the provision of legal services, including *Federal Real Property and Federal Immovables Act* Rules for Federal and Superior Courts and Aboriginal Advisory Deskbooks.

Qualitative data in connection with open-ended survey questions revealed that several issues might also have affected legal counsel's capacity to deliver high-quality legal services, including the following:

- Lack of timely and full remote access to tools and resources;
- lack of software/program compatibility;
- limitations associated with both Justipedia and iCase (e.g., lack of user-friendliness, the need for greater oversight regarding information/data being entered into the systems, lack of real-time updates); and
- challenges as a result of the centralization of IT services across government meant that sometimes services were not as responsive to AAP needs as compared to when IT services were being provided within the Department.

#### **4.3.3. Awareness and understanding within the federal government of issues, options, approaches to Aboriginal law, Aboriginal legal policy and northern development legal issues**

The evaluation found that the AAP has been successful at increasing awareness and understanding of nuanced legal issues, innovative options and approaches to Aboriginal law, Aboriginal legal policy and northern development legal issues and is continually relied upon as the expert source of legal advice across a broad spectrum of legal issues. Many examples were provided by key informants on how the Portfolio had contributed to this enhanced awareness and understanding, such as understanding Supreme Court of Canada and policy decisions. Counsel from other areas of the Department noted that AAP helped them to understand how a particular piece of litigation fit into the litigation landscape.

AAP Management/Senior Counsel believed the AAP had contributed in important ways to innovation and the enhanced awareness and understanding within the federal government of issues, options, and approaches to Aboriginal law, legal policy, and northern development legal issues. Several notable examples of this were provided, including the following:

- Indian Residential School Settlement Agreement;
- Duty to consult (e.g., “AAP responded immediately by creating a unit devoted to legal policy development in this area”);
- Section 35 of the *Constitution Act*, 1982 and claims to Aboriginal title;
- Specific Claims Tribunal; and
- Modern treaties/treaty policy development in the negotiation of historical treaties.

Case law was perceived by this group as having evolved during the evaluation period as a direct impact of the work of the AAP.

Clients felt that the Portfolio had contributed in important ways to the enhanced awareness and understanding of Aboriginal law, legal policy, and northern development legal issues horizontally across the government (e.g., “AAP has helped shape the government’s legal positions incrementally, affecting overall law”). Members of this group noted that they regularly received useful information from AAP on opinions arising from litigation decisions/interpretation of litigation decisions/positions and felt the Portfolio was contributing to their enhanced awareness and understanding with reference to the following: “advising and presenting the Crown’s arguments before the court”; “participating in the development of agreements/positions”; “illuminating [clients] on the legal landscape”; and “helping [clients] to modify [their] approach so [they] appear before a judge less frequently”.

The file review showed that AAP was contributing in important ways to enhanced awareness and understanding of the nuanced matters, innovative options, and approaches to various Aboriginal law, legal policy and northern development legal issues, such as duty to consult in relation to comprehensive funding arrangements, breach of treaty and fiduciary duty with respect to surrender, and applicability of the Specific Claims Process.

Important areas of enhanced awareness and understanding that were identified by clients pertained to legal issues and implications and potential risk that would inform business decisions. Results emerging from the case studies revealed that AAP invested important time in

consultation activities to ensure clients were aware of different points of view, of the various issues that needed to be considered prior to making any decision, of roles under legislation, and of how to make arguments clearer and robust. A significant example of the Portfolio's contribution pertained to the Crown's Constitutional Duty to Consult, which affects all areas of Aboriginal law. Specifically, AAP efforts resulted in the development of a pivotal framework for addressing recurring legal issues in connection with development projects and offered options for managing them. As noted by one case study informant, following the implementation of this framework, related cases against Canada and rate of loss dramatically decreased.

Within the AAP, useful fora/processes that were identified by legal counsel as contributing to enhanced awareness/understanding included access to supervisors/mentors, practice working groups, and access to the AANDC LSU and regional Aboriginal Law Sections. Existing AAP calls and meetings were either not used or applicable to the majority of legal counsel during the evaluation period. Qualitative data associated with open-ended survey questions revealed that a few legal counsel would like to have more training in specialized areas to increase their awareness and understanding of issues, options, approaches to Aboriginal law, legal policy, and northern development legal issues.

#### **4.3.4. Aboriginal law and legal policy issues and northern development legal issues are effectively addressed, litigated and resolved**

AAP's continuous efforts to address, litigate and resolve Aboriginal law and legal policy issues are evidenced by various court cases, prevailing court decisions and key legislation identified in the literature. In relation to consultation and accommodation, for instance, AAP's work on *Beckman v. Little Salmon Carmacks* helped to clarify two important issues regarding duty to consult.<sup>15</sup>

- That regulatory processes leading to a decision may be sufficient for meeting duty to consult in the absence of separate engagements with First Nations, on the condition that these processes entail requisite elements of consultation; and

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<sup>15</sup> See <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7896/index.co>.

- Regulatory decision-makers must balance the rights of the applicant with any potential impacts on the rights of First nations, with the court being required to acknowledge such decisions provided that they are reasonable.<sup>16</sup>

The AAP was perceived by some interviewees as contributing to Aboriginal law and legal policy issues and claims being effectively addressed, litigated and resolved across government through the provision of specific legal advice on matters of resolution and general policy approaches, duty to consult, how to “go forward in light of certain court decisions”, and by advancing arguments and maintaining consistency of legal opinions. AAP counsel felt that greater consideration and responsiveness to the new judicial culture of out-of-court resolution was required to ensure that the proper steps were being taken to prepare to settle out-of-court.

Clients felt that the AAP was contributing in important ways to the effective consideration, litigation and resolution of Aboriginal law, legal policy, and northern development legal issues across government, and was directly implicated in the successful conclusions that were being generated and negotiations that were taking place around reconciliation principles. AANDC in particular noted that their approach was constantly evolving as a direct function of the advice they were receiving from AAP. Clients stated that they were regularly encouraged to settle disputes when feasible; however, it was generally acknowledged by this group that a huge amount of litigation was not appropriate for resolution outside the court. Nonetheless, clients on the whole were satisfied with the rate of settlement that had been achieved during the evaluation period.

The 2011 Client Feedback Survey provided insights into the extent to which AAP contributed to issues and claims being effectively addressed, litigated and resolved. For example, “Recommended appeal or judicial review, if applicable” was rated 8.3/10 in connection with litigation services; other areas scored below the departmental standard of 8.0, such as “Identified means to prevent and resolve legal disputes at the earliest opportunity”, which was scored 7.3/10 regarding litigation services (see Table 6).

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<sup>16</sup> Retrieved online January 15, 2015 at <http://www.fasken.com/en/aboriginal-land-claims/>.

**Table 6: Client (AANDC) Feedback on the Usefulness of Legal Services (2011)**

	Legal Advisory Services	Litigation Services	Legislative Drafting Services
Provided clear and practical guidance	7.9 (±0.2)	7.5 (±0.5)*	n/a
Developed drafting options appropriate to the policy/program objectives of depts./agencies	n/a	n/a	8.1 (±0.8)*
Proposed appropriate solutions for legal and drafting issues raised	n/a	n/a	8.1 (±0.8)*
Involved Departments/Agencies in the development of legal strategy and positions	7.5 (±0.2)	7.3 (±0.5)*	n/a
Identified means to prevent and resolve legal disputes at the earliest opportunity	7.7 (±0.2)	7.3 (±0.5)*	n/a
Identified opportunities to implement policies and programs by administrative rather than legislative or regulatory means	n/a	n/a	7.4 (±1.0)*
Consistency of legal services	8.1 (±0.2)	7.8 (±0.4)	8.3 (±0.8)*
Identified opportunities to use dispute resolution practices, where appropriate	7.4 (±0.3)	7.1 (±0.5)*	n/a
Understanding of the nature of the issue for which assistance was sought	8.5 (±0.1)	7.8 (±0.4)	8.2 (±0.7)*
Recommended appeal or judicial review, if applicable	n/a	8.3 (±0.5)*	n/a

\* Caution is recommended in interpreting results that have a calculated margin of error greater than ±0.4

The same survey indicated positive responses across legal advisory, litigation and legislative drafting services concerning whether the AAP had advised the client on issues/development which may impact their department/agency, worked with the client to identify legal risks, and involved the client in the review/development of legal options to mitigate identified legal risks

While 57% of the Legal Counsel Survey respondents who indicated that they typically worked on litigation files or files requiring litigation support reported barriers to using DR to try to resolve AAP litigation files, the use of DR increased over the evaluation period. Overall, across the five-year evaluation period, an equal percentage of the files were adjudicated and settled. Table 7 shows that the vast majority of cases that were settled out of court involved attempts at DR, particularly closed litigation files classified as medium risk during 2012-13.

**Table 7: Risk Level by Final Outcome and DR Status of Litigation Files (2008-09 – 2012-13)**

Risk Level/Final Outcome	2008-09	2009-10	2010-11	2011-12	2012-13
<b>High</b>	1.4%	2.8%	1.9%	3.6%	2.4%
<b>Adjudicated</b>	0.8%	1.5%	0.9%	2.2%	1.4%
Without DR	0.7%	1.4%	0.9%	2.2%	1.3%
With DR	0.1%	0.1%	0.0%	0.0%	0.1%
<b>Settled</b>	0.7%	1.3%	1.0%	1.4%	1.0%

Risk Level/Final Outcome	2008-09	2009-10	2010-11	2011-12	2012-13
Without DR	0.2%	0.7%	0.6%	0.8%	0.5%
With DR	0.5%	0.6%	0.4%	0.6%	0.5%
<b>Medium</b>	<b>63.0%</b>	<b>61.1%</b>	<b>77.4%</b>	<b>66.0%</b>	<b>80.2%</b>
<b>Adjudicated</b>	<b>46.9%</b>	<b>33.9%</b>	<b>41.9%</b>	<b>19.4%</b>	<b>15.1%</b>
Without DR	29.1%	16.5%	20.6%	10.9%	8.8%
With DR	17.8%	17.3%	21.3%	8.5%	6.3%
<b>Settled</b>	<b>16.1%</b>	<b>27.2%</b>	<b>35.5%</b>	<b>46.7%</b>	<b>65.1%</b>
Without DR	2.6%	5.1%	5.2%	3.2%	2.4%
With DR	13.6%	22.1%	30.3%	43.5%	62.6%
<b>Low</b>	<b>35.5%</b>	<b>36.1%</b>	<b>20.8%</b>	<b>30.3%</b>	<b>17.3%</b>
<b>Adjudicated</b>	<b>15.6%</b>	<b>15.1%</b>	<b>12.7%</b>	<b>23.2%</b>	<b>11.7%</b>
Without DR	14.0%	13.2%	10.8%	22.5%	11.3%
With DR	1.6%	1.9%	1.9%	0.7%	0.4%
<b>Settled</b>	<b>19.9%</b>	<b>21.0%</b>	<b>8.1%</b>	<b>7.1%</b>	<b>5.7%</b>
Without DR	4.1%	9.7%	3.7%	4.5%	3.6%
With DR	15.8%	11.3%	4.5%	2.6%	2.1%
<b>Grand Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

*Source: iCase data*

*Notes: This table shows the percentage of CLOSED (i.e., files that were closed during a particular fiscal year) litigation files by file outcome (adjudicated/settled) and whether DR was used (or not) over the evaluation period, by level of legal risk, to illustrate consistency of the implementation of DR structures/processes over time to support the delivery of legal services in response to client need as a function of legal risk. Policy work is captured under advisory files in iCase.*

Table 8 shows that most cases that were settled out of court involved DR, particularly closed litigation files that were classified as low complexity during 2012-13.

**Table 8: Complexity Level by Final Outcome and DR Status of Litigation Files (2008-09 – 2012-13)**

Complexity Level/Final Outcome	2008-09	2009-10	2010-11	2011-12	2012-13
<b>Mega</b>	<b>0.4%</b>	<b>0.3%</b>	<b>0.4%</b>	<b>0.5%</b>	<b>0.4%</b>
<b>Adjudicated</b>	<b>0.1%</b>	<b>0.1%</b>	<b>0.3%</b>	<b>0.3%</b>	<b>0.2%</b>
Without DR	0.1%	0.1%	0.3%	0.3%	0.2%
<b>Settled</b>	<b>0.3%</b>	<b>0.2%</b>	<b>0.1%</b>	<b>0.1%</b>	<b>0.2%</b>
Without DR	0.1%	0.1%	0.0%	0.1%	0.1%
With DR	0.2%	0.1%	0.1%	0.0%	0.1%
<b>High</b>	<b>33.2%</b>	<b>23.5%</b>	<b>22.2%</b>	<b>4.8%</b>	<b>2.7%</b>
<b>Adjudicated</b>	<b>22.8%</b>	<b>21.2%</b>	<b>20.0%</b>	<b>2.9%</b>	<b>1.3%</b>

Complexity Level/Final Outcome	2008-09	2009-10	2010-11	2011-12	2012-13
Without DR	10.3%	8.0%	9.6%	2.1%	1.2%
With DR	12.5%	13.2%	10.4%	0.8%	0.1%
<b>Settled</b>	<b>10.4%</b>	<b>2.3%</b>	<b>2.2%</b>	<b>2.0%</b>	<b>1.4%</b>
Without DR	0.9%	0.8%	1.0%	0.6%	0.5%
With DR	9.5%	1.5%	1.1%	1.4%	0.9%
<b>Medium</b>	<b>54.4%</b>	<b>32.7%</b>	<b>30.1%</b>	<b>32.6%</b>	<b>27.3%</b>
<b>Adjudicated</b>	<b>41.1%</b>	<b>16.5%</b>	<b>22.0%</b>	<b>23.2%</b>	<b>15.2%</b>
Without DR	32.7%	11.2%	10.7%	15.6%	9.1%
With DR	8.4%	5.4%	11.3%	7.5%	6.1%
<b>Settled</b>	<b>13.3%</b>	<b>16.2%</b>	<b>8.1%</b>	<b>9.4%</b>	<b>12.1%</b>
Without DR	5.0%	9.6%	3.5%	3.5%	2.8%
With DR	8.3%	6.5%	4.6%	6.0%	9.3%
<b>Low</b>	<b>12.0%</b>	<b>43.5%</b>	<b>47.3%</b>	<b>62.1%</b>	<b>69.6%</b>
<b>Adjudicated</b>	<b>7.3%</b>	<b>17.5%</b>	<b>15.6%</b>	<b>19.0%</b>	<b>12.0%</b>
Without DR	6.3%	15.0%	13.2%	18.1%	11.4%
With DR	1.0%	2.5%	2.4%	0.9%	0.7%
<b>Settled</b>	<b>4.7%</b>	<b>26.0%</b>	<b>31.7%</b>	<b>43.1%</b>	<b>57.5%</b>
Without DR	1.9%	6.2%	4.8%	4.8%	3.5%
With DR	2.8%	19.8%	26.9%	38.4%	54.0%
<b>Grand Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

*Source: iCase data*

*Notes: This table shows the number and percentage of CLOSED (i.e., files that were closed during a particular fiscal year) litigation files by file outcome (adjudicated/settled) and whether DR was used (or not) over the evaluation period, by level of legal complexity, to illustrate consistency of the implementation of DR structures/processes over time to support the delivery of legal services in response to client need as a function of legal complexity.*

#### 4.3.5. Legal Risk Management

Legal risk management 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.”<sup>17</sup> As such, legal risk management involves a number of different stages and activities, including:

<sup>17</sup> See <http://www.tbs-sct.gc.ca/rpp/2006-2007/Jus-Jus/jus-jus-eng.pdf>

- Identification and assessment of potential legal risks;
- Communication of potential risks to stakeholders, as necessary;
- Mitigation of 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); and
- Management of legal risks that have materialized and a reduction of their potential costs (monetary and otherwise).

The legal risk management process also involves reassessment of legal risks, as necessary, as issues develop over time.

Evaluation results indicate that AAP contributed to the ability of government departments and agencies to better manage their legal risks on Aboriginal issues. Most key informants felt that the AAP's advice contributed to AANDC's ability to administer their programs in a manner that reduced risks. The Portfolio was perceived as enhancing government's understanding and management/mitigation of legal risk through informal and formal means, for instance through written briefings, lawyer explanations and information sessions.

A review of AAP documentation revealed concerted efforts to assist government departments and agencies in their ability to better manage their legal risks on Aboriginal issues during the evaluation period. For example, in order to manage the speed and volume of information that is crucial to effective legal risk management, the AAP states that it will optimize project management, case management, knowledge management, and quality assurance tools and systems. Another critical example concerns the Legal Risk Management Renewal pilot, undertaken with the Department's Law Practice Management Division, which involved a determination of which categories of files could and should be the subject of a risk assessment and to determine how an assessment ought to be carried out. It was recognized that more work is required with respect to the quantification of risk across the Department. Specifically, counsel help clients understand risk upfront with a "legal risk management grid", which involves assigning a numerical value to risk. As risk can be difficult to quantify, a numerical value may not provide sufficient detail to clients. Given the Legal Risk Management Framework was being piloted during the evaluation period, there were inconsistencies in terms of identifying/quantifying level of legal risks. The Legal Risk Management Framework was finalized and its use across the Department was made mandatory in 2013 (just after the evaluation period), in April 2013 for litigation files and in September 2013 for advisory and legislative files. It is

anticipated that the use of this framework will lead to more consistency not only within AAP but also across the Department.

Overall, clients felt that the Portfolio had done a good job at assisting government departments and agencies in managing legal risks on Aboriginal issues over the course of the evaluation period. Findings emerging from key informant and case study interviews revealed that legal risks were thoroughly and regularly communicated to clients by way of discussions, draft facta with cover notes, briefing and scenario notes, formal legal opinions, legal risk analyses and contingency plans, possible outcomes and probability of those outcomes. As based on informal and formal discussions and engagements concerning legal risk, and the re-articulation of legal risk as required over the life of the file, clients were able to better manage/mitigate legal risks on Aboriginal issues.

Still, it was acknowledged that while AAP assists in the management of legal risk, it is ultimately up to the client to decide how they would like to proceed. In terms of legal risk management, clients believed that the Portfolio did not have a flexible system in place for measuring risk (e.g., sometimes a full legal risk assessment is not required and something short and quick would be more helpful), and that sometimes the current risk assessment tool had not been helpful. Clients perceived that a change in the way the Portfolio assessed legal risk would allow the AANDC LMRB to be more effective at addressing the resolution of litigation cases. Clients also noted that, because of cost reductions, AAP had been hindered in their efforts to provide corporate counsel with warning notes/advice for avoiding risks and obstacles in the future (excepting monumental cases).

#### **4.4. Demonstration of Efficiency and Economy**

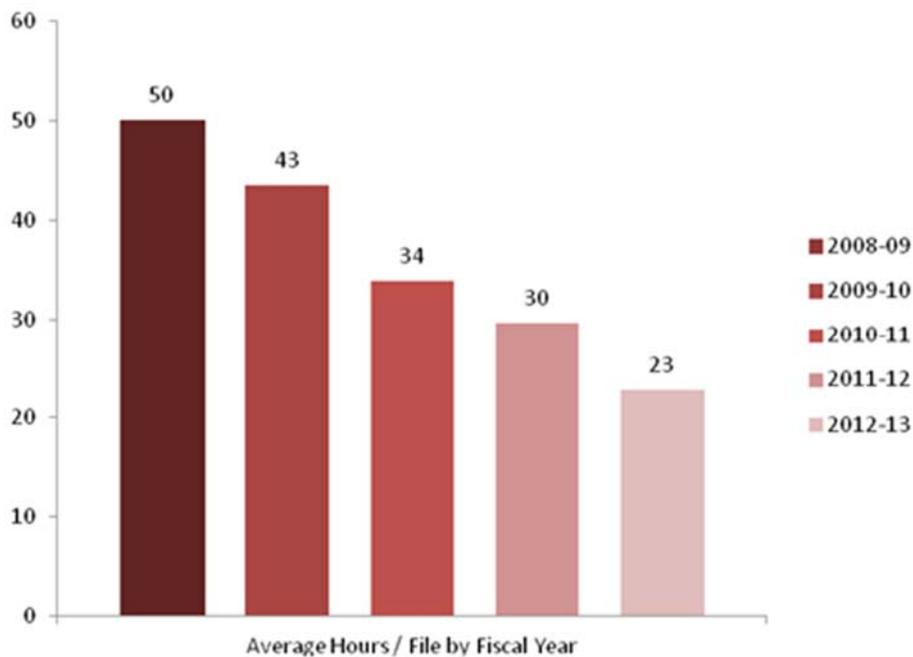
The Treasury Board 2009 *Policy on Evaluation* defines efficiency as production of “a greater level of output... with the same level of input or at a lower level of input with the same level of output,” and economy as the achievement of expected results using the minimum amount of resources required. Applying these definitions to AAP, an analysis of efficiency and economy considers the ability of the Portfolio to manage the cost and demand for legal services and the degree to which the legal services provided are cost efficient.

As noted earlier, during the evaluation period the AAP underwent organizational changes including budget and staff reductions. The Portfolio was accountable for an annual budget of approximately \$78.8 M, which was distributed nationally (38% to AAP HQ and AANDC LSU,

and 62% to regional offices) across three business lines: litigation service, Indian Residential Schools, and legal advisory services. The annual budget covered the salary and operating expenditures of approximately 746 full-time equivalents (FTE) nationally. The budget was reduced in several increments to \$65.6M in fiscal year 2012-13, and the staffing level to 612 FTEs nationally. Additionally, the AAP undertook several reviews and other initiatives to enhance its resource utilization efficiencies.

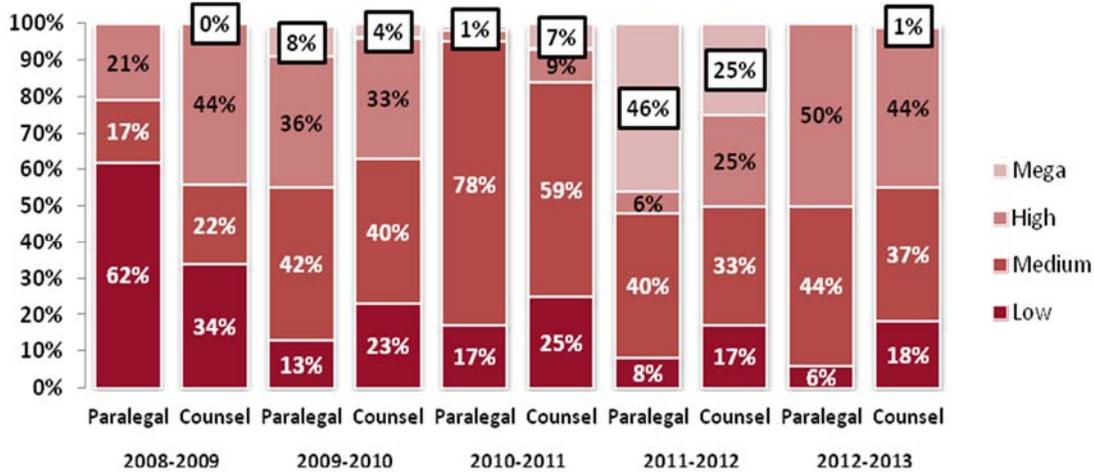
Analysis of iCase data revealed the percentage of time spent by legal counsel on low complexity advisory files and low risk litigation files decreased over time; the percentage of time spent on low complexity litigation files increased, which is likely a result of the increasing number of such files. Of the 16,165 advisory, litigation and legislative files that were opened and closed during the evaluation period, where AANDC was either the primary or the secondary client, average hours per file steadily decreased over time, as shown in Figure 3.

**Figure 3: Average Hours per File (2008-09 – 2012-13)**



As highlighted in Figure 4, it appears that over the course of the evaluation period, the percentage of time spent by legal counsel on low complexity advisory files declined from 34% of total time in 2008-09 to 18% in 2012-13. Paralegal time on low complexity advisory files also decreased.

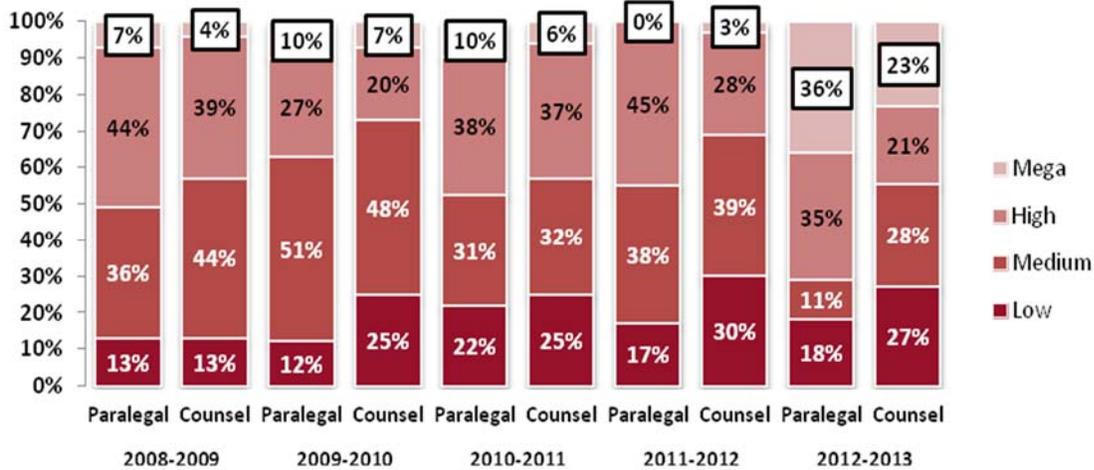
**Figure 4: Percentage of Total Paralegal and Counsel Hours on ADVISORY Files by Level of Complexity (2008-09 – 2012-13)**



Source: iCase data

As shown in Figure 5, over the course of the evaluation period, the percentage of time spent by legal counsel on low complexity litigation files increased from 13% of total time in 2008-09 to 27% in 2012-13. Paralegal time on low complexity litigation files increased. Increased time on such files by paralegals and counsel is likely in response to the increasing number of closed low complexity litigation files that were observed during the five-year evaluation period (as shown in Table 8 above, there was an increase from 12.0% in 2008-09 to 69.6% in 2012-13).

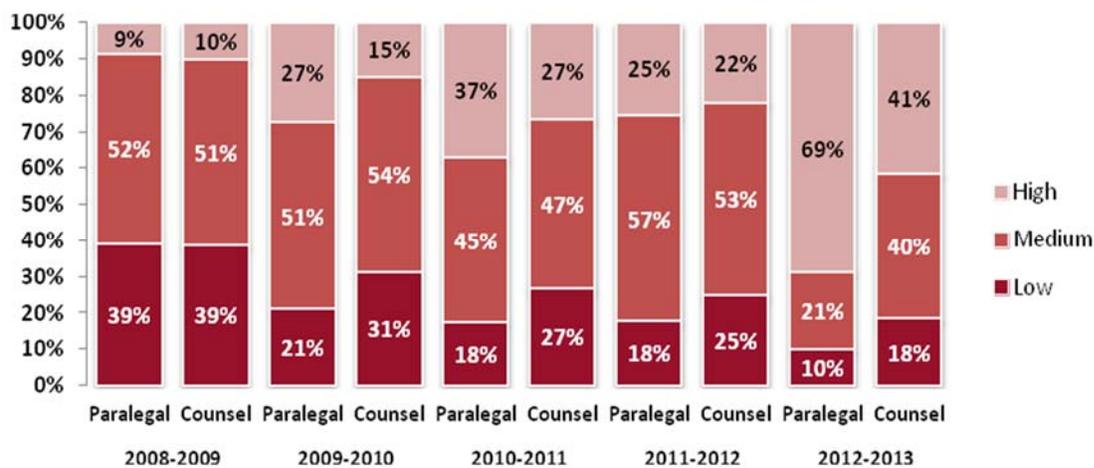
**Figure 5: Percentage of Total Paralegal and Counsel Hours on LITIGATION Files by Level of Complexity (2008-09 – 2012-13)**



Source: iCase data

Figure 6 shows that the percentage of time spent by legal counsel on low risk litigation files decreased from 39% of total time in 2008-09 to 18% in 2012-13. Paralegal time on low risk litigation files also decreased. These findings seem to align with those presented in Table 7, which showed that over the course of the evaluation period, the number of closed low risk litigation files decreased.

**Figure 6: Percentage of Total Paralegal and Counsel Hours on LITIGATION Files by Level of Risk (2008-09 – 2012-13)**



Source: iCase data

Level of legal counsel was parsed out even further (i.e., paralegal, junior (LA-00, LA-1A/LP1, and LA-2A/LP2) and senior counsel (LA-2B/LP3/LC1, LA-3A/LP4/LC2, LA-3B/LP5/LC3, and LA-3C/LC4).

Tables 9 and 10 show that over the course of the evaluation period, the highest percentage of time spent on litigation files was spent by junior legal counsel (relative to more senior counsel or paralegals) regardless of level of legal complexity or risk.

**Table 9: Percentage of Total Hours/File by Level of Resource and Legal Complexity per Fiscal Year (2008-09 – 2012-13)**

<b>Litigation Files Only</b>																
<b>2008-2009</b>				<b>2009-2010</b>			<b>2010-2011</b>			<b>2011-2012</b>			<b>2012-2013</b>			
	Paralegal	Junior	Senior	Paralegal	Junior	Senior	Paralegal	Junior	Senior	Paralegal	Junior	Senior	Paralegal	Junior	Senior	
<b>Mega</b>	14%	75%	11%	14%	70%	16%	14%	72%	14%	17%	66%	17%	8%	70%	23%	
<b>High</b>	8%	75%	17%	15%	73%	13%	15%	78%	7%	13%	74%	12%	14%	76%	9%	
<b>Medium</b>	15%	<b>79%</b>	6%	7%	<b>79%</b>	14%	12%	<b>83%</b>	5%	10%	<b>84%</b>	6%	11%	<b>82%</b>	6%	
<b>Low</b>	17%	63%	20%	15%	58%	27%	15%	63%	22%	23%	47%	30%	22%	44%	35%	

**Table 10: Percentage of Total Hours/File by Level of Resource and Legal Risk per Fiscal Year (2008-09 – 2012-13)**

<b>Litigation Files Only</b>																
<b>2008-2009</b>				<b>2009-2010</b>			<b>2010-2011</b>			<b>2011-2012</b>			<b>2012-2013</b>			
	Paralegal	Junior	Senior	Paralegal	Junior	Senior	Paralegal	Junior	Senior	Paralegal	Junior	Senior	Paralegal	Junior	Senior	
<b>High</b>	15%	57%	29%	24%	49%	26%	19%	56%	25%	21%	43%	37%	26%	48%	26%	
<b>Medium</b>	17%	70%	13%	14%	70%	16%	14%	75%	11%	19%	67%	13%	10%	<b>76%</b>	14%	
<b>Low</b>	17%	<b>73%</b>	10%	11%	<b>79%</b>	11%	10%	<b>78%</b>	12%	14%	<b>72%</b>	14%	10%	70%	20%	

A priority area that was identified was to ensure that legal resources are aligned to the issues or cases that make the greatest difference to business or government operations and priorities, both in terms of supporting those priorities and helping clients manage their greatest legal risks to corporate objectives. Legal counsel who indicated that they typically worked on litigation files and/or files requiring litigation support indicated that there was an appropriate level (51%) and number (45%) of counsel assigned to litigation files relative to the assessed legal risk and complexity. A greater percentage of legal counsel who typically worked on advisory files indicated that there was an appropriate level (66%) and number (62%) of counsel assigned to advisory files relative to the assessed legal risk and complexity.

One-third of survey respondents perceived a duplication of roles and/or responsibilities in the delivery of legal services. Specifically, they perceived too many layers of management, an overlap of work being conducted by HQ and regional counsel on similar files/issues, and potential duplication among ALC, AANDC LSU and the client (AANDC) in the provision of litigation support and management activities. A common theme emerging from qualitative lines of inquiry throughout the survey and interviews revealed that legal counsel were to some extent constrained by the loss of junior counsel, paralegals and administrative staff, which meant them taking on additional tasks that might be more suitable for others to complete (e.g., research and photocopying).

Many interviewees agreed that the legal services provided by AAP were cost effective relative to the private sector; however, there was a growing concern that too much time was being devoted to trying to improve 'cost' efficiency (e.g., "Sometimes a disproportionate amount of time is spent trying to save \$100").

Clients perceived that value for money had been achieved and that AAP resource utilization had been appropriate over the evaluation period. Noticeable efforts had been made by legal advisory and litigation staff over the course of the evaluation period to reduce costs and pair files up with a suitable level of expertise in relation to legal risk, complexity and GOC priorities. Clients also felt that rates were reasonable in return for the high-quality legal services they had received. Still, there was some concern expressed with the billing system, which some clients found difficult to decipher at times.

A review of AAP documents showed that from fiscal year 2011 onward, the Portfolio had engaged in several efforts to ensure its continued capacity to provide national strategic coordination and legal risk management, and to deliver legal services appropriate/sufficient, given existing and future demand for legal services. Notable examples include the Professional

Development Integration Plan in 2011, which spoke of the importance of investing in value-added training and development to help ensure service delivery in light of a reduced workforce and to support employees. The development of employment engagement strategies was also noted. A sustainable strategy for the resourcing of legal services was established in a manner that factors in the following:

- Servicing the key priorities identified by the GOC, AANDC, and the Attorney General;
- Helping to achieve AANDC's responsibility for managing legal risk to its mandate;
- Promoting Justice's "value-added" in identifying, assessing and providing options for how to address that legal risk; and
- Developing tools and processes for efficient delivery of legal services.

When asked to provide comments regarding factors that contribute to the unit's ability to provide timely, high quality, and cost effective legal services, legal counsel expressed the need for additional human resources moving forward (e.g., paralegals and assistants), succession planning, and mentorship, training, management and professional development opportunities. In addition, legal counsel expressed the need for greater access to research, information, tools, resources, data, fora and legal counsel colleagues within the AAP and beyond to assist in the delivery of legal services.

Interviewees believed that the AAP remained highly responsive despite the significant loss of personnel. Many felt that the AAP had managed with what it had towards the end of the evaluation period, and that "resources and demand" were suitably in line during this time. Still, in relation to future demand, respondents felt less confident. Interviewees felt that recent decisions in Aboriginal law would lead to a surge in demand, which could strain the current level of resources.

Interviewees noted some challenges in billing other government departments that seem to be related to the fact that different funding models were being used across government departments. It was further noted that the iCase timekeeping system did not match the cost recovery funding model, in that time (i.e., in hours) was logged into iCase for each file and then converted into FTE data, which did not necessarily match the information appearing on a client's invoice. As noted by one key informant, "It would be nicer if both systems were more integrated to parse out how the invoice related to effort." This issue may be addressed by the Department's new 1,400 hour standard, which should help to manage the costs of legal services by meeting any increased demand with the existing workforce.

Clients also noted some challenges with the cost-recovery model and a need for more predictability into annual budgeting. Members of this group suggested multi-year agreements as an alternative to yearly agreements, that a more efficient commercial style billing system be adopted, or perhaps move to a “fee for service as a better way to track money spent”.

## 5. CONCLUSIONS, RECOMMENDATIONS AND MANAGEMENT RESPONSE

This section of the report presents integrated conclusions based on the findings presented in Section 4. The information is structured along the main evaluation issues and questions.

### Relevance

#### *Is there a continued need for the AAP legal services?*

The AAP offers specialized legal advisory and direct litigation services to federal client departments and agencies in the provision of high-quality legal services and legal policy advice in relation to Aboriginal Peoples to the Deputy Minister and Minister of Justice Canada and federal departments and agencies. It also provides high-quality legal services on northern development legal issues within the mandate of AANDC. The Portfolio ensures that federal legal policy, legal positions and advice in the field of Aboriginal law, as well as AANDC-related northern development legal issues are consistent and integrated across the federal government, contribute to the resolution of Aboriginal legal issues and claims, and to the development of Aboriginal legal policy and national law practice management.

To this end, thousands of files are opened each year where AANDC is either the primary or secondary client. Litigation files in particular demonstrate continued growth. Value-add services provided by the AAP in response to need are expansive and include expertise pertaining to duty to consult, SCT work, interpretation, legal opinions, legal risk assessments, and judicial reviews. Legal services offered by the AAP address increasingly complex federal issues concerning Aboriginal Peoples and continue to result in major developments in Aboriginal law and legal policy, possibly the single largest growth sector in the legal industry in the area of public law. Existing and projected areas of legal risk concern the Indian Residential Schools Settlement Agreement, Aboriginal children's experiences outside of Indian Residential Schools, Specific Claims Action Plan, the Federal Framework for Economic Development, the Federal

Comprehensive Land Claims Policy, Treaty and Self-government Negotiations, Aboriginal Rights and Title and Consultation and Accommodation.

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

The Portfolio purposely aligns its activities with federal government priorities and departmental strategic outcomes, including supporting the AANDC's Minister's long and short-term Aboriginal agenda (with particular emphasis on supporting the Aboriginal Economic Development Framework), and the Justice Minister's and Deputy Minister's priorities with respect to Aboriginal issues, and managing key horizontal issues and providing whole-of-government advice.

Over the five-year evaluation period, AAP suitably re-calibrated its activities in response to changing priorities and strategic outcomes. The Portfolio remained aware of high priority areas and demonstrated a practical understanding of what services were required by clients, for instance those pertaining to human rights and SCT work and that addressed program and policy on modernization. Highly collaborative approaches, good working relationships, and solid in-house expertise enable the Portfolio to better respond to changes in federal government priorities and departmental strategic outcomes.

***Does the provision of legal services by the AAP align with federal roles and responsibilities?***

The AAP supports the Minister in fulfilling his duties as Minister of Justice and Attorney General of Canada under the *Department of Justice Act* and other relevant federal statutes, as well as the GOC's long- and short-term agenda with respect to Aboriginal Peoples. Alignment of the Portfolio's legal services with the *Department of Justice Act* is achieved through its successful management of cross-cutting legal issues and the provision of legal advisory and litigation services that assist client departments and agencies in the management of legal risk, being ever mindful of its obligations to protect the Crown.

***Are the mandate and objectives of the AAP clear?***

The overall mandate of the AAP is to provide high-quality legal services and legal policy advice in relation to Aboriginal Peoples to the Deputy Minister and Minister of Justice Canada, and to federal departments and agencies. The AAP mandate also includes providing high-quality legal services on northern development legal issues within the mandate of AANDC; among the 34 departments and agencies delivering Aboriginal and northern programs and services, AANDC is the primary recipient of AAP's legal services.

Responsibilities of the AAP as a whole in providing litigation support were perceived by legal counsel to remain somewhat unclear, while roles and responsibilities in connection with *specific* units of the AAP were clear and appropriate towards the achievement of the mandate and objectives of the Portfolio. The evaluation found differing views with respect to the functioning of the governance/organizational structures of the AAP. While practice and working groups and some committees were perceived as supporting the achievement of AAP's objectives, others were perceived to be redundant or not functioning as well as intended.

***Has the AAP change management plan continued to support the achievement of the AAP mandate?***

During the evaluation period, the AAP change management plan was implemented, including a Modernization Strategy that involved a major reorganization of HQ functions and significant reductions in the cost structure of these functions. Multiple lines of evidence suggest that the AAP mandate continued to be supported; still, some duplication of roles/responsibilities in the delivery of high-quality legal services was observed during the evaluation period. This duplication indicates an opportunity for greater efficiency in connection with the role of the ALC in the provision of litigation support and advice to litigation counsel, and in relation to litigation management. An opportunity also exists for drawing a clearer distinction between the role of HQ and regional counsel when working on similar files. It is important to note that the absence of junior level staff, paralegals and administrative resources introduces workload pressures that may interfere with the capacity to deliver high-quality legal services.

**Recommendation 1: It is recommended that roles and responsibilities be clarified for the ALC, the LSU and regional counsel involved in litigation support and management.**

**Management Response:**

Agreed.

Near the end of the evaluation cycle, the Portfolio underwent a significant reorganization, including the creation of the ALC in order to manage and deliver legal services with greater efficiency, and clarifying the new roles and responsibilities within the AAP has been a priority.

More recently, with the implementation of the Legal Services Review measure entitled a “Unified Approach to Aboriginal Law Services Delivery”, AAP has taken a number of actions, which helps clarify roles and responsibilities including the following:

1. The practice of Aboriginal law in Justice is now consolidated through the designation of the ALC as Justice’s Centre of Expertise for Aboriginal law and legal policy. The ALC works together with a virtual community of counsels and paralegals from across Justice with significant expertise and practice in Aboriginal law. This is supported by the Protocol for the Consolidation of Aboriginal Law Advisory Services in Justice (including advisory legal services to support litigation), which outlines the roles and responsibilities of the Centre and the Community of Practice to better manage our dynamic area of practice.
2. AAP has also signed a Protocol of Engagement with INAC addressing key Justice-client points of intersect in the litigation process clarifying roles and responsibilities, and reducing redundancies and duplication.
3. To support items 1 and 2 above, AAP has developed a new Integrated Service Delivery Model, which aims to:
  - a) Clarify the roles and responsibilities within Justice;
  - b) Improve litigation and advisory coordination;
  - c) Enhance communication between ALC, LSU, Regional Operations, litigators and the client; and,
  - d) Streamline and improve overall governance and decision-making processes to allow Justice to properly fulfill its Attorney General role and strengthen the ADAG, AAP’s functional authority over Aboriginal law.

***Is there sufficient capacity within AAP to support ongoing quality improvement, performance measurement and evaluation?***

AAP continues to engage in various efforts that guide and support ongoing quality improvement and performance measurement. A number of client committees, working groups or practice groups and interdepartmental committees have been established to sustain such efforts. The implementation of the new business analytic model/evidence-based approach to identifying key priorities, peer reviews and other committees has also ensured ongoing quality assurance and consistency in legal positioning and reporting practices. An opportunity exists for enhancing data collection methods and systems, such as the consistency with which data are entered into iCase and in the type of information and level of detail being stored in the system.

**Performance**

***Has the AAP produced high-quality legal services related to Aboriginal law, legal policy and northern development legal issues?***

The AAP continues to meet its mandate by providing high-quality legal services, defined by the Department of Justice as being accurate in law, consistent and coordinated across the Department of Justice Canada, able to meet/exceed established client service standards for timeliness, responsiveness and usefulness; and consistent with the *Hallmarks of Well-drafted Acts and Regulations* with respect to legislative services.

Multiple lines of evidence indicate that the services of the Portfolio were well coordinated, useful, timely, highly responsive, and appropriate to the needs of clients and their policy and program objectives. The services provided by the AAP during the evaluation period covered a broad range of significant legal issues, including those pertaining to treaty land entitlement, specific claims, fiduciary duty, and consultation and accommodation. Importantly, the majority of files (86%) that were closed during the evaluation period achieved Crown success.

Moving forward, areas for opportunity exist in enhancing access to specific information, including up-to-date legal opinions and risk assessments, case theories, draft pleadings, Deskbooks and access to specialized libraries for research purposes.

***Is the AAP contributing to enhanced capacity to deliver legal services related to Aboriginal law, legal policy and northern development legal issues in an integrated/consistent and responsive manner?***

The AAP is headed by the Assistant Deputy Attorney General who has functional responsibility for Aboriginal matters within the Department of Justice to ensure the consistency of Aboriginal policy and practices throughout all federal government departments.

By 2012-13, several AAP initiatives were underway towards the further attainment of integration/ consistency and responsiveness of legal services moving forward. During fiscal year 2012-13, the ALC was established to ensure consistency of legal advice and the AAP's continued ability to provide responsive services. As a result of AAP efforts, effective consultations across a range of relevant stakeholders, briefing processes, and how risks are conveyed and approaches proposed through effective dialogue, certain language is being developed and applied across similar cases to ensure consistency of legal positions. Established client committees, working groups or practice groups and interdepartmental committees, as well as cross-country calls, peer reviews, template opinions, and guidelines further help to ensure the integrated delivery of legal services and that legal counsel speak with one voice.

In general, the evaluation found that counsel have the appropriate resources to conduct their work, although a few areas for improvement were noted in connection with existing AAP tools, resources and processes. Future considerations include more enhanced and timelier access to critical tools and resources in both official languages that are current, as well as a more coordinated effort across the AAP as a whole.

**Recommendation 2: It is recommended that the tools and resources available to AAP counsel be examined to determine current gaps and to explore cost-effective ways of bridging those gaps.**

**Management Response:**

Agreed.

The AAP recognizes the need for a continuously updated, integrated and comprehensive set of information tools and resources in a wide variety of formats to aid in improving the quality, efficiency and completeness of legal services. Since the end of the evaluation cycle, AAP has

implemented a number of tools and resources to assist counsels in the conduct of their work. These include (not exhaustive list):

- 1) Aboriginal Legal Issue Backgrounders on at least 17 different topics – concise summaries of the law and current federal legal positions on a broad range of aboriginal legal issues. Development and updating of these resources are ongoing.
- 2) Legal Issue Federal Position Guides on at least 6 topics– in depth discussion papers and guides on the federal approach to key and current aboriginal legal issues. Development and updating of these resources are ongoing.
- 3) Templates for Legal Counsel – standardized and recommended language and structure for frequently drafted documents. Completed templates include:
  - Settlement Agreements
  - Legal Risk Assessments
  - Duty to Consult Legal Opinions
- 4) Litigation Settlement Process Desk Book – a reference work for counsel which contains practice directives, best practices information, templates and other tools for facilitating the settlement process.
- 5) Legal Risk Assessment Best Practices Guide - a reference work for counsel which contains practice directives, best practices information, templates and other tools for preparing legal risk assessments.
- 6) Consultation Newsletter - a bi-monthly report on contextual developments and litigation related to Crown consultations obligations.
- 7) Consultation Practice Group - a forum for learning, information sharing, and innovation. The Practice Group includes approximately 150 members and it meets regularly, alternating agendas between information sharing and addressing specific issues/topics.
- 8) Protocol of engagement with INAC, which streamlines and clarifies eight components of our litigation practice:
  - Case intake;

- Case plans;
  - Research plans;
  - Document production process – streamlines through a best practices tool designed to reduce the effort spent on document production activities;
  - Instructions – to reduce effort spent on various aspects of obtaining instructions, a protocol for Streamlined Instructions for Procedural Matters was developed;
  - Risk assessment – streamlining of the development, review and approval process;
  - Settlement mandates; and
  - Contracting for experts.
- 9) SCT Efficiencies Report - a practice directive on roles and responsibilities, governance, and issues of settlement to improve efficiencies and effectiveness in the coordination and conduct of the SCT practice area.

***Is the AAP contributing to enhanced awareness and understanding within the federal government of issues, options, approaches to Aboriginal law, legal policy and northern development legal issues?***

The AAP has been successful at increasing awareness and understanding of nuanced legal issues, innovative options, as well as approaches to Aboriginal law, legal policy and northern development legal issues horizontally across government, and is continually relied upon as the expert source of legal advice across a broad spectrum of legal issues. Areas of enhanced awareness and understanding include duty to consult in relation to Comprehensive Funding Arrangements, breach of treaty and fiduciary duty with respect to surrender, and applicability of the Specific Claims Process.

The Portfolio has several working groups, training and professional development activities and products to assist with information dissemination and knowledge exchange. Particularly useful mechanisms include access to supervisors/mentors, the AANDC LSU, Practice Working Groups and regional offices/Aboriginal Law Sections. Moving forward, more job shadowing/training opportunities in specialized legal areas are required to promote further development of legal

practice skills, support enhanced awareness and understanding of issues, options, approaches to Aboriginal law, legal policy, and northern development legal issues.

**Recommendation 3: It is recommended that the training needs of AAP counsel be examined to determine current gaps and to explore cost-effective ways of offering access to training.**

**Management Response:**

Agreed.

Professional Development and Training is a high priority for the AAP and, as such, the Portfolio introduced in 2012-13 a professional development and training program (that compliments the Department's Professional Development Directorate) identifying and addressing common learning needs across the AAP that are consistent with the Portfolio's business goals and strategic objectives, avoiding duplication of effort, and sharing best practices. The program is project managed with a Learning Framework that is client focused, innovative, with a view to building a flexible and successful workforce.

The AAP is committed to supporting the ongoing training and development of its employees to ensure our workforce is highly skilled in areas of law most relevant and of highest priority, and to position us to deliver high-quality legal services consistent with the Department's vision for Canada's Legal Team.

Surveys are conducted at the end of each session and at the end of the fiscal year, to ensure that any gaps are being addressed either through the integrated professional development program, or otherwise.

In addition, in 2015-16, the Portfolio made significant investments in training and held/will hold by the end of the fiscal year 10 short training sessions (normally 1.5 hours long), as well as two 2-days training workshop on the following key areas of our practice:

- Modernizing our advisory practice; and
- Towards a New Section 35 Reconciliation Framework - Legal issues for Negotiations, Policy and our Practice.

When feasible, short training sessions are offered online through WebEx. We also inform our legal staff of free relevant podcasts through our SharePoint site

***Is the AAP contributing to Aboriginal law and legal policy issues and claims being effectively addressed, litigated and resolved across government?***

The Portfolio has contributed in important ways to Aboriginal law and legal policy issues and claims being effectively addressed, litigated and resolved across government. Overall, clients are satisfied with the rate of settlement that has been achieved.

Most cases settled out of court involve attempts at dispute resolution, especially medium risk and low complexity files, and attempts at dispute resolution have increased over time. Clients are regularly encouraged to settle disputes and feel that the AAP is directly implicated in the successful conclusions being generated and negotiations taking place around reconciliation principles.

***Is the AAP contributing to the ability of government departments and agencies to better manage their legal risks on Aboriginal issues?***

AAP is engaged in concerted efforts to assist government departments and agencies in their ability to better understand, manage and mitigate their legal risks and has effective practices in place to support the identification of these. Legal risk is regularly communicated to client departments and agencies through formal and informal means (for instance through written briefings, lawyer explanations and information sessions), and as a result clients are able to better manage/mitigate legal risks on a variety of Aboriginal issues (and the re-articulation of legal risk as required over the life of the file).

While legal counsel are fully committed to improving legal risk management moving forward, greater effort is needed to identify and assess legal risks when a file is opened, especially in connection with advisory files, and in the re-assessment of legal risks as required following the initial risk assessment. These concerns will likely be addressed through the implementation of the departmental Legal Risk Management Framework, which is now mandatory.

## Efficiency and Economy

*Has the AAP resource utilization been appropriate, in relation to the resources planned and allocated to activities and outputs produced and progress toward expected outcomes?*

Multiple lines of evidence indicate that AAP files are assigned based on expertise to maximize efficiency in the delivery of legal services while maintaining quality. In general, the Portfolio manages its work by attempting to align resources with level of legal risk, complexity and impact, a process that directly aligns with the Law Practice Model. The Model limits staffing of senior complement and LA2A positions and enhances recruitment at the LA1 level.

Over the course of the evaluation period, several discussions, reviews and activities took place that aimed to enhance AAP resource utilization efficiencies. Average hours per file where AANDC was either the primary or the secondary client steadily decreased over time, as did the percentage of time spent by legal counsel and paralegals on low complexity advisory files and low risk litigation files. The highest percentage of time spent on litigation files was spent by junior legal counsel (relative to more senior counsel or paralegals), regardless of level of legal complexity or risk.

In general, the evaluation found that the Portfolio had engaged in comprehensive efforts to ensure its continued capacity to provide national strategic coordination and legal risk management, and to deliver legal services appropriate/sufficient, given existing and future demand for legal services, including the implementation of a Professional Development Integration Plan and employment engagement strategies.

Overall, the funding model being utilized by the AAP appears to be appropriate and sufficient to meet the current demand for legal services. However, several challenges were noted, especially in connection with legal advisory services, and the fact that the model is not conducive to mentoring or job shadowing opportunities. There is also the sense that further reductions in the Portfolio's funding will negatively impact its ability to meet demand. Concern was also expressed in the AAP's ability to maintain suitable responsiveness to future demands given current employee capacity constraints in absence of "backfilling", and anticipated requests for legal services following recent high profile Supreme Court of Canada decisions. Additional human resources may be required moving forward (e.g., paralegals and assistants), as well as enhanced succession planning efforts, and mentorship, training, management and professional development opportunities.

**Appendix A:**  
**LOGIC MODEL**

## **AAP Logic Model**

AAP activities and outputs are highly inter-related. For the purposes of the Logic Model, four core activity areas have been identified. It is important to note that the Logic Model is a high-level, strategic tool, and does not reflect the organizational structure of, nor lines of accountability, within the AAP.

It is also important to note that AAP works in a responsive, consultative and collaborative manner with its clients and partners, and that in accordance with client needs, there is strategic coordination and fluid integration of services provided.

Each activity area and its related outputs are provided below.

### **National Strategic Coordination and Legal Risk Management**

The AAP plays a national, strategic coordination role regarding Aboriginal law and Aboriginal legal policy, and is responsible for northern development legal issues under the AANDC mandate.<sup>18</sup> AAP works collaboratively across the Portfolio, the Department and in consultation with client departments. Consistent with the Department's legal risk management approach, the AAP counsel identify and assess legal risks related to Aboriginal legal issues that involve/may have an impact on the federal Crown or on federal policy. They also take into consideration wider-ranging impacts (e.g., on other levels of government). Strategic coordination and legal risk management are thus integral to all AAP activities, and essential to the horizontal management of Aboriginal law and northern development legal issues from a 'whole of government' perspective.

### **Litigation Services**

Litigation services comprise a major element of the Portfolio's activities. Litigation services consist of several key activities, including: working collaboratively with client departments on legal issues; developing and providing litigation strategies and advice; conducting litigation;

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<sup>18</sup> The Aboriginal justice policy function was included in the *Evaluation of the Aboriginal Justice Strategy*. Responsibility for this policy work has shifted from the Aboriginal Law and Strategic Policy Section of the AAP (see the former organizational structure of the AAP in Figure 1 above) to the policy team within the Aboriginal Justice Directorate. Consequently, this evaluation – which covers five years of AAP activity (2008-09 to 2012-13) – will include the Aboriginal legal policy work of the AAP, which to date has not been evaluated.

developing dispute resolution (DR) options and strategies, and making recommendations and pursuing them as appropriate. Activities related to litigation fall within the broader framework of strategic coordination and legal risk management described above. The framework represents a critical approach and integral tool for the Portfolio's legal services, as Aboriginal law and northern development legal issues arise in multi-layered and complex public policy environments, influenced by historic and current social, cultural, environmental and economic factors, with potentially profound future impacts. The AAP counsel consult with, and seek the advice of, other counsel within the Department as appropriate to each file.

The primary outputs of litigation services are: litigation strategies and advice; litigation conducted; DR options and strategies developed, and recommendations made and pursued as appropriate. In addition, government decision-makers are informed of legal risk and options through various communication vehicles and mechanisms (e.g., meetings, briefings, reports).

### **Management and Support of a National Law Practice**

The AAP undertakes many activities to ensure the effective management and support of a national law practice pertaining to Aboriginal law and northern development legal issues. This includes ongoing tracking and analysis of trends, drivers, risks, and other themes related to relevant legal issues through the completion of in-house data analysis, as well as national consultation and coordination and environmental scanning. These efforts assist the AAP in managing, forecasting and resourcing its work, and in providing effective services to client departments. The ALC maintains a national litigation inventory, which provides critical data for trend analysis and forecasting purposes.

In managing the national law practice, the AAP engages with partners and stakeholders through various information-sharing and coordination mechanisms, such as inter-departmental committees (e.g., the Strategic Intake Committee for litigation). Managing the national law practice also involves providing training opportunities and information sharing to develop knowledge and understanding within Justice, AANDC and other client departments, where Aboriginal law and northern development legal issues frequently emerge (e.g., legal project management training for counsel and paralegals; labour relations training for managers and supervisors; law and policy professional development sessions for the Portfolio, regions and clients; publisher training for support staff; ongoing lunch-and-learn sessions on specific aspects of Aboriginal law).

To ensure the provision of high-quality legal services, the AAP utilizes various knowledge and practice management tools and products. For example, there is an online tool accessible by both AANDC and AAP to track requests and deliver opinions. AAP has also piloted approaches for legal risk management to legal advisory services in both the ALC and LSU. Other tools, such as Justipedia (an online research and precedent database launched in 2012) are used to assist with the management and coordination of the Aboriginal Law practice.

The primary outputs of management and support of national law practice include: trends analysis and forecasts; national consultation and coordination; briefings and reports; organizational learning and training products, and knowledge/practice management tools and products, such as Microsoft Windows Azure Access Control Service SharePoint site; practice directives and guidelines; and litigation and Deskbooks.

### **Legal Advisory Services**

Legal advisory services are integral to the management and resolution of legal issues within the federal government. Recently, a National Advisory Deskbook was developed and became available online to all counsel offering legal advisory services. Advisory services encompass legal advice, litigation support and drafting of commercial and legislative documents, and negotiations support; still, services may vary by region.

Specific activities can include:

- Providing legal analyses, legal options and advice on issues related to the AAP mandate;
- Developing and providing dispute prevention options and strategies, as well as resolution options and strategies, as appropriate;
- Supporting negotiations;
- Fulfilling the role of Department of Justice under the *Federal Real Property and Federal Immovables Act* (and regulations under this Act) relating to the acquisition and disposition of interests in real property;
- Supporting legislative drafting; and
- Drafting commercial documents.

Key outputs of legal advisory services are:

- Providing legal analysis, opinions and advice;
- Developing dispute prevention and resolution options and strategies;
- Drafting and negotiating tenure documents for the use of reserve land under the Indian Act;
- Drafting and advising on the appropriate documentation to acquire or dispose of interests in federal land under the *Federal Real Property and Federal Immovables Act* (and regulations under this Act);
- Supporting negotiations;
- Supporting legislative drafting;
- Drafting documents related to a range of topics including: energy infrastructure framework agreements; emergency management agreements; consultation protocols; self-government agreements and treaties; settlement agreements with First Nations; Letters of Intent or Memoranda of Understanding between federal government departments or between the federal government and a province or territory; and
- Assisting in the drafting and negotiation of agreements under other federal legislation, such as the First Nations Land Management Act and the First Nations Commercial and Industrial Development Act.

Legal advisory services may be called upon, for example, to identify National Coordinators who are experts in substantive areas of law to develop legal templates and benchmarks pertaining to these areas. Through legal advisory activities and outputs, government decision-makers are informed of legal risks and options through various communication mechanisms (e.g., meetings, fora, committees).

### **Expected Direct Outcomes**

The activities and outputs of the AAP lead to a set of inter-related direct outcomes, which are described below:

- **High-quality litigation services related to Aboriginal law and northern development legal issues** – the AAP activities are designed to deliver timely, responsive and high-quality litigation services, in accordance with the Department of Justice statutory mandate, followed by departmental standards and the terms of Memoranda of Agreement negotiated with client departments and agencies;

- **Enhanced capacity to deliver legal services related to Aboriginal law and northern development legal issues in an integrated, consistent and responsive manner** – enhanced capacity to deliver legal services is achieved through ongoing strategic management and coordination. This includes identification and assessment of key and emerging Aboriginal law and northern development legal issues, undertaking litigation trend analysis and forecasting, conducting retrospective case analyses, consultations and professional development, and training and knowledge management/reuse. Aboriginal law is an evolving field, and the AAP's work is at the forefront. Capacity- and expertise-building are central to effective management and support the national law practice in this sphere, and to evolving Aboriginal policy and program development more generally. This includes addressing resource challenges and efficiencies in practice (e.g., use of new technology); and
- **Enhanced awareness and understanding within the federal government of issues, options, approaches to Aboriginal law, Aboriginal legal policy and northern development legal issues** – the AAP plays a substantive role in enhancing awareness and understanding within the federal government of issues, options and approaches to Aboriginal law, Aboriginal legal policy and northern development legal issues. Through its strategic coordination and legal risk management function, high-quality litigation and legal advisory services, as well as more general awareness and training sessions, the AAP supports and assists federal government officials in decision-making and managing legal risk. This includes ensuring a broader awareness and understanding of legal issues, impacts and implications, and providing case specific, relevant advice, options and strategies for their consideration and resolution.

### **Expected Intermediate Outcomes**

Achievement of direct outcomes leads to two inter-related intermediate outcomes:

- **Aboriginal law and policy issues, claims and northern development legal issues are effectively addressed, litigated and resolved across government** – through all of its activities, the AAP contributes to the effective management, litigation and resolution of Aboriginal law and policy issues, claims against the Crown and northern development legal issues. It is important to note that the AAP's efforts inform and influence – but do not control – government decision-making. While the quality of the services provided is a factor in how issues are addressed, litigated and resolved, it is also important to note that client decisions and court decisions are outside the scope of the AAP's control; and

- **Government departments and agencies are better able to manage their legal risks on Aboriginal issues** – the AAP provides analyses, advice and options about legal risks related to Aboriginal issues. The AAP’s managers and counsel work closely and collaboratively with government officials to determine options and strategies that prevent and mitigate, and effectively manage, legal risk within the federal government. This in turn helps government departments and agencies to make informed choices and decisions about how to effectively manage legal risks. These AAP activities contribute to policy and program, as well as case-specific legal risk management.

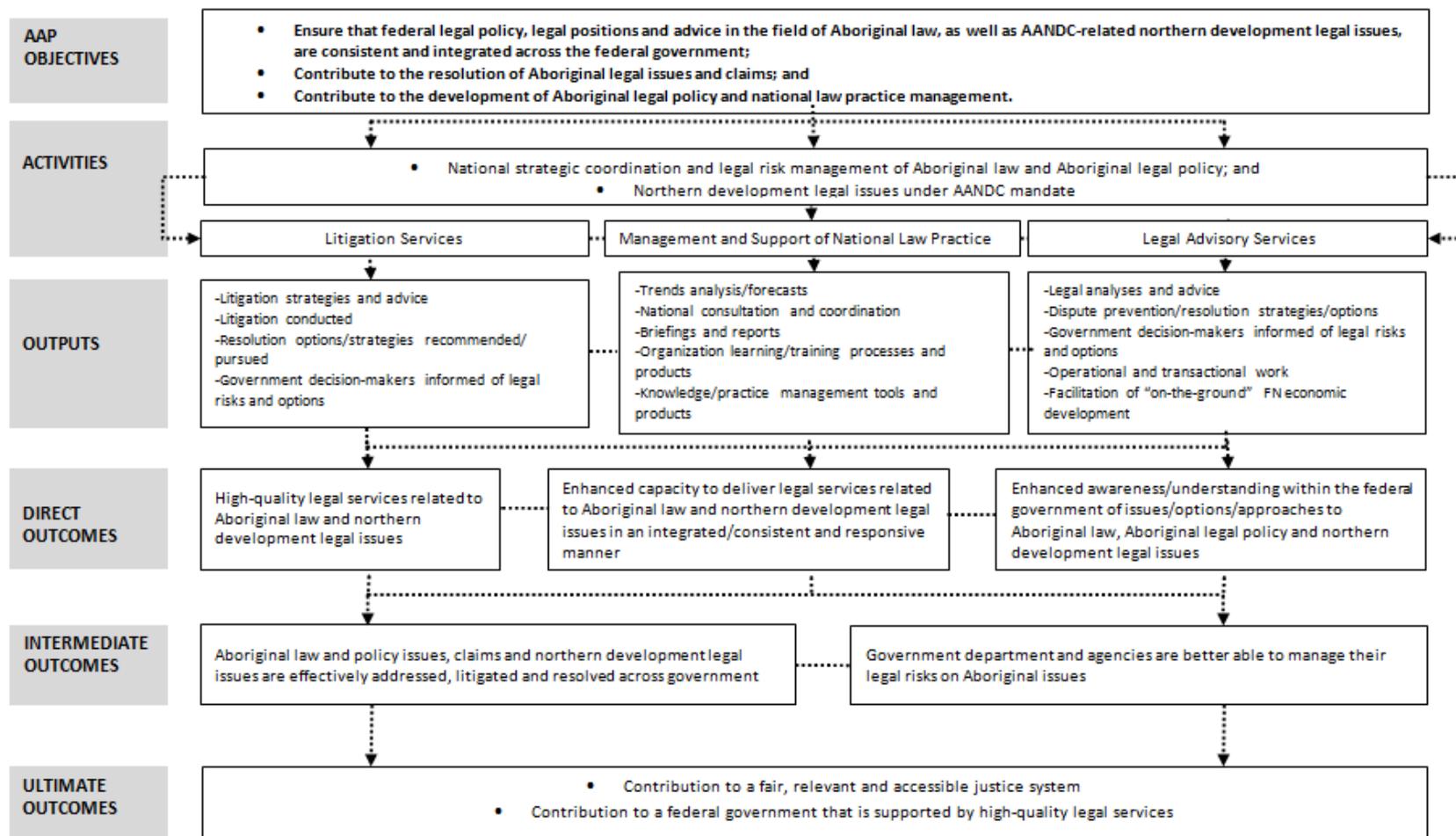
### **Expected Ultimate (Strategic) Outcomes**

Overall, by achieving these direct and intermediate outcomes, the work of the AAP contributes to the following ultimate (strategic) outcomes of the Department:

- A fair, relevant and accessible Canadian justice system; and
- A federal government that is supported by high-quality legal services.

The logic model is shown below.

### Aboriginal Affairs Portfolio Logic Model



**Appendix B:**  
**EVALUATION MATRIX**

Evaluation Issue	Evaluation Questions	Performance Indicator	Measures	Data Sources/Methods
<b>Relevance</b>				
<b>Continued Need for the AAP<sup>19</sup></b>	<i>1.1 To what extent does the AAP address the needs of the GOC and federal client departments and agencies?</i>	Extent/scope/nature of demand for AAP national strategic coordination, litigation, Aboriginal law practice management and legal advisory services	<ul style="list-style-type: none"> <li>• Trends<sup>20</sup> in demand for AAP services (active and closed files) by AANDC and other client departments/agencies</li> <li>• Trends in the complexity of legal issues addressed through litigation and advisory services</li> <li>• Anticipated changes in Aboriginal issues of national/federal relevance over the next five years</li> </ul>	<ul style="list-style-type: none"> <li>• AAP iCase data<sup>21</sup>/analysis</li> <li>• AAP administrative files<sup>22</sup>/analysis</li> <li>• AAP staff/interviews</li> <li>• AAP clients/interviews</li> </ul>
		Extent/scope/nature of past, current and projected legal risk concerning Aboriginal issues of national/federal relevance	<ul style="list-style-type: none"> <li>• Trends in the level of legal risk and complexity of files concerning Aboriginal issues of national/federal relevance</li> <li>• Trends in volume of high risk and high impact files concerning Aboriginal issues</li> <li>• Anticipated changes concerning potentially high risk and high impact Aboriginal issues of national/federal relevance</li> </ul>	<ul style="list-style-type: none"> <li>• AAP administrative files/analysis</li> <li>• AAP iCase data/analysis</li> <li>• AAP staff/interviews</li> <li>• AAP clients/interviews</li> </ul>
		Extent/scope/nature of past, current and projected legal risk related to northern development legal issues of national/federal relevance	<ul style="list-style-type: none"> <li>• Trends in the level of legal risk and complexity of files concerning northern development legal issues of national/federal relevance</li> <li>• Trends in volume of high risk and high impact files concerning northern development legal issues</li> <li>• Anticipated legal risks/changes concerning northern development legal issues</li> </ul>	<ul style="list-style-type: none"> <li>• AAP administrative files/analysis</li> <li>• AAP iCase data/analysis</li> <li>• AAP staff/interviews</li> <li>• AAP clients/interviews</li> </ul>
		Monetary value of Aboriginal issues related to AAP work	<ul style="list-style-type: none"> <li>• Monetary value of settlements/ judgements (e.g., class actions, settlements, claims) over the evaluation period</li> <li>• Contingent liability of the Crown</li> <li>• Government spending related to Crown responsibilities (e.g., modern and historic treaty</li> </ul>	<ul style="list-style-type: none"> <li>• Main estimates/analysis</li> <li>• AAP administrative files/analysis</li> <li>• AAP staff/interviews</li> <li>• Contingent liability reports</li> </ul>

<sup>19</sup> Throughout this matrix, the AAP refers to the portfolio at both national and regional levels, unless otherwise specified.

<sup>20</sup> Trends will be examined for the five year evaluation period, 2008/2009 to 2012/2013, unless otherwise specified.

<sup>21</sup> These are aggregate legal file reports. Specific legal files will not be directly accessed by the evaluators due to solicitor/client privilege. Where required, JUS Evaluation Division officials will gather, and provide required information according to evaluation requirements (see Data Sources, and Methods for more information).

<sup>22</sup> The AAP administrative files generally include administrative files, policy, and planning documents, work plans, budgets, and information management related files.

Evaluation Issue	Evaluation Questions	Performance Indicator	Measures	Data Sources/Methods
			obligations and consultation and fiduciary responsibilities) • Anticipated changes over the next 5 years	
		Extent/scope/nature of past, current and projected of Aboriginal legal and legal policy issues of national/ federal relevance that are within the mandate and scope of the AAP <sup>23</sup>	<ul style="list-style-type: none"> <li>• Trends in scope, nature and complexity of issues related to the GOC’s lawful obligations with respect to Aboriginal peoples, claims and settlements and other issues of federal relevance</li> <li>• Strategic coordination of the provision of litigation and legal advisory services to address Aboriginal legal and legal policy issues</li> <li>• Perceived scope of AAP activities in terms of addressing current and anticipated Aboriginal legal and legal policy issues of national/federal relevance</li> <li>• Current and emergent pressures on the government related to Aboriginal legal and legal policy issues</li> </ul>	<ul style="list-style-type: none"> <li>• Literature review/ environmental scan and forecasts<sup>24</sup>/analysis</li> <li>• AAP staff/interviews</li> <li>• AAP clients/interviews</li> </ul>
<b>Alignment with Government Priorities</b>	<i>1.2 To what extent are the activities of the AAP aligned with: (1) GOC priorities; and (2) the strategic outcomes of Justice?</i>	Extent to which the AAP activities are aligned with: (1) GOC; and (2) the strategic outcomes of Justice	<ul style="list-style-type: none"> <li>• Alignment of AAP activities with GOC priorities</li> <li>• Changes made, if any, to AAP mandate/ activities to maintain alignment with the changes in GOC priorities</li> <li>• Perceived relevance of AAP’s services to the priorities of the GOC</li> </ul> <ul style="list-style-type: none"> <li>• Alignment of AAP activities with strategic outcomes of Justice</li> <li>• Changes made, if any, to AAP activities to better support Justice strategic outcomes</li> <li>• Perceived relevance of AAP’s services to the strategic outcomes of Justice</li> </ul>	<ul style="list-style-type: none"> <li>• Speech from the Throne, Federal Budget, other GOC documents/analysis</li> <li>• AAP administrative files/ analysis</li> <li>• AAP staff/interviews</li> <li>• AAP clients/interviews</li> </ul> <ul style="list-style-type: none"> <li>• Program Alignment Architecture, Departmental Performance Report and other Justice documentation/analysis</li> <li>• AAP administrative files/analysis</li> <li>• AAP staff/interviews</li> <li>• AAP clients/interviews</li> </ul>

<sup>23</sup> This includes issues where the AAP plays a role in strategically coordinating, addressing legal risk management, as well as providing litigation and legal advisory services.

<sup>24</sup> The AAP currently undertakes some trends analysis and forecasting; it will be important to assess this data source and to determine whether supplemental scanning is required for future evaluation purposes.

Evaluation Issue	Evaluation Questions	Performance Indicator	Measures	Data Sources/Methods
<b>Alignment with Federal Roles and Responsibilities</b>	1.3 <i>To what extent do the activities of the AAP align with federal roles and responsibilities?</i>	Extent to which AAP activities are aligned with federal roles and responsibilities and legal obligations in relation to Aboriginal peoples	<ul style="list-style-type: none"> <li>• Consistency between AAP activities with the federal roles and responsibilities and the legislative authority of the GOC</li> <li>• Degree to which AAP activities support the government in meeting its legal obligations in relation to Aboriginal peoples</li> <li>• Changes made, if any, to AAP activities to maintain alignment with federal roles, responsibilities and legal obligations to Aboriginal peoples</li> </ul>	<ul style="list-style-type: none"> <li>• Constitutional, Statutory Authorities, relevant legislation/analysis</li> <li>• Program Alignment Architecture/analysis</li> <li>• AAP staff/interviews</li> <li>• AAP clients/interviews</li> <li>• AAP administrative files/analysis</li> </ul>
<b>Portfolio Design</b>				
<b>Organization Design</b>	2.1 <i>Are the mandate and objectives of AAP clear?</i>	Evidence, scope and clarity of AAP mandate and objectives	<ul style="list-style-type: none"> <li>• Consistency/clarity of the communications/documentation that describe the mandate and objectives of the AAP</li> <li>• Changes in the scope of the mandate/objectives of the AAP</li> <li>• Awareness and knowledge of AAP mandate and objectives among AANDC and other client departments/agencies</li> <li>• Perceptions regarding the consistency/clarity of the AAP mandate and objectives</li> </ul>	<ul style="list-style-type: none"> <li>• AAP administrative files/analysis</li> <li>• AAP staff/interviews</li> <li>• Legal counsel survey</li> <li>• AAP clients/interviews</li> </ul>
	2.2 <i>To what extent has the AAP change management plan (and the changes implemented) continued to support achievement of the AAP mandate?</i>	Changes implemented to the organizational structure and service delivery process	<ul style="list-style-type: none"> <li>• Changes implemented within the organizational structure of the AAP<sup>25</sup></li> <li>• Extent to which roles and responsibilities are fulfilled within the current structure</li> <li>• Perceptions regarding the usefulness of various AAP committees, the briefing process within the AAP, and the challenges experienced by litigators in getting instructions from clients</li> </ul>	<ul style="list-style-type: none"> <li>• AAP governance structure/analysis</li> <li>• AAP documentation/administrative files/analysis</li> <li>• AAP staff/interviews</li> <li>• Legal counsel survey</li> </ul>
		Appropriateness and clarity of structures, roles and responsibilities within AAP	<ul style="list-style-type: none"> <li>• Degree to which the AAP organization structure and associated roles and responsibilities support and align with the mandate of the AAP</li> <li>• Perceptions regarding the suitability and clarity of</li> </ul>	<ul style="list-style-type: none"> <li>• AAP administrative files/analysis</li> <li>• AAP staff/interviews</li> <li>• Legal counsel survey</li> </ul>

<sup>25</sup> For example, streamlining of service delivery; re-distribution of responsibilities among units/groups; introduction of the ALC, and downsizing at the senior management level.

Evaluation Issue	Evaluation Questions	Performance Indicator	Measures	Data Sources/Methods
			<p>the structures, roles and responsibilities within AAP given the AAP mandate</p> <ul style="list-style-type: none"> <li>• Perceptions as to the effectiveness of the structures, processes and resources available to support the Aboriginal law practice</li> </ul>	
<p><b>AAP Performance Monitoring and Evaluation Capacity</b></p>	<p>2.3 <i>Is there sufficient capacity within AAP to support ongoing quality improvement, performance measurement and evaluation?</i></p>	<p>Appropriateness of portfolio design to support the achievement of objectives</p> <p>Methods/systems to support ongoing quality improvement, performance measurement and evaluation</p> <p>Sufficiency of capacity/resources</p>	<ul style="list-style-type: none"> <li>• Extent to which the AAP organization structure supports AAP objectives</li> <li>• Perceptions about the suitability of the AAP design to support the achievement of objectives</li> <li>• Perceptions as to whether the AAP is covering mandated activities and areas of responsibilities as intended (in terms of the reasons/rationale for re-organization)</li> <li>• Factors in AAP design contributing to/detracting from the achievement of AAP objectives</li> <li>• Perceptions as to the effectiveness of the structures, processes and resources available to enhance the delivery of integrated and consistent litigation and legal advisory services</li> </ul>	<ul style="list-style-type: none"> <li>• AAP structure/analysis</li> <li>• AAP administrative files/analysis</li> <li>• Literature review/ environmental scan</li> <li>• AAP staff/interviews</li> <li>• Legal counsel survey</li> </ul>
<p><b>Performance</b></p>				
<p><b>Achievement of Expected Outcomes</b></p>				
<p><b>Direct Outcomes</b></p>				
	<p>3.1 <i>To what extent has the AAP produced high-quality legal services related to</i></p>	<p>Nature and scope of AAP legal activities/services undertaken relative to GOC</p>	<ul style="list-style-type: none"> <li>• AAP services that are undertaken to meet GOC needs/ requirements related to Aboriginal law, legal policy and northern development issues</li> </ul>	<ul style="list-style-type: none"> <li>• AAP administrative files/ analysis</li> <li>• AAP iCase data/analysis</li> </ul>

Evaluation Issue	Evaluation Questions	Performance Indicator	Measures	Data Sources/Methods
	<p><i>Aboriginal law and northern development issues?</i></p>	<p>needs/requirements</p>		<ul style="list-style-type: none"> <li>• Litigation inventory/analysis</li> <li>• AAP staff/interviews</li> </ul>
	<p>3.2 <i>To what extent is AAP contributing to enhanced capacity to deliver legal services related to Aboriginal law and northern development legal issues in an integrated/consistent and responsive manner?</i></p>	<p>Extent to which AAP contributes to/enhances the Aboriginal law practice within the GOC</p>	<ul style="list-style-type: none"> <li>• Mechanisms and resources that are available to support the delivery of high-quality legal services</li> <li>• Use and perceived usefulness of the mechanisms available to support the delivery of high-quality legal services</li> <li>• Gaps in quality control mechanisms available</li> <li>• Client perceptions of the degree to which the AAP provides accessible, useful, responsive and timely legal services</li> <li>• AAP client satisfaction with the overall quality of the legal services received</li> </ul>	<ul style="list-style-type: none"> <li>• AAP administrative files/analysis</li> <li>• AAP legal files/analysis</li> <li>• AAP staff/interviews</li> <li>• Legal counsel survey</li> <li>• Client Feedback Survey/analysis</li> <li>• Clients/interviews</li> <li>• Case studies</li> </ul>
			<ul style="list-style-type: none"> <li>• #/type/nature of quality improvement efforts planned/undertaken to enhance Aboriginal law practice within the GOC</li> <li>• #/type/nature of internal structures, processes, tools, information technology and products developed/applied to enhance AAP capacity to strategically coordinate and deliver legal services in an integrated, consistent and responsive manner (e.g., training, knowledge practice management tools and products)</li> <li>• Level of use/usefulness of internal structures among AAP counsel</li> <li>• Amount and type of training/professional development for AAP counsel regarding the practice of Aboriginal law within the GOC</li> <li>• Amount and type of knowledge mobilization/transfer activities conducted with AANDC and other clients regarding the practice of Aboriginal law within the GOC</li> </ul>	<ul style="list-style-type: none"> <li>• AAP staff/interviews</li> <li>• AAP administrative files/analysis</li> <li>• Legal counsel survey</li> <li>• AAP training session feedback reports<sup>26</sup>/analysis</li> <li>• AAP training session feedback reports/analysis</li> </ul>

<sup>26</sup> AAP training feedback reports address participant satisfaction in terms of whether expectations were met, and course delivery.

Evaluation Issue	Evaluation Questions	Performance Indicator	Measures	Data Sources/Methods
		Extent to which AAP has the capacity to deliver legal services in an integrated and consistent manner	<ul style="list-style-type: none"> <li>• #/type/nature of quality improvement efforts planned/undertaken to enhance AAP capacity to deliver legal services related to Aboriginal law and northern development legal issues in an integrated, consistent and responsive manner</li> <li>• #/type/nature of tools, products and information technology used to enhance capacity to deliver integrated and consistent legal services</li> <li>• #/type and effectiveness of training events to enhance the delivery of integrated and consistent litigation and legal advisory services</li> <li>• #, type and effectiveness of presentations/information sessions regarding the delivery of integrated and consistent litigation and legal advisory services</li> <li>• Level of client satisfaction with the consistency of legal services provided</li> </ul>	<ul style="list-style-type: none"> <li>• AAP staff /interviews</li> <li>• AAP administrative files/analysis</li> <li>• Legal counsel survey</li> <li>• iCase data/analysis</li> <li>• AAP training session feedback reports/analysis</li> <li>• Client Feedback Survey/analysis</li> <li>• Clients/interviews</li> <li>• Case studies</li> </ul>
		Extent to which the AAP is responsive to current and emergent legal issues related to Aboriginal law and northern development	<ul style="list-style-type: none"> <li>• Effectiveness of the structures and processes in place to support the delivery of legal services that are responsive to the needs of clients</li> <li>• Tools, resources and information technology used to support legal services that are responsive to the needs of clients</li> <li>• Training/training events that are provided for the delivery of litigation and legal advisory services that are responsive to the needs of clients</li> <li>• Level of client satisfaction with the responsiveness of the legal services received</li> <li>• Gaps in services</li> </ul>	<ul style="list-style-type: none"> <li>• AAP staff/interviews</li> <li>• Legal counsel survey</li> <li>• AAP administrative files/analysis</li> <li>• iCase data/analysis</li> <li>• Client Feedback Survey/analysis</li> <li>• Clients/interviews</li> <li>• Case studies</li> </ul>
		Nature and extent to which new technology has contributed to enhanced internal capacity (e.g., virtual teams)	<ul style="list-style-type: none"> <li>• Amount and type of technology that is available to enhance the delivery of legal services in an integrated and consistent manner</li> <li>• Use and usefulness of technological resources to deliver high-quality legal services</li> </ul>	<ul style="list-style-type: none"> <li>• AAP administrative files/analysis</li> <li>• AAP staff/interviews</li> <li>• Legal counsel survey</li> </ul>
	3.3 <i>To what extent is the AAP contributing to enhanced awareness/understanding</i>	Effectiveness of AAP structures and processes that promote and enhance	<ul style="list-style-type: none"> <li>• Number and nature of AAP structures (e.g., AADM Joint Steering Committee, Client Claims Advisory Committee, Inter-departmental Working Groups) and</li> </ul>	<ul style="list-style-type: none"> <li>• AAP administrative files/analysis</li> <li>• Committee and Working</li> </ul>

Evaluation Issue	Evaluation Questions	Performance Indicator	Measures	Data Sources/Methods
	<i>within the federal government, of issues, options, approaches to Aboriginal legal, legal policy and northern development legal issues?</i>	awareness/understanding horizontally across government	<p>processes (e.g., meetings, fora, calls) that are in place to promote and enhance understanding across government of issues, options and approaches</p> <ul style="list-style-type: none"> <li>• Number and nature of presentations/ information sessions provided by AAP to AANDC and other federal departments/agencies to increase awareness</li> <li>• Participant experience/satisfaction with AAP training and presentation events (within and outside the Portfolio)</li> </ul>	<p>Group minutes/analysis</p> <ul style="list-style-type: none"> <li>• AAP staff/interviews</li> <li>• AAP clients/interviews or focus groups</li> <li>• AAP case studies/analysis</li> <li>• Legal counsel survey</li> <li>• AAP training session feedback reports/analysis</li> <li>• AAP legal files/analysis</li> <li>• AAP iCase data/analysis</li> </ul>
		Effectiveness of communication and collaboration activities with AANDC and other clients	<ul style="list-style-type: none"> <li>• Frequency and type of AAP communications and collaboration processes</li> <li>• Level of client satisfaction with communications and collaborative efforts</li> <li>• Effectiveness of communications and collaborative efforts</li> <li>• Communication challenges and gaps</li> </ul>	<ul style="list-style-type: none"> <li>• AAP administrative files/analysis</li> <li>• Committee and Working Group minutes/analysis</li> <li>• AAP staff/interviews</li> <li>• AAP clients/interviews</li> </ul>
<b>Intermediate Outcomes</b>				
<b>Development innovation and progress</b>	<i>4.1 To what extent is AAP contributing to Aboriginal law and policy issues and claims being effectively addressed, litigated and resolved across government?</i>	Extent to which AAP is contributing to the evolution of Aboriginal law and legal policy issues	<ul style="list-style-type: none"> <li>• Perceptions regarding the extent of AAP's contribution to the evolution of Aboriginal law and Aboriginal legal policy issues</li> <li>• Trends in litigation issues and outcomes</li> <li>• Trends in legal policy developments</li> <li>• Nature and extent AAP's influence and expertise on the evolution of Aboriginal law and legal policy issues</li> </ul>	<ul style="list-style-type: none"> <li>• Literature/review</li> <li>• AAP administrative files/analysis</li> <li>• AAP staff/interviews</li> <li>• AAP legal files/analysis</li> <li>• AAP case studies/analysis</li> <li>• Legal counsel survey</li> </ul>
		Extent to which the Crown's interests are protected	<ul style="list-style-type: none"> <li>• Protocols, processes and resources that are available to assist in claims being effectively addressed, litigated and resolved</li> <li>• Application of the various methods of addressing claims against the Crown (e.g., litigation, DR, settlement, etc.)</li> <li>• Contingency plans developed for high impact files</li> <li>• Legal strategies developed with a whole of government perspective</li> </ul>	<ul style="list-style-type: none"> <li>• AAP legal files/analysis</li> <li>• AAP staff/interviews</li> <li>• AAP clients/interviews</li> <li>• AAP case studies/analysis</li> <li>• Legal counsel survey</li> </ul>
	<i>4.2 To what extent is AAP</i>	Extent to which AAP legal	<ul style="list-style-type: none"> <li>• Number/% of litigation and advisory files where</li> </ul>	<ul style="list-style-type: none"> <li>• AAP administrative</li> </ul>

Evaluation Issue	Evaluation Questions	Performance Indicator	Measures	Data Sources/Methods
	<i>contributing to the ability of government departments and agencies to better manage their legal risks on Aboriginal issues?</i>	services contribute to clients' ability to manage their legal risks	legal risk is reported <ul style="list-style-type: none"> <li>• Types of strategies/options identified to help clients manage/mitigate risks</li> <li>• Extent to which legal risk is tracked and/or reassessed in advisory and legal policy files</li> <li>• Extent to which clients perceive that the AAP is contributing to their understanding of legal risks and options to manage legal risks</li> <li>• Risk assessment protocols in place to enhance the consistency of legal risk assessments</li> <li>• Use and usefulness of the risk assessment protocols in place</li> </ul>	files/analysis <ul style="list-style-type: none"> <li>• AAP litigation inventory/analysis</li> <li>• AAP clients/interviews</li> <li>• AAP legal files/analysis</li> <li>• AAP case studies/analysis</li> <li>• Legal counsel survey</li> </ul>
<b>Ultimate (Strategic) Outcome</b>				
	5.1 <i>To what extent is AAP contributing to a fair, relevant and accessible Canadian justice system?</i>	Cumulative	<ul style="list-style-type: none"> <li>• Achievement of direct outcomes</li> <li>• Achievement of intermediate outcomes</li> </ul>	<ul style="list-style-type: none"> <li>• Cumulative/contribution analysis</li> <li>• AAP staff/interviews</li> <li>• Justice officials/interviews</li> </ul>
	5.2 <i>To what extent is AAP contributing to a federal government that is supported by high-quality legal services?</i>	Cumulative	<ul style="list-style-type: none"> <li>• Achievement of direct outcomes</li> <li>• Achievement of intermediate outcomes</li> </ul>	<ul style="list-style-type: none"> <li>• Cumulative/contribution analysis</li> <li>• AAP staff/interviews</li> <li>• Justice officials/interviews</li> </ul>
<b>Demonstration of Efficiency and Economy</b>	6.1 <i>Has the AAP resource<sup>27</sup> utilization been appropriate, in relation to the resources planned and allocated to activities and outputs produced and progress toward expected outcomes?</i>	Budget and work plan priorities and activities in relation to outputs delivered by AAP	<ul style="list-style-type: none"> <li>• Average level of effort for each type of file</li> <li>• Resources used to address activities by type of activity and by service line/type of service</li> <li>• Nature and success of efforts to undertake AAP activities and deliver services cost-effectively (e.g. past, current and planned efforts)</li> <li>• Perceptions of redundancy, duplication or surplus of resources, perception of gaps among AAP staff/legal counsel</li> <li>• Average costs/total yearly AAP expenditures relative</li> </ul>	<ul style="list-style-type: none"> <li>• AAP administrative files/analysis</li> <li>• AAP client agreements/analysis</li> <li>• AAP staff/interviews</li> <li>• Legal counsel survey</li> <li>• AAP Cost Structure and other financial documentation</li> <li>• AAP iCase data/analysis</li> </ul>

<sup>27</sup> This includes human, and financial resources.

Evaluation Issue	Evaluation Questions	Performance Indicator	Measures	Data Sources/Methods
			<p>to resources (by case type, service provided and client), to address requests for advisory services</p> <ul style="list-style-type: none"> <li>• Average costs/total yearly AAP expenditures relative to resources (by case type, service provided and client), to represent the Crown in litigation</li> <li>• Appropriateness of the level of counsel assigned to cases by level of risk and complexity</li> <li>• Changes to resource utilization over the evaluation period</li> </ul>	
	<p>6.2 <i>Is the AAP capacity to provide national strategic coordination and legal risk management, and to deliver legal services appropriate/sufficient, given the current and future demand for legal services?</i></p>	<p>Level, scope and nature of AAP activities in relation to demand related to Aboriginal law and northern development legal issues</p>	<ul style="list-style-type: none"> <li>• Level, scope and nature of AAP activities in relation to demand related to Aboriginal law and northern development legal issues)</li> <li>• AAP human resource plans/ requirements versus actual HR profile</li> <li>• AAP HR recruitment, deployment, engagement and retention trends</li> <li>• Changes that have been made to increase the level of outputs produced with resources allocated</li> <li>• Capacity to address urgent matters</li> </ul>	<ul style="list-style-type: none"> <li>• AAP administrative files/analysis</li> <li>• AAP staff/interviews</li> <li>• Legal counsel survey</li> <li>• AAP HR Plan/analysis</li> <li>• AAP HR Needs Assessment/ analysis</li> <li>• AAP managers/interviews</li> </ul>
	<p>6.3 <i>Are the funding models utilized by AAP appropriate and sufficient to meet current and future demand for services?</i></p>	<p>Level of satisfaction that AAP and its clients have with: (1) the AAP funding models generally; and (2) clients' specific agreements</p>	<ul style="list-style-type: none"> <li>• AAP staff/client perceptions of the adequacy of the AAP funding model</li> <li>• AAP staff/client satisfaction with clients' specific agreements</li> <li>• Perceived implications of the funding agreement/arrangement on the AAPs longer-term planning<sup>28</sup></li> <li>• Resource coverage by A-base funding</li> <li>• Proportion of the AAP work (e.g., services requested by other LSUs) that is completed but not cost recoverable (or that is covered by other departments or other Portfolios)</li> <li>• Gap between financial inputs and resource</li> </ul>	<ul style="list-style-type: none"> <li>• AAP staff/interviews</li> <li>• AAP clients/interviews or focus groups</li> <li>• AAP financial documentation</li> </ul>

<sup>28</sup> The majority of resources come from clients; therefore the AAP is somewhat constrained in terms of longer term planning as there is no guarantee that they will receive the resources they need from clients – particularly in a time of resource constraint.

Evaluation Issue	Evaluation Questions	Performance Indicator	Measures	Data Sources/Methods
	<p>6.4 <i>Are there alternative ways of delivering the same services?</i></p>	<p>Trends in law practice/service delivery models (within Justice and within private sector as relevant)</p>	<p>requirements for outputs</p> <ul style="list-style-type: none"> <li>• Examples from other Justice portfolios</li> <li>• Examples from within other jurisdictions as relevant</li> <li>• Comparison of alternative models against federal Canadian needs</li> </ul>	<ul style="list-style-type: none"> <li>• AAP Cost Structure Working Group Report/analysis</li> <li>• AAP staff/interviews</li> <li>• Legal counsel survey</li> <li>• Literature review/ environmental scan</li> </ul>

**Appendix C:**  
**DATA COLLECTION INSTRUMENTS**

## **Key Informant Guide for Department of Justice Officials**

The Department of Justice Canada is conducting an evaluation of the Aboriginal Affairs Portfolio (AAP). The purpose of the evaluation is to assess the performance of the AAP. The evaluation period will cover five years from 2008/2009 to 2012/2013. R.A. Malatest & Associates Ltd., a professional research firm, was hired by the Department of Justice Canada to assist with this evaluation.

Thank you for agreeing to participate in an interview for the evaluation of the AAP. This interview will contribute to the development of a comprehensive understanding of the Portfolio and its performance, based on your unique experiences and perspectives.

Your participation is completely voluntary. Your identity will not be attached to your individual responses. Responses from the interviews will be analysed in aggregate form (i.e., at the group level). Any quotes that are used for reporting purposes will be selected to ensure that no individual is identifiable.

We would like to remind you to be mindful of solicitor-client privilege before responding to any questions or providing us with any examples. Please avoid sharing details regarding any case you have been or are currently involved with that, upon reflection, you believe may be confidential in nature.

The interview should take approximately one hour to complete. With your permission, I would like to record the interview to ensure accuracy and completeness of results. All recordings will be used for research purposes only, and will be destroyed at project completion.

Do you have any questions before we begin? [Y/N]

Are you comfortable proceeding with this interview? [Y/N]

### **Introduction**

1. Please briefly describe your current roles and responsibilities as they pertain to the AAP, including any Portfolio committees in which you are involved.

## **Relevance**

2. In your opinion, how responsive has the AAP been to current and emerging issues over the past five years? Describe any gaps or challenges that remain. How might the quality and responsiveness of the AAP services be improved?

## **Organization Design**

3. What processes and mechanisms are in place to facilitate collaboration and communication with the AAP? Do you believe these to be effective? Explain. Thinking of collaboration and communication processes and mechanisms, what do you think is missing? In terms of improvements moving forward, what would you like to see happen?

## **Performance**

4. Describe the working relationship between your group and the Portfolio. In your opinion, what is working most effectively? What do you consider to be less successful? Explain. Are roles and responsibilities obvious/clear? Describe.
5. Do you have knowledge of/have you personally participated in AAP awareness enhancing activities/events as they pertain to Aboriginal law, and legal policy or northern development issues? Would you please comment on the extent to which you think the Portfolio contributes to the evolution of Aboriginal law and legal policy in Canada? How has this changed in the past five years? In what ways does the AAP ensure that the Crown's interests are protected when providing legal services, including legal advice? How has this changed in the past five years?
6. Are you familiar with other ways of delivering similar services to those delivered by the AAP? Explain.

## **Efficiency and Economy**

7. In your opinion, how might the Portfolio achieve greater efficiencies? Thinking of efficiency and economy, are there ways of improving or streamlining your group's interactions/communications with the AAP?

## **Closing**

8. Is there anything else you would like to share about the Portfolio? Beyond those ideas already discussed, are you able to provide any additional suggestions for improvement?

## **Key Informant Guide for Legal Counsel and Other Professionals**

The Department of Justice Canada is conducting an evaluation of the Aboriginal Affairs Portfolio (AAP). The purpose of the evaluation is to assess the performance of the AAP. The evaluation period will cover five years from 2008/2009 to 2012/2013. R.A. Malatest & Associates Ltd., a professional research firm, was hired by the Department of Justice Canada to assist with this evaluation.

Thank you for agreeing to participate in an interview for the evaluation of the AAP. This interview will contribute to the development of a comprehensive understanding of the Portfolio and its performance, based on your unique experiences and perspectives.

Your participation is completely voluntary. Your identity will not be attached to your individual responses. Responses from the interviews will be analysed in aggregate form (i.e., at the group level). Any quotes that are used for reporting purposes will be selected to ensure that no individual is identifiable.

We would like to remind you to be mindful of solicitor-client privilege before responding to any questions or providing us with any examples. Please avoid sharing details regarding any case you have been or are currently involved with that, upon reflection, you believe may be confidential in nature.

The interview should take approximately one hour to complete. With your permission, I would like to record the interview to ensure accuracy and completeness of results. All recordings will be used for research purposes only, and will be destroyed at project completion.

Do you have any questions before we begin? [Y/N]

Are you comfortable proceeding with this interview? [Y/N]

### **Introduction**

1. Please briefly describe your current roles and responsibilities with regard to the services you provide for the Portfolio. If you are involved in any AAP committees, please include these in your response.

## **Relevance**

2. How have government priorities/needs changed over the past five years? {when responding to this question, please consider complexity of issues, legal strategies, positions, and resolution of legal disputes}
3. How have these changes affected the nature of the work you do?

## **Organization Design**

4. In what ways are existing briefing processes effective/ineffective? Describe the usefulness of the various AAP committees with which you work most frequently. Are you also involved with any AANDC committees? If so, please describe their usefulness in terms of briefing.
5. What processes/mechanisms are in place to facilitate collaboration/communication within Justice? What works? What do you think is still missing? What processes/mechanisms are in place to ensure the consistency of legal positions taken by the AAP? How effective are these? If you are able to, please describe how these have changed in the last five years.

## **Performance**

6. Please describe your working relationships within the Department of Justice (e.g., Headquarters, Regional Offices, Departmental Legal Services Unit, the Public Law Sector, Legislative Services Branch, and/or other Justice portfolios). Thinking of these relationships, are roles, and responsibilities clear?
7. How clear is the role of AANDC's Litigation Management and Resolution Branch (LMRB)/other client departments as pertaining to their work with you on litigation files? Describe. [\*Litigators/Litigation Paralegals]
8. Describe any methods/systems/standards that are in place to support ongoing quality assurance. Are there sufficient resources available to support these specific efforts? Explain. Do these methods/systems/standards contribute to your ability to provide integrated, consistent, and responsive legal services? What factors constrain your ability to provide timely, high-quality legal services? How could your services be more responsive to emerging priorities?

9. Describe how you assist clients in managing their legal risks {please include AAP's involvement in AANDC/other client committees/branches in your answer}. Has this changed over the past five years? What works? What gaps/challenges remain?

### **Development, Innovation and Progress**

10. How does your work support the development of knowledge and awareness of Aboriginal law and legal policy issues? How has this changed over the past five years? How does the AAP contribute to the evolution of Aboriginal law and legal policy in Canada? How does the AAP ensure that the Crown's interests are protected during the provision of legal services, including legal advice?
11. Are you able to suggest alternative ways/law practice/service models of delivering the services you currently deliver (from within the Department, private sector, other jurisdictions as appropriate to your given area of work)?

### **Efficiency and Economy**

12. In your opinion are there sufficient resources to meet the demand for legal services?
13. How has resource utilization (financial, technological, human resources) changed over the last five years? Describe any gaps, and/or duplication of effort in AAP processes. In your opinion, do you think the legal services provided by the Portfolio are cost effective? Describe. How might cost-effectiveness be improved? {when responding to this question, please consider the process for assigning files to legal counsel, as well as roles and responsibilities} What criteria are considered when assigning files? Thinking of efficiency and economy, do you have anything else you would like to comment on?
14. Do you have the necessary data, information and support systems related to the efficient delivery of legal services? What's missing? How does the AAP monitor the changes in demand for legal services? Has this approach been effective?
15. Are the resources appropriate to meet the demand for delivery of legal services/the Aboriginal law practice? (e.g., financial, tools, products, IT, human resources, training, professional development, and subject matter expertise)
16. What role does the client play in the promotion of early dispute resolution; timely consultation with the Portfolio; providing client instructions? In your opinion, what is the

client's role in terms of improving the effectiveness, efficiency and economy of, and managing the demand for, legal services?

## **Conclusion**

17. Is there anything else you would like to share with us about the services you provide, the Portfolio or the Department of Justice Canada more broadly? Beyond those already discussed, are you able to provide any suggestions for improvement?

## **Key Informant Guide for Management and Senior Counsel**

The Department of Justice Canada is conducting an evaluation of the Aboriginal Affairs Portfolio (AAP). The purpose of the evaluation is to assess the performance of the AAP. The evaluation period will cover five years from 2008/2009 to 2012/2013. R.A. Malatest & Associates Ltd., a professional research firm, was hired by the Department of Justice Canada to assist with this evaluation.

Thank you for agreeing to participate in an interview for the evaluation of the AAP. This interview will contribute to the development of a comprehensive understanding of the Portfolio and its performance, based on your unique experiences and perspectives.

Your participation is completely voluntary. Your identity will not be attached to your individual responses. Responses from the interviews will be analysed in aggregate form (i.e., at the group level). Any quotes that are used for reporting purposes will be selected to ensure that no individual is identifiable.

We would like to remind you to be mindful of solicitor-client privilege before responding to any questions or providing us with any examples. Please avoid sharing details regarding any case you have been or are currently involved with that, upon reflection, you believe may be confidential in nature.

The interview should take approximately one hour to complete. With your permission, I would like to record the interview to ensure accuracy and completeness of results. All recordings will be used for research purposes only, and will be destroyed at project completion.

Do you have any questions before we begin? [Y/N]

Are you comfortable proceeding with this interview? [Y/N]

### **Introduction**

1. Describe your current roles/responsibilities within the Aboriginal Affairs Portfolio, including any AAP committees you are involved in.

### **Relevance**

2. Have you noticed any changes in the demand for AAP services in the last five years? {when responding to this question, please consider volume, type, and complexity of legal issues,

legal risk level, and/or other characteristics, such as potential impact} How have these changes affected the nature of AAP's work?

3. How have government priorities/needs changed over the last five years? {consider the GOC's lawful obligations with respect to Aboriginal peoples, claims, and monetary value of settlements/ judgements (e.g., class actions, settlements, claims), and other issues of federal relevance} How have the AAP services changed in response to these priorities/needs? {consider the legal strategies, and positions, means to present, and resolve legal disputes, and alternative dispute resolution practice} How might the responsiveness of AAP services be improved?

### **Organization Design**

4. Describe any changes that have occurred to AAP's organization design within the past five years {please consider roles, processes and formal reporting relationships in your response}. What brought about these changes? What has been the impact of these changes? {within the AAP; on AAP clients}
5. How does the current organization design support the achievement of AAP objectives? How are AAP objectives not being supported by the current organization design? Do you think the scope of the objectives of the AAP has changed in the last five years? Please explain.
6. Describe the usefulness of the various Portfolio committees.
7. In what ways are briefing processes effective/ineffective? Thinking about the AAP committees that you use on a regular basis, how useful are they in terms of supporting these processes?
8. What processes/mechanisms are in place to facilitate collaboration/communication within Justice? What works? What do you think is still missing? What processes/mechanisms are in place to ensure consistency of legal positions taken by Portfolio? How effective are these? How have these changed in the last five years?

### **Performance**

9. Describe your primary working relationships within the Department of Justice (e.g., Headquarters, Regional Offices, Departmental Legal Services Unit, the Public Law Sector,

Legislative Services Branch and/or other Justice portfolios). Thinking of these relationships, are roles and responsibilities clear?

10. Describe your primary relationship with clients. Are roles and responsibilities clear? If you work with AANDC LMRB, how clear is their role as it pertains to work on litigation files?
11. Thinking of the last five years, what factors support/constrain the Portfolio's ability to provide timely, high-quality legal services related to Aboriginal law and northern development legal issues? {when answering this question, if suitable, please consider the level of risk, and complexity}
12. Describe any methods/systems/standards that are in place to support ongoing quality assurance. How do these methods/systems contribute to enhanced integration, consistency, and responsiveness of legal services related to Aboriginal law and northern development legal issues?
13. How does AAP assist clients in understanding/managing/mitigating legal risk? {consider AAP's involvement in AANDC/other client committees/branches} Has AAP's role changed over the past five years? What works? What gaps/challenges remain?

### **Development, Innovation and Progress**

14. Thinking of developments in Aboriginal law and legal policy over the last five years, how has the AAP contributed to their evolution? How does the Portfolio ensure the Crown's interests are protected when providing legal services/advice? {consider innovative legal strategies developed to help clients manage/mitigate legal risk, and/or contingency plans put in place for high impact files}
15. Are you able to suggest alternative ways/law practice/service models of delivering the same services (from within the Department, private sector, other jurisdictions as appropriate to your given area of work)?

### **Efficiency and Economy**

16. In your opinion, are there sufficient resources to meet the demand for legal services?
17. How has resource utilization (financial, technological, human resources) changed over the last five years? Describe any gaps, and/or duplication of effort in AAP processes. In your

opinion, do you think the legal services provided by the AAP are cost effective? How might cost-effectiveness be improved? {when responding to this question, please consider the process of assigning files to legal counsel as well as roles, and responsibilities} What criteria are considered when assigning files?

18. How appropriate is the current funding model for the Portfolio? How does it compare to funding models in other Justice portfolios? In your view, what changes, if any, are needed?
19. Do you have the necessary data, information and support systems in place to support business decisions related to the efficient delivery of legal services, including managing the demand for services? What's missing?
20. In your opinion, what is the clients' role in terms of improving the effectiveness, efficiency and economy of, and managing the demand for, legal services? What role does the client play in the promotion of early dispute resolution? In timely consultation with the AAP? In providing client instructions?

### **Conclusion**

21. Is there anything else you would like to share with us about the Portfolio or the Department more broadly? Beyond those already discussed, are you able to provide any suggestions for improvement?

## **Key Informant Guide for Clients**

The Department of Justice Canada is conducting an evaluation of the Aboriginal Affairs Portfolio (AAP). The purpose of the evaluation is to assess the performance of the AAP. The evaluation period will cover five years from 2008/2009 to 2012/2013. R.A. Malatest & Associates Ltd., a professional research firm, was hired by the Department of Justice Canada to assist with this evaluation.

Thank you for agreeing to participate in an interview for the evaluation of the AAP. This interview will contribute to the development of a comprehensive understanding of the Portfolio and its performance, based on your unique experiences and perspectives.

Your participation is completely voluntary. Your identity will not be attached to your individual responses. Responses from the interviews will be analysed in aggregate form (i.e., at the group level). Any quotes that are used for reporting purposes will be selected to ensure that no individual is identifiable.

We would like to remind you to be mindful of solicitor-client privilege before responding to any questions or providing us with any examples. Please avoid sharing details regarding any case you have been or are currently involved with that, upon reflection, you believe may be confidential in nature.

The interview should take approximately one hour to complete. With your permission, I would like to record the interview to ensure accuracy and completeness of results. All recordings will be used for research purposes only, and will be destroyed at project completion.

Do you have any questions before we begin? [Y/N]

Are you comfortable proceeding with this interview? [Y/N]

### **Introduction**

1. Please briefly describe your current roles and responsibilities within your department.

### **Relevance**

2. What services do you commonly request from the Aboriginal Affairs Portfolio of the Department of Justice?

3. How have your priorities/needs changed over the past five years? {please consider scope, nature and complexity of issues, and level of legal risk} How have the services of the Aboriginal Affairs Portfolio of the Department of Justice changed in response to these priorities/needs?

### **Organization Design**

4. What roles/processes/reporting relationships are in place to facilitate collaboration/communication between you and the Portfolio? In what ways have these been effective? How have these changed in the past five years? What do you think is still missing?
5. In your view, what is the mandate of the Litigation Management and Resolution Branch (LMRB), and how does it work in practice? How would you describe the responsibilities of the AANDC LMRB vis-à-vis the Justice litigators and Departmental Legal Services Unit (DLSU) counsel on litigation files? What do you understand to be the role of the DLSU on litigation matters? [\*AANDC LMRB officials only]

### **Performance**

6. In your opinion, do you receive consistent advice from the Portfolio?
7. How does the Aboriginal Affairs Portfolio of the Department of Justice support the development of your knowledge and awareness of Aboriginal law and legal policy issues? How does it support your ability to manage legal risk? What is the extent to which the Portfolio contributes to the evolution of Aboriginal law and legal policy in Canada? How has this changed in the past five years? In what ways does the Portfolio ensure that the Crown's interests are protected when providing legal services, including legal advice? How has this changed in the past five years?
8. How responsive is the Portfolio in meeting your service needs? Describe any gaps or challenges that exist. How might the quality and responsiveness of the services of the Aboriginal Affairs Portfolio of the Department of Justice be improved? Based on your experience over the past five years, to what extent are your litigation files settled using a dispute resolution/other process? Explain. What improvements would you like to see?
9. What is the role of LMRB with regard to the resolution/settlement of Aboriginal litigation matters? Please describe the process at LMRB to get settlement approval on litigation files.

How satisfied are you with the rate of settlement of AANDC litigation files? Please explain.  
[\*AANDC LMRB officials only]

### **Development, Innovation and Progress**

10. Thinking of developments in Aboriginal law and legal policy over the past five years, in your opinion, how has the Aboriginal Affairs Portfolio of the Department of Justice contributed to their evolution? How does the Portfolio ensure the Crown's interests are protected when providing legal services/advice? {consider innovative legal strategies developed to help you manage/mitigate legal risk and/or contingency plans for high impact files}? How has this changed in the past five years?

11. In your view, are there other ways of delivering legal services that should be considered?

### **Efficiency and Economy**

12. In your opinion, do you think that you have received value for money from the legal services provided? Please explain. What is your opinion with respect to the appropriateness of the current funding model of the Portfolio, and/or any specific agreements that may be in place?

13. To what extent does the LMRB approach the management and resolution of litigation based on risk and priorities? Are there any challenges in this regard? To what extent is this done in consultation with the Aboriginal Affairs Portfolio of the Department of Justice? How might greater efficiencies be achieved? [\*AANDC LMRB or AANDC senior officials only]

14. As the client, describe your role in terms of the following:

- Improving the effectiveness, efficiency and economy of, and managing the demand for, legal services;
- The promotion of early dispute resolution;
- Consultation; and
- Providing instructions to the AAP regarding legal service needs.

## **Conclusion**

15. Is there anything else you would like to share with us today about your experiences with the Aboriginal Affairs Portfolio of the Department of Justice? Beyond those already discussed, are you able to provide any suggestions for improvement?

## Case Study Guide for the Aboriginal Affairs Portfolio

The Department of Justice Canada is conducting an evaluation of the Aboriginal Affairs Portfolio (AAP). The purpose of the evaluation is to assess the performance of the AAP. **The evaluation period will cover five years from 2008/2009 to 2012/2013.** R.A. Malatest & Associates Ltd., a professional research firm, was hired by the Department of Justice Canada to assist with this evaluation.

Thank you for agreeing to participate in a case study interview for the evaluation of the AAP. This case study interview will contribute to the development of a comprehensive understanding of the Portfolio and its performance, based on your unique experiences and perspectives as they pertain to *[insert name of case study here]*.

Your participation is completely voluntary. Your identity will not be attached to your individual responses. Responses from the interviews will be analysed at the group level (i.e., case studies). Any quotes that are used for reporting purposes will be selected to ensure that no individual is identifiable.

We would like to remind you to be mindful of solicitor-client privilege before responding to any questions or providing us with any examples. Please avoid sharing details regarding any case you have been or are currently involved with that, upon reflection, you believe may be confidential in nature.

The interview should take approximately one hour to complete. With your permission, I would like to record the interview to ensure accuracy and completeness of results. All recordings will be used for research purposes only, and will be destroyed at project completion. A member of the Justice Evaluation Division will be sitting in on this interview.

Do you have any questions before we begin? [Y/N]

Are you comfortable proceeding with this interview? [Y/N]

## Case Study Guide: Representative of the AAP

### Opening

1. Please describe the key legal issues raised in [*insert name of case study here*].
2. Please describe your primary role/responsibilities in this file.

### Performance

3. In what way is this file a good example of the AAP's capacity to deliver high quality legal services in an *integrated, consistent, and responsive* manner? Describe.
4. Did you collaborate or consult with other sections or committees of AAP or the Department on this file? If so, please describe their involvement and impact on the file? Were roles and responsibilities clear? Was the coordination between groups efficient?
5. Did you consult with clients on this file? If so, was the consultation effective? Please consider whether the consultations assisted AAP in understanding the client's policy and program objectives; whether the consultations enhanced the clients' understanding of the legal issues, their implications, and potential risks; and, whether the consultations affected progress and the ultimate outcome of the file.
6. How was legal risk communicated to the clients? How well did they understand the legal risks involved in this file? In your opinion, how did the clients use the legal risk assessment to manage and mitigate the legal risks associated with this file? What challenges, if any, did you encounter in assessing or communicating the legal risk associated with this file?

### Processes/Tools

7. In your opinion, which tools or processes best supported your ability to deliver services in relation to this file?
8. Please describe any best practices or lessons learned that could be applied to other similar files, or more generally, that would help to improve the litigation, advisory and/or legal policy work.

**Resources**

9. In your opinion, were sufficient and appropriate resources assigned to this file (considering the nature of the file, the level of expertise, etc.)?
10. Were you aware of any resource challenges (e.g., human, financial, tools) in your work on this file? If so, how were those challenges managed?
11. Please describe what changes, if any, could have been made to achieve a greater level of efficiency in managing this file.

**Closing**

12. In closing, is there anything else you would like to share about this file?

## Case Study Guide for the Client Department

The Department of Justice Canada is conducting an evaluation of the Aboriginal Affairs Portfolio (AAP). The purpose of the evaluation is to assess the performance of the AAP. **The evaluation period will cover five years from 2008-09 to 2012-13.** R.A. Malatest & Associates Ltd., a professional research firm, was hired by the Department of Justice Canada to assist with this evaluation.

Thank you for agreeing to participate in a case study interview for the evaluation of the AAP. This case study interview will contribute to the development of a comprehensive understanding of the Portfolio and its performance, based on your unique experiences and perspectives as they pertain to *[insert name of case study here]*.

Your participation is completely voluntary. Your identity will not be attached to your individual responses. Responses from the interviews will be analysed at the group level (i.e., case studies). Any quotes that are used for reporting purposes will be selected to ensure that no individual is identifiable.

We would like to remind you to be mindful of solicitor-client privilege before responding to any questions or providing us with any examples. Please avoid sharing details regarding any case you have been or are currently involved with that, upon reflection, you believe may be confidential in nature.

The interview should take approximately one hour to complete. With your permission, I would like to record the interview to ensure accuracy and completeness of results. All recordings will be used for research purposes only, and will be destroyed at project completion. A member of the Justice Evaluation Division will be sitting in on this interview.

Do you have any questions before we begin? [Y/N]

Are you comfortable proceeding with this interview? [Y/N]

## Case Study Guide: Representative of the Client Department

### Opening

1. Please describe your primary role/responsibilities with reference to the [*insert name of case study here*].

### Performance

2. Based on your experience, please comment on the following dimensions of the quality of the overall services provided by the AAP in relation to this file:
  - a) its capacity to respond to your requests in a timely manner;
  - b) the extent to which your department or agency was provided with advice and options appropriate to your policy and program objectives;
  - c) (for advisory files) the extent to which legal advice was presented in a manner that met your needs and expectations;
  - d) (for litigation files) the extent to which litigation services offered were carried out in a manner that met your needs and expectations; and
  - e) the extent to which your department or agency received consistent legal advice.
3. To your knowledge, was there more than one group within Justice Canada involved in this file (departmental legal services unit, regional offices, specialized sections, etc.)? If so, please describe the role you played, if any, during the work of these other groups. Additionally, based on your experience, how efficiently was the work coordinated between these different groups?
4. In your opinion, was the consultation between you and the AAP on this file effective? Please consider whether the consultations assisted the AAP in understanding your policy and program objectives; whether the consultations enhanced your understanding of the legal issues, their implications and potential risks; and, whether the consultations affected progress and the ultimate outcome of the file.

5. How was the legal risk communicated to you? How satisfied were you with the way legal risks were communicated? Please explain how the legal advice was used to manage and mitigate legal risk related to this file.

### **Resources**

6. In your opinion, were sufficient and appropriate resources assigned to this file (considering the nature of the file, the level of expertise, etc.)?
7. Were you aware of any resource challenges (e.g., human, financial, technical) encountered by the AAP on this file? If so, how were those challenges managed?
8. Please describe what changes, if any, could have been done to achieve a greater level of efficiency in managing this file.

### **Closing**

9. Is there anything else you would like to share about the Portfolio's role in this file?

## **Justice Canada Evaluation of the Aboriginal Affairs Portfolio Legal Counsel Survey**

The Department of Justice is conducting an evaluation of the Aboriginal Affairs Portfolio (AAP). This evaluation comes in response to the 2009 Treasury Board Secretariat *Policy on Evaluation*, which requires government departments to evaluate all direct expenditures every five years. For the Department of Justice, this policy requires that legal services be evaluated every five years. The Department of Justice has hired R.A. Malatest & Associates Ltd. to conduct the *Evaluation of the AAP*. The purpose of the evaluation is to assess the extent to which the Portfolio provides relevant and effective legal services to its clients. The evaluation period will cover five years from 2008/2009 to 2012/2013.

Thank you for participating in this online survey. Its purpose is to obtain information about the performance of the AAP from the perspective of **legal counsel** working across the Portfolio. Your responses are very important to us, and represent a significant source of information in support of this evaluation. The results will provide insight into Portfolio structures, processes, and mechanisms, and how they are working. Please know that your participation is completely voluntary. Your identity will not be attached to your individual responses as responses will be analysed in aggregate. In addition, your individual answers will not be shared with anyone outside of R.A. Malatest & Associates Ltd.

The survey should take approximately 15 to 20 minutes to complete. Please note you are able to exit and re-enter the survey at any time during its completion. We would appreciate your completing this survey no later than **June 27, 2014**.

The survey will cover the following themes:

- Background (e.g., information regarding your involvement in the AAP);
- Portfolio Design (including governance structures/mechanisms and roles and responsibilities);
- Resources and Professional Development (including resources, tools, fora/processes and training);
- AAP Contributions to Legal Risk Management (including the identification and reassessment of legal risk, dispute resolution and Litigation Management and Resolution Branch (LMRB) activities); and

Demonstration of Efficiency (including number and level of counsel).

## BACKGROUND

### 1. When did you first join the Department of Justice?

(Please select ONE)

- Less than a year ago
- Between 1 and 5 years ago
- Between 6 and 10 years ago
- More than 10 years ago

### 2. What is the classification level of the position you currently occupy?

(Please select ONE)

- Legal Counsel (LP-1)
- Legal Counsel (LP-2)
- Senior Legal Counsel (LP-3)
- General Counsel (LP-4)
- Senior General Counsel (LP-5)
- Manager (LC)

### 3. In what unit do you currently work?

(Please select ONE)

- Regional Office
- Aboriginal Law Centre
- Aboriginal Affairs and Northern Development Canada (AANDC) Legal Services Unit
- ADAG Office
- Other (please specify)

**Q3.EQ.1.OR.Q3.EQ.3**

**4. What kind of files do you typically work on?**

(Please select ALL that apply)

- Litigation
- Litigation support
- Legal policy
- Advisory
- Management/general administrative files
- Other (please specify)

**Q3.EQ.3**

**5. In which of the following areas do you conduct the majority of your work?**

(Please select ALL that apply)

- Negotiations and northern affairs
- Operations and programs
- Specific claims
- Aboriginal children's issues
- Treaties, Aboriginal rights, and title issues
- Aboriginal Government Negotiations West/Specific Claims BC/YT
- Residential Schools Settlement
- Aboriginal economic development
- Other (please specify)

## PORTFOLIO DESIGN

The following questions ask about the design of the AAP, including the organization, and governance structures/mechanisms, roles and responsibilities relative to the Portfolio's mandate, and objectives.

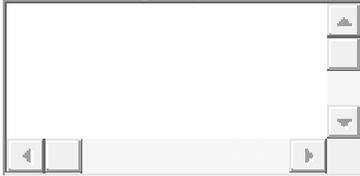
**6. Using a scale of 1 to 10, where 1 means totally disagree, and 10 means totally agree, please indicate your level of agreement with the following statements about the AAP's governance structures/mechanisms, and roles and responsibilities:**

	Totally disagree 1	2	3	4	5	6	7	8	9	Totally agree 10	Don't know /no response	Not applicable to my job
a) The governance structures/mechanisms are well-defined by the AAP (i.e. Management Committee; Senior Management Meeting; Law and Policy Committee; Cross Country Call; Direct Report Meetings; and Working Groups) (Hover pointer for explanation)	<input type="radio"/>	<input type="radio"/>										
b) The governance/organizational structures that are in place for my unit are functioning as intended.	<input type="radio"/>	<input type="radio"/>										
c) The roles and responsibilities of my unit are clear.	<input type="radio"/>	<input type="radio"/>										
d) The roles and responsibilities of my unit are appropriate.	<input type="radio"/>	<input type="radio"/>										
e) The roles and responsibilities of the AAP in providing litigation support are clear	<input type="radio"/>	<input type="radio"/>										

**7. Do you have any other comments regarding AAP's governance structures/mechanisms?**

(Please select ONE)

- Yes. Please specify

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- No

**8. In your opinion, is there any duplication of roles and/or responsibilities within the Portfolio?**

(Please select ONE)

- Yes. Please specify

A rectangular text input field with a light gray border. It contains no text. On the right side, there are three small square buttons stacked vertically, with the top one having an upward-pointing arrow and the bottom one a downward-pointing arrow. On the bottom side, there are two small square buttons, one on the left with a left-pointing arrow and one on the right with a right-pointing arrow.

- No
- Don't know
- No response

**9. Do you have any other comments regarding roles and/or responsibilities within the Portfolio?**

(Please select ONE)

- Yes. Please specify

A rectangular text input field with a light gray border. It contains no text. On the right side, there are three small square buttons stacked vertically, with the top one having an upward-pointing arrow and the bottom one a downward-pointing arrow. On the bottom side, there are two small square buttons, one on the left with a left-pointing arrow and one on the right with a right-pointing arrow.

- No
- Don't know
- No response

**10. To what extent have the following factors influenced the AAP's ability to meet clients' requests for legal services?  
Please use the scale provided, where 1 means no influence, and 10 means a very significant influence:**

	No influence 1	2	3	4	5	6	7	8	9	A very significant influence 10	Don't know /no response	Not applicabl e to my job
a) The completeness of the information provided in clients' requests	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
b) AAP approval processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
c) AAP information sharing processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
d) Client committee/ approval processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
e) The high volume of high risk files at any given time	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
f) Level of complexity of the legal issues associated with the file	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
g) The amount of legal consultation that is required on a file	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
h) Reporting requirements of AANDC clients	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
i) Reporting requirements of other client departments and agencies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
j) Timeliness of instructions from AANDC	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
k) Timeliness of instructions from other client departments and agencies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
l) Availability of resources	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
n) Workload pressures overall	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>									
m) Other (please specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>									
<input type="text"/>												

**11. Please indicate to what extent the following factors have influenced your work in a negative or positive way, where 1 means to a large extent negatively, 5 means no influence and 10 means to a large extent positively:**

	To a large extent negatively	2	3	4	No influence/neutral	6	7	8	9	To a large extent positively
	1				5					10
<b>Q10A.GE.2.AND.Q10A.LE.10</b>										
a) The completeness of the information provided in clients' requests	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10B.GE.2.AND.Q10B.LE.10</b>										
b) AAP approval processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10C.GE.2.AND.Q10C.LE.10</b>										
c) AAP information sharing processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10D.GE.2.AND.Q10D.LE.10</b>										
d) Client committee/ approval processes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10E.GE.2.AND.Q10E.LE.10</b>										
e) The high volume of high risk files at any given time	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10F.GE.2.AND.Q10F.LE.10</b>										
f) Level of complexity of the legal issues associated with the file	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10G.GE.2.AND.Q10G.LE.10</b>										
g) The amount of legal consultation that is required on a file	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10H.GE.2.AND.Q10H.LE.10</b>										
h) Reporting requirements of AANDC clients	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10I.GE.2.AND.Q10I.LE.10</b>										
i) Reporting requirements of other client departments and agencies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10J.GE.2.AND.Q10J.LE.10</b>										
j) Timeliness of instructions from AANDC	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10K.GE.2.AND.Q10K.LE.10</b>										
k) Timeliness of instructions from other client departments and agencies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10L.GE.2.AND.Q10L.LE.10</b>										
l) Availability of resources	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10N.GE.2.AND.Q10N.LE.10</b>										
n) Workload pressures overall	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q10M.GE.2.AND.Q10M.LE.10</b>										
m) Other (please specify):	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**12. Do you have any other comments regarding factors that may be influencing the AAP's ability to meet clients' requests for legal services?**

(Please select ONE)

- Yes. Please specify

- No

**RESOURCES AND PROFESSIONAL DEVELOPMENT**

**13. Using a scale of 1 to 10, where 1 means to no extent/not at all, and 10 means to the greatest extent/always, please rate the extent to which each of the following tools, systems, technologies, and resources are useful:**

	To no extent /not at all	1	2	3	4	5	6	7	8	9	To the greatest extent/ always	10	Don't know /no response
a) Electronic tools (e.g., Justipedia, Links to Legal Opinions) (Hover pointer for explanation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) Deskbooks (e.g., for the Settlement of Aboriginal Litigation, Consultation Deskbook, Legal Services Unit Deskbook for Specific Claims) (Hover pointer for explanation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) Guidelines (e.g., Federal Court Aboriginal Litigation Practice Guidelines, Guidelines for Drafting Expedited Legal opinions, other regulatory manuals/guides) (Hover pointer for explanation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) Other tools/systems/technologies/ resources (please specify): <input style="width: 100px; height: 15px;" type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**14. Thinking of AAP's existing tools, systems, technologies, and resources, what improvements might be required moving forward?**

**15. Do you have any other comments regarding tools and resources?**

(Please select ONE)

- Yes. Please specify

- No

**16. On a scale of 1 to 10, where 1 means strongly disagree, and 10 means strongly agree, indicate to what degree you agree that the following fora/processes are useful in terms of supporting you with your work:**

	Strongly disagree										Strongly agree	Don't use/ not applicable to my job	Don't know /no response
	1	2	3	4	5	6	7	8	9	10			
a) Practice Working Groups	<input type="radio"/>	<input type="radio"/>											
b) Litigation and Legal Risk Management Leadership Meeting	<input type="radio"/>	<input type="radio"/>											
c) ALC Litigation and Legal Risk Management Group Meeting	<input type="radio"/>	<input type="radio"/>											
d) Aboriginal Law Centre Key Issues Meeting	<input type="radio"/>	<input type="radio"/>											
e) National Coordination Call on Aboriginal Consultation and Accommodation	<input type="radio"/>	<input type="radio"/>											

	Strongly disagree 1	2	3	4	5	6	7	8	9	Strongly agree 10	Don't use/ not applicable to my job	Don't know /no response
f) AANDC LSU Modern Treaty and Self-Government Practitioners Call	<input type="radio"/>	<input type="radio"/>										
g) Access to Aboriginal Law Sections (Regional Offices)	<input type="radio"/>	<input type="radio"/>										
h) Access to supervisors/mentors	<input type="radio"/>	<input type="radio"/>										
i) Access to the AANDC LSU	<input type="radio"/>	<input type="radio"/>										
Other (specify): <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>										

**17. Do you have any other comments regarding tools and resources?**

(Please select ONE)

Yes. Please specify

No

**18. To what extent do the current tools, resources, and processes enable you to...?**

	To no extent /not at all 1	2	3	4	5	6	7	8	9	To the greatest extent/ always 10	Don't use/ not applicable to my job	Don't know /no response
a) Contribute to the development of consistent and integrated legal policy (comprehensive and co-ordinated Aboriginal legal policies involving government agencies, NGOs as well as national, regional and local parliaments and authorities).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

	To no extent /not at all 1	2	3	4	5	6	7	8	9	To the greatest extent/ always 10	Don't use/ not applicable to my job	Don't know /no response
b) Contribute to the development of consistent and integrated legal advice (for example, with respect to all aspects of legal negotiation regarding a specific issue).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) Contribute to the development of consistent and integrated legal positions in litigation files.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) Contribute to the effective resolution of Aboriginal legal issues, claims, and litigation files.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**19. Please indicate your level of agreement with the following statements in relation to training in support of the delivery of legal services using a scale of 1 to 10, where 1 means strongly disagree, and 10 means strongly agree:**

	Strongly disagree 1	2	3	4	5	6	7	8	9	Strongly agree 10	Don't know /no response
a) I receive training that is relevant to my practice area.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) I receive training that builds my legal practice skills.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) I receive training that builds my leadership and management skills.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) I receive training from mentors.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**20. Are there areas in which you would like to receive additional training?**

(Please select ONE)

- Yes (please specify):

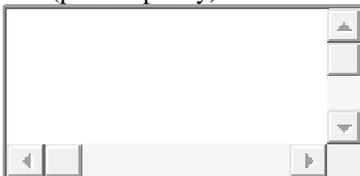
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- No
- Don't know
- No response

**21. Do you have any other comments regarding AAP training opportunities?**

(Please select ONE)

- Yes (please specify):

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- No

**22A. In the past two years, have you ever provided any AAP-related training?**

- Yes
- No
- Don't know
- No response

**Q22A.EQ.1**

**22B. To whom did you provide this training?**

(Select ALL that apply)

- Other AAP staff
- Other Justice staff
- AANDC
- Other client departments/agencies
- Don't know
- No response

**Q4.EQ.4**

**AAP CONTRIBUTIONS TO LEGAL RISK MANAGEMENT**

**23. Taking into consideration the ADVISORY FILES you have been involved with in the past five years, how often would you say that legal risks were identified and assessed when you opened a file?**

(Please select ONE)

- Almost always (95%-100% of files)
- Frequently (75%-95% of files)
- Regularly (50%-74% of files)
- Occasionally (25%-49% of files)
- Rarely (1%-24% of files)
- Never (0% of files)
- Uncertain on the % of files
- Don't know
- No response

**Q4.EQ.4**

**24. Taking into consideration your ADVISORY FILES in the past five years, how often did you REASSESS the legal risk after the initial assessment?**

(Please select ONE)

- Almost always (95%-100% of files)
- Frequently (75%-95% of files)
- Regularly (50%-74% of files)
- Occasionally (25%-49% of files)
- Rarely (1%-24% of files)
- Never (0% of files)
- Uncertain on the % of files
- Don't know
- No response

**Q4.EQ.1.OR.Q4.EQ.2**

**25. Taking into consideration the LITIGATION FILES you have worked on in the past five years, how often did you REASSESS the legal risk after the initial assessment?**

- Almost always (95%-100% of files)
- Frequently (75%-95% of files)
- Regularly (50%-74% of files)
- Occasionally (25%-49% of files)
- Rarely (1%-24% of files)
- Never (0% of files)
- Uncertain on the % of files
- Don't know
- No response

26. Using the scale provided below, where 1 means to no extent/not at all, and 10 means to the greatest extent/always, based on your experiences with the overall active management of litigation files , indicate to what extent did the level of legal risk...

	To no extent /not at all 1	2	3	4	5	6	7	8	9	To the greatest extent/ always 10	Don't know /no response
<b>Q4.EQ.1.OR.Q4.EQ.2</b> a) Influence your decisions to recommend alternative dispute resolution?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q4.EQ.1.OR.Q4.EQ.2</b> b) Influence the client's decision to participate in dispute resolution processes?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

27. Do you have any other comments regarding AAP's overall contributions to legal risk management?

(Please select ONE)

Yes (please specify):

No

**Q4.EQ.1.OR.Q4.EQ.2**

28. Are there any barriers to using dispute resolution to try to resolve AAP litigation files?

Yes (please specify):

No

Don't know

No response

**Q4.EQ.1.OR.Q4.EQ.2**

**29. Have you worked with AANDC's Litigation Management and Resolution Branch (LMRB)?**

- Yes, on approximately how many files:

- No  
>> **Q35A**

**30. Using the scale provided below, where 1 means to no extent/not at all and 10 means to the greatest extent/always, based on your experience, indicate to what extent...**

	To no extent /not at all	2	3	4	5	6	7	8	9	To the greatest extent/always	Not applicable to my job	Don't know /no response
	1									10		
<b>Q4.EQ.1.OR.Q4.EQ.2</b> a) The role of AANDC's Litigation Management and Resolution Branch (LMRB) is clear on litigation matters.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q4.EQ.1.OR.Q4.EQ.2</b> b) LMRB processes contribute to the delivery of high quality legal litigation services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q4.EQ.1.OR.Q4.EQ.2</b> c) The LMRB contributes to the early resolution or settlement of litigation files	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q4.EQ.1.OR.Q4.EQ.2</b> d) LMRB's process to settle litigation files is effective.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Q4.EQ.1.OR.Q4.EQ.2**

**31. In your opinion, is there any duplication of responsibilities between LMRB, and AAP in terms of managing litigation?**

Yes (please specify):

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No

Don't know

No response

**Q4.EQ.1.OR.Q4.EQ.2**

**32. Is there any duplication of responsibilities between AANDC's LMRB, and the DLSU in providing litigation support?**

Yes (please specify):

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No

Don't know

No response

**Q4.EQ.1.OR.Q4.EQ.2**

**33. Do you have any other comments regarding the role of LMRB?**

Yes (please specify):

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No

**Q4.EQ.1.OR.Q4.EQ.2**

**34. Do you have any other comments regarding the role of the DLSU in providing litigation support?**

Yes (please specify):

No

**DEMONSTRATION OF EFFICIENCY**

**35. In terms of experiences regarding your particular unit, please indicate the extent to which AAP resources have been sufficient and appropriate, using a scale of 1 to 10, where 1 means to no extent/not at all sufficient and appropriate, and 10 means to the greatest extent/always sufficient, and appropriate.**

	To no extent /not at all	2	3	4	5	6	7	8	9	To the greatest extent/ always	10	Don't know /no response
<b>Q4.EQ.1.OR.Q4.EQ.2</b>												
a) Appropriate <u>number</u> of counsel is assigned to litigation files relative to the assessed legal risk and complexity.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q4.EQ.1.OR.Q4.EQ.2</b>												
b) Appropriate <u>level</u> of counsel is assigned to litigation files relative to the assessed legal risk and complexity.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q4.EQ.4</b>												
c) Appropriate <u>number</u> of counsel is assigned to advisory files relative to the assessed legal risk and complexity.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Q4.EQ.4</b>												
d) Appropriate <u>level</u> of counsel is assigned to advisory files relative to the assessed legal risk and complexity.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**36. What factors contribute to your unit's ability to provide timely, high-quality, cost-effective legal services? [Quality legal services are defined by the Department of Justice as: accurate in law (not addressed under the current evaluation); consistent and coordinated across Justice; meeting/exceeding established client service standards for timeliness, responsiveness, and usefulness; and consistent with the Hallmarks of Well-drafted Acts and Regulations with respect to legislative services]. (Hover pointer for explanation)**

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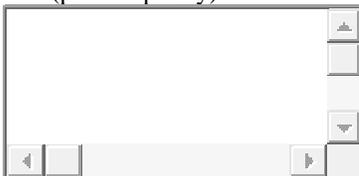
**37. What factors constrain your unit's ability to provide timely, high-quality, cost-effective legal services?**

An empty rectangular text input box with a light gray border. On the right side, there are three small square buttons stacked vertically. On the bottom left, there are two small square buttons, and on the bottom right, there is one small square button.

**38. Do you have any further comments or suggestions?**

(Please select ONE)

Yes (please specify):

A rectangular text input box with a light gray border. On the right side, there are three small square buttons stacked vertically. On the bottom left, there are two small square buttons, and on the bottom right, there is one small square button.

No

Thank you for taking the time to complete this survey.

## FILE REVIEW – Closed Litigation Files

### Overview

1. File number: \_\_\_\_\_

2. a) Date request was received: \_\_\_\_\_ b) Date file was opened: \_\_\_\_\_ 3. Date file closed: \_\_\_\_\_  
(mm/dd/yy) (mm/dd/yy) (mm/dd/yy)

#### 4. Lead Organizational Unit:

\_\_(01) Litigation Branch    \_\_(02) Regional Office – British Columbia    \_\_(03) Regional Office – Northern Region    \_\_(04) Regional Office – Prairie    \_\_(05) Regional Office – Ontario  
\_\_(06) Regional Office – Quebec    \_\_(07) Regional Office – Atlantic Region

#### 5. Supporting Organizational Unit:

\_\_(01) Aboriginal Law Centre    \_\_(02) Aboriginal Law & Strategic Policy Section    \_\_(03) Resolution Branch    \_\_(04) AANDC Legal Services Unit – Operations and Programs    \_\_(05) AANDC Legal Services Unit – Specific Claims  
\_\_(06) AANDC Legal Services Unit – Negotiations and Northern Affairs  
\_\_(07) AANDC Legal Services Unit – Aboriginal Children’s Issues  
\_\_(08) AANDC Legal Services Unit – Treaties and Aboriginal Government Negotiation West/Specific Claims BC/YT  
\_\_(09) Regional Office – British Columbia    \_\_(10) Regional Office – Northern Region    \_\_(11) Regional Office – Prairie    \_\_(12) Regional Office – Ontario    \_\_(13) Regional Office – Quebec  
\_\_(14) Regional Office – Atlantic Region

#### 6. Description of supporting role:

\_\_\_\_\_  
\_\_\_\_\_

#### 7. Lead client department/agency:

\_\_\_\_\_

8. Other departments involved in the file process: \_\_\_\_\_ (00) None

\_\_\_\_\_  
\_\_\_\_\_

9. Other levels of government involved: \_\_\_\_\_ (00) None

\_\_\_\_\_  
\_\_\_\_\_

#### 10. Overview of issue being litigated:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**11. Client is:**

- (01) Claimant       (02) Respondent       (03) Appellant       (04) Respondent on appeal       (88) Unable to assess
- (05) Defendant       (06) Applicant       (07) Plaintiff

**12. 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 (specify): \_\_\_\_\_

**13. A) Case Outcome:**

- (01) Settled       (02) Adjudicated       (88) Unable to assess
- (03) Closed administratively / transferred

**13. B) Crown Result:**

- (01) Successful       (02) Partially Successful       (03) Unsuccessful

**14. Were the expectations of the outcome provided to the client, and the one that consistently informed the work on the file, achieved at the end of the life of the file?**

- (01) Yes       (00) No       (88) Unable to assess

**15. Has the case been appealed?**

- (01) Yes       (00) No       (99) Not applicable
- Level of court:  (01) Provincial       (88) Unable to assess
- (02) Supreme

**16. Based on the documentation in the file, did counsel identify issues that should be referred to other areas within AAP or within Justice?**

- (00) None identified
- (01) Yes, to other areas of AAP (specify): \_\_\_\_\_
- (02) Yes, Public Law Section       (03) Yes, Litigation Branch       (04) Yes, Legislative Services Branch
- (05) Yes, to other areas of Justice (specify): \_\_\_\_\_

**17. What was the level of lead counsel originally assigned to this file:**

- (01) Legal Counsel (LA1/LP1)       (02) Legal Counsel (LA2A/LP2)       (03) Senior Legal Counsel (LA2B/LP3)
- (04) General Counsel (LA3A/LP4)       (05) Senior General Counsel (LA3B/LP5)       (06) Manager (LC)
- (88) Unable to assess

**18. Did the lead counsel change over the life of the file?**

- (01) Yes       (00) No

**iCase Information – Case Characteristics**

**19. Potential client impact (at start of case) [note: this field removed from iCase April 2013, so may not be available]:**

- |  |  |   |
|--|--|---|
| __(01) Affects administration of justice/public confidence     | __(02) Involves treaties or agreements                                       | __(03) Legal issues or events that may be controversial, attract significant national media attention, or involve Cabinet Ministers or prominent public figures |
| __(04) Limitations of federal jurisdictions                    | __(05) Major effect on fiscal resources of client or government              | __(06) Major effect on human rights, personnel, access, and privacy, gender or diversity issues   |
| __(07) Major effect on law/regulations of client or government | __(08) Major effect on programs/policies/initiatives of client or government | __(09) Major effect on relations with Aboriginal people, Métis  |
| __(10) Effect on the Charter or Constitution                   | __(99) Not applicable  | __(88) Unable to assess   |

**20. Complexity:**

- \_\_(01) Low      \_\_(02) Medium      \_\_(03) High      \_\_(04) Mega      \_\_(88) Unable to assess

**21. Possibility of Settlement:**

- \_\_(01) Low      \_\_(02) Medium      \_\_(03) High      \_\_(99) Not applicable      \_\_(88) Unable to assess

**22. Risk Level:**

- \_\_(01) Low      \_\_(02) Medium      \_\_(03) High      \_\_(88) Not yet evaluated

**Staff Resources used (from iCase)**

**23. a) Total number, and level of AAP counsel, paralegals, and other staff assigned to file b) # Hours spent on this file, and \*timeframe (mm/dd/yy to mm/dd/yy) based on timekeeping entries, for each staff involved in the file**

a) Type	Total	b) # Hours per staff assigned to file, and *timeframe
__01 LA0	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__02 LA1/LP1	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__03 LA2A/LP2	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__04 LA2B/LP3	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__05 LA3A/LP4	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__06 LA3B/LP5	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__07 LC	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__08 EC-01	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__09 EC-02	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__10 EC-03	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__11 EC-04	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__12 EC-05	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____

\_\_13 EC-06 \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_  
 \_\_14 EC-07 \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_  
 \_\_15 EC-08 \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_

*\*Please add additional staff assignment categories as required (e.g., 6: \_\_\_\_\_; 7: \_\_\_\_\_, 8: \_\_\_\_\_, and so forth).*

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

**24. 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 enter risks that are already listed under potential client impact in iCase (see Q15). 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.*

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> (01) New/novel legal issue                         | <input type="checkbox"/> (02) Constitutional or Charter issue                       | <input type="checkbox"/> (03) Issue with availability of evidence |
| <input type="checkbox"/> (04) Issue with availability of affiants/witnesses | <input type="checkbox"/> (05) Difficult facts to support claim/defence              | <input type="checkbox"/> (06) Unfavourable case law               |
| <input type="checkbox"/> (07) Significant media interest                    | <input type="checkbox"/> (08) Cabinet Ministers or other prominent figures involved | <input type="checkbox"/> (09) Class action                        |
| <input type="checkbox"/> (10) Legal issue considered controversial          | <input type="checkbox"/> (66) Other (specify): _____                                |   |
|   | <input type="checkbox"/> (88) Unable to assess                                      |   |

**25. Is there a risk level indicated in the file (i.e., not iCase)?**

- (01) Yes                       (00) No

**26. If yes, please indicate level:**

- (01) Low                       (02) Medium                       (03) High

**27. Date of initial risk assessment:** \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 mm dd yy

- (88) Unable to assess

**28. Was the assessed risk level communicated to the client?**

- (01) Yes                       (00) No

**29. Who was consulted in the initial risk assessment?**

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> (00) No one indicated in file   | <input type="checkbox"/> (01) Client department/agency        | <input type="checkbox"/> (02) Client LSU |
| <input type="checkbox"/> (03) Specialized unit within Justice (e.g., Public Law Sector or Policy Sector, etc.) | <input type="checkbox"/> (04) Other potentially affected LSUs |  |
| <input type="checkbox"/> (66) Other (specify): _____   |   |  |

**30. Was risk reassessed?**

- (01) Yes                       (00) No



**38. Is there an indication in the file that it was reviewed in one of the following communication fora/ committee meetings?**

\_\_(01) Yes (select all that apply):

\_\_(00) No indication in file

- Cross Country Call
- Direct Report Meetings
- General Practice Working Groups
- Key Issues Update Meetings
- Management of Law Group
- AAP Law and Policy Committee
- ALC Key Issues Meeting
- ALC Experts Advisory Group
- LLRM Leadership Meeting
- LLRM Group Meeting
- Regional Law and Litigation Committee
- National Coordination Call on Aboriginal Consultation and Accommodation
- AANDC LSU Modern Treaty and Self-Government Practitioners Call
- Specific Claims Tribunal Interim Oversight Framework
- Specific Claims Tribunal Issues Review Committee
- Specific Claims Practice Issues Meeting
- LSU AANDC Financial Management Committee
- LSU AANDC Policy Committee
- LSU AANDC Senior Executive Committee
- LSU AANDC Operation's Committee
- LSU AANDC Treaties and Aboriginal Government Management meeting
- Other (Specify):\_\_\_\_\_

**39. Is there an indication in the file that any of the following stakeholders were advised of legal risks, and risk- related events (i.e., did counsel report the files to senior management, and others)?**

\_\_(00) No indication that anyone was advised of legal risks in file

\_\_(01) Senior management in DOJ headquarters

\_\_(02) Regional managers

\_\_(03) Risk- related committees

\_\_(04) AAP LSU

\_\_(05) Client officials

\_\_(06) National Litigation Committee

\_\_(07) Portfolio managers

\_\_(66) Other (please specify):\_\_\_\_\_

**40. Please include any other information that you believe would be useful in understanding how risk was managed in this file.**

\_\_\_\_\_  
\_\_\_\_\_





### Quality Assurance Processes

**43. Quality assurance processes completed as evident in the file documentation (Check all that apply):**

- (01) Peer review (members of AAP)                       (05) Review by manager  
 (02) Review by AAP practice groups                       (06) Review by AAP management committees  
 (03) Review by AANDC LSU                                       (07) Review by DM/EC  
 (04) Review by Regional Law and Litigation Committee                       (08) Review by National Litigation Committee  
 (66) Other (specify): \_\_\_\_\_  
 (88) Unable to assess

### Dispute Resolution Options

**44. a) Were dispute resolution options considered?**

- (01) Yes             (00) No (why not) \_\_\_\_\_             (88) Unable to assess

**b) If yes, which dispute resolution options were considered (please check ALL that apply)?**

- (01) Negotiation                       (02) Voluntary Mediation                       (03) Mandatory Mediation  
 (04) Arbitration                       (05) Other Judicial Process  
 (66) Other (please specify) : \_\_\_\_\_                       (88) Unable to assess

**45. a) Were dispute resolution options pursued?**

- (01) Yes             (00) No (why not) \_\_\_\_\_             (88) Unable to assess

**b) If yes, which dispute resolution options were pursued (please check ALL that apply)?**

- (01) Negotiation                       (02) Voluntary Mediation                       (03) Mandatory Mediation  
 (04) Arbitration                       (05) Other Judicial Process  
 (66) Other (please specify): \_\_\_\_\_                       (88) Unable to assess

**46. Is there evidence that the client was involved in the selection of one or more of these pursued resolution options?**

- (01) Yes             (00) No

**47. Is there evidence of the DR process used at LMRB?**

- (01) Yes             (00) No

**48. Is there evidence of the role of the DLSU in providing litigation support on this file?**

- (01) Yes             (00) No

**49. Is there evidence of the role of the LMRB on this file?**

- (01) Yes             (00) No

**50. a) Was DR utilized / recommended on more than one occasion on this file?**

- (01) Yes             (00) No (why not) \_\_\_\_\_

**General Comments/Observations:**

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**10. Other levels of government involved in the file:** \_\_ (00) None

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**11. Overview of issue (what initiated the request, description of issue):**

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**12. File outcome:**

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> (01) Client considered legal risks identified, and proceeded as originally planned | <input type="checkbox"/> (02) Client considered legal advice, and adopted option to reduce/mitigate legal risks | <input type="checkbox"/> (03) Litigation action/ challenge brought against government |
| <input type="checkbox"/> (66) Other (please specify): _____   | <input type="checkbox"/> (88) Unable to assess  |   |

**13. What was the level of lead counsel originally assigned to this file:**

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> (01) Legal Counsel (LA1/LP1)    | <input type="checkbox"/> (02) Legal Counsel (LA2A/LP2)          | <input type="checkbox"/> (03) Senior Legal Counsel (LA2B/LP3) |
| <input type="checkbox"/> (04) General Counsel (LA3A/LP4) | <input type="checkbox"/> (05) Senior General Counsel (LA3B/LP5) | <input type="checkbox"/> (06) Manager (LC)                    |
| <input type="checkbox"/> (88) Unable to assess           |   |   |

**14. Did the lead counsel change over the life of the file?**

- |                                   |                                  |
|-----------------------------------|----------------------------------|
| <input type="checkbox"/> (01) Yes | <input type="checkbox"/> (00) No |
|-----------------------------------|----------------------------------|

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

**15. What legal risks are identified?** Please check all that apply. Only include if there is documentation that specifies risks (in iCase or in file).

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> (01) New/novel legal issue                         | <input type="checkbox"/> (02) Constitutional or Charter issue          | <input type="checkbox"/> (03) Issue with availability of evidence                   |
| <input type="checkbox"/> (04) Issue with availability of affiants/witnesses | <input type="checkbox"/> (05) Difficult facts to support claim/defence | <input type="checkbox"/> (06) Unfavourable case law                                 |
| <input type="checkbox"/> (07) Significant media interest                    | <input type="checkbox"/> (08) Class action                             | <input type="checkbox"/> (09) Cabinet Ministers or other prominent figures involved |
| <input type="checkbox"/> (10) Legal issue considered controversial          | <input type="checkbox"/> (11) Liability of the Crown                   |   |
| <input type="checkbox"/> (66) Other (please specify): _____                 |  |   |
| <input type="checkbox"/> (88) Unable to assess                              |  |   |

**16. Is there a risk level indicated in the file?**

- |                                   |                                  |
|-----------------------------------|----------------------------------|
| <input type="checkbox"/> (01) Yes | <input type="checkbox"/> (00) No |
|-----------------------------------|----------------------------------|

**17. If yes, level of risk indicated:**

- |                                   |                                      |                                    |
|-----------------------------------|--------------------------------------|------------------------------------|
| <input type="checkbox"/> (01) Low | <input type="checkbox"/> (02) Medium | <input type="checkbox"/> (03) High |
|-----------------------------------|--------------------------------------|------------------------------------|

**18. Date of initial risk assessment:** \_\_\_\_\_

- |    |    |    |  |
|----|----|----|--|
| mm | dd | yy | <input type="checkbox"/> (88) Unable to assess |
|----|----|----|--|

**19. Was the risk level communicated to the client?**

- |                                   |                                  |
|-----------------------------------|----------------------------------|
| <input type="checkbox"/> (01) Yes | <input type="checkbox"/> (00) No |
|-----------------------------------|----------------------------------|

**20. Who was consulted in the initial risk assessment?**

- (00) No one indicated in file       (01) Client department/agency       (02) Client LSU  
 (03) Specialized unit within Justice (e.g., Public Law Sector or Policy Sector, etc.) (Specify): \_\_\_\_\_  (04) Other potentially affected LSUs  
 (05) Other areas of the Portfolio (specify): \_\_\_\_\_  
 (06) Other departments (specify): \_\_\_\_\_  
 (66) Other (specify): \_\_\_\_\_

**21. Is there evidence of ongoing involvement?**

- (01) Yes       (00) No

**22. If yes, was risk reassessed?**

- (00) No       (01) Yes

**23. Reasons risk was reassessed (select all that apply)**

- (01) Standard Review (usually conducted every 90 days)       (88) Unable to assess  
 (02) New legal issue raised  
 (03) New (additional) request for legal services  
 (04) New evidence/facts  
 (66) Other (specify): \_\_\_\_\_

**24. What was the final risk level?**

- (01) Low       (02) Medium       (03) High

**25. Date of final risk assessment:** \_\_\_\_/\_\_\_\_/\_\_\_\_  (88) Unable to assess  
 mm dd yy

**26. If file 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 (specify): \_\_\_\_\_  
 (88) Unable to assess

**Staff Resources used (from iCase)**

**27. a) Total number, and level of AAP counsel, paralegals, and other staff assigned to file b) # Hours spent on this file, and timeframe (mm/dd/yy to mm/dd/yy) based on timekeeping entries, for each staff involved in the file**

a) Type	Total	*b) # Hours per staff assigned to file, and timeframe
__01 LA0	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__02 LA1/LP1	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__03 LA2A/LP2	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__04 LA2B/LP3	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____
__05 LA3A/LP4	_____	1: _____; 2: _____; 3: _____; 4: _____; 5: _____

\_\_\_06 LA3B/LP5 \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_  
 \_\_\_07 LC \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_  
 \_\_\_08 EC-01 \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_  
 \_\_\_09 EC-02 \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_  
 \_\_\_10 EC-03 \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_  
 \_\_\_11 EC-04 \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_  
 \_\_\_12 EC-05 \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_  
 \_\_\_13 EC-06 \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_  
 \_\_\_14 EC-07 \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_  
 \_\_\_15 EC-08 \_\_\_\_\_ 1: \_\_\_\_\_; 2: \_\_\_\_\_; 3: \_\_\_\_\_; 4: \_\_\_\_\_; 5: \_\_\_\_\_

*\*Please add additional staff assignment categories as required (e.g., 6: \_\_\_\_\_; 7: \_\_\_\_\_, 8: \_\_\_\_\_, and so forth).*

**Communications**

**28. Which of the following documents related to assessing, and communicating legal risk are in the file (Check each type of document found in file)?** \_\_\_(99) Not applicable

\_\_\_(01) Risk assessment document      \_\_\_(02) Legal advice/opinion      \_\_\_(03) Briefing Notes  
 \_\_\_(04) Early Warning Note for file      \_\_\_(05) Media monitored (e.g., press clippings in file, etc.)  
 \_\_\_(66) Other risk-related documents (specify): \_\_\_\_\_

**29. Is there an indication in the file that it was reviewed in one of the following communication fora?**

(01) Yes (select all that apply):      \_\_\_(00) No indication in file  
 Cross Country Call  
 Direct Report Meetings  
 General Practice Working Groups  
 Key Issues Update Meetings  
 Management of Law Group  
 AAP Law and Policy Committee  
 ALC Key Issues Meeting  
 ALC Experts Advisory Group  
 LLRM Leadership Meeting  
 LLRM Group Meeting  
 Regional Law and Litigation Committee  
 National Coordination Call on Aboriginal Consultation and Accommodation  
 AANDC LSU Modern Treaty and Self-Government Practitioners Call  
 Specific Claims Tribunal Interim Oversight Framework  
 Specific Claims Tribunal Issues Review Committee  
 Specific Claims Practice Issues Meeting  
 LSU AANDC Financial Management Committee  
 LSU AANDC Policy Committee  
 LSU AANDC Senior Executive Committee  
 LSU AANDC Operation's Committee  
 LSU AANDC Treaties and Aboriginal Government Management meeting  
 Other (Specify): \_\_\_\_\_

**30. Is there an indication in the file that any of the following stakeholders were advised of legal risks, and risk- related events (i.e., did counsel report the files to senior management and others)?**

- (00) No indication that anyone was advised of legal risks in file  
 (01) Senior management in DOJ HQ     (02) Regional managers     (03) Risk- related committees  
 (04) AANDC LSU     (05) Client officials     (06) National Litigation Committee  
 (07) Portfolio managers     (08) Other potentially affected LSUs  
 (66) Other (please specify): \_\_\_\_\_

**31. Please include any other information that you believe would be useful in understanding how risk was managed in this file.**

\_\_\_\_\_

\_\_\_\_\_

**Consultations**

**32. Is there an indication in the file that any of the following were consulted?**

- (00) No consultation indicated in file  
 (01) Client department     (02) AANDC LSU     (03) AAP Manager  
 (04) LRM contact person for region/section     (05) Specialized unit within Justice (e.g., Public Law Sector, Policy Sector, etc.)     (06) Other potentially affected LSU  
 (66) Other (specify): \_\_\_\_\_

**33. Legal advice/consultation sought (Note: consultations can include oral/written updates or discussions of possible strategies, options, approaches to the file):**

- (a) **ALC/ALSP/RB/AAP**     (01) Yes  
     (00) No

**If yes, reason for consultation with ALC/ALSP/RB/AAP:**

- (01) Identifying, and assessing legal risk     (02) The potential impact of legal risk     (03) Ensuring consistent approach across government  
 (04) Potential legal options     (05) Potential litigation strategies     (06) Seeking policy direction  
 (07) Sharing information     (08) Practice area expertise     (09) Legal advice/opinion  
 (66) Other(specify): \_\_\_\_\_  
 (88) Unable to assess

- (b) **Regional office/AAP**     (01) Yes. Specify area: \_\_\_\_\_  
     (00) No

**If yes, reason for consultation:**

- (01) Identifying, and assessing legal risk     (02) The potential impact of legal risk     (03) Ensuring consistent approach across government  
 (04) Potential legal options     (05) Potential litigation strategies     (06) Seeking policy direction  
 (07) Sharing information     (08) Practice area expertise     (09) Legal advice/opinion  
 (66) Other (specify): \_\_\_\_\_  
 (88) Unable to assess



**If yes, reason for consultation with other departments:**

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> (01) Identifying, and assessing legal risk | <input type="checkbox"/> (02) The potential impact of legal risk | <input type="checkbox"/> (03) Ensuring consistent approach across government |
| <input type="checkbox"/> (04) Potential options                     | <input type="checkbox"/> (05) Potential litigation strategies    | <input type="checkbox"/> (06) Seeking policy direction                       |
| <input type="checkbox"/> (07) Sharing information                   |  |  |
| <input type="checkbox"/> (66) Other (specify): _____                |  |  |
| <input type="checkbox"/> (88) Unable to assess                      |  |  |

**Quality Assurance Processes**

**34. Quality assurance processes completed as evident in the file documentation (Check all that apply):**

- (01) Peer review (members of AAP)
- (02) Review by AAP practice groups
- (03) Review of draft opinion by AANDC LSU
- (04) Review of draft opinion by Regional Office
- (05) Review by manager
- (06) Review by AAP management team
- (66) Other (specify): \_\_\_\_\_
- (88) Unable to assess

**General Comments/Observations:**

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