

Internal Audit Division

AUDIT OF THE ONTARIO REGIONAL OFFICE
FINAL AUDIT REPORT
DECEMBER 14, 2011

[*] The report has been severed where exempted information has been removed in accordance with the *Access to Information Act*.

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LIST OF ACRONYMS

ASG	Audit & Systems Group (<i>Groupe de la vérification et des systèmes – GVS</i>)
AAU	Agent Affairs Unit (<i>Unité de coordination des mandataires – UCM</i>)
ACFP	Associate Chief Federal Prosecutor (<i>Procureur fédéral en chef adjoint – PFCA</i>)
AG	Attorney General of Canada (<i>Procureur général du Canada – PG</i>)
ASU	Agent Supervision Unit (<i>Unité de supervision des mandataires – USM</i>)
CAE	Chief Audit Executive (<i>Dirigeant principal de la vérification – DPV</i>)
CIO	Chief Information Officer (<i>Dirigeant principal de l'information – DPI</i>)
CFP	Chief Federal Prosecutor (<i>Procureur fédéral en chef – PFC</i>)
CFSEU	Combined Forces Special Enforcement Unit (<i>Unité mixte d'enquête sur le crime organisé – UMECO</i>)
CPD	Continuing Professional Development (<i>Formation professionnelle continue – FPC</i>)
CSP	Corporate Service Provider (<i>Prestataire de services généraux – PSG</i>)
DDPP	Deputy Director Public Prosecutions (<i>Directeur adjoint des poursuites pénales – DAPP</i>)
DoJ	Department of Justice Canada (<i>Ministère de la Justice Canada – MJ</i>)
DPP	Director of Public Prosecutions (<i>Directeur des poursuites pénales – DPP</i>)
DPPA	Director of Public Prosecutions Act (<i>Loi sur le directeur des poursuites pénales – LDPP</i>)
DSO	Departmental Security Officer (<i>Agent de sécurité ministériel – ASM</i>)
FPS	Federal Prosecution Service (<i>Service fédéral des poursuites – SFP</i>)
FTE	Full-Time Equivalent (<i>Équivalent temps plein – ETP</i>)
HQ	Headquarters (<i>Administration centrale – AC</i>)
HRD	Human Resources Directorate (<i>Direction générale des ressources humaines – DGRH</i>)
IAD	Internal Audit Division (<i>Division de la vérification interne – DVI</i>)
IMET	Integrated Market Enforcement Team (<i>Équipe intégrée de la police des marchés financiers – EIPMF</i>)
INSET	Integrated National Security Enforcement Team (<i>Équipe intégrée de la sécurité nationale – EISN</i>)
IPOC	Integrated Proceeds of Crime (<i>Unité mixte des produits de la criminalité – UMPC</i>)
MCF	Management Control Framework (<i>Cadre de contrôle de la gestion – CCG</i>)
MoU	Memorandum of Understanding (<i>Protocole d'entente – PE</i>)
NTP	National Timekeeping Protocol (<i>Protocole national de comptabilisation du temps – PNCT</i>)

O&M	Operations and Maintenance (<i>Fonctionnement et entretien – F et E</i>)
OCH	Old City Hall (<i>Vieil hôtel de ville – VHV</i>)
ORO	Ontario Regional Office (<i>Bureau régional de l’Ontario – BRO</i>)
PPSC	Public Prosecution Service of Canada (<i>Service des poursuites pénales du Canada – SPPC</i>)
PREA	Performance Review and Employee Appraisal (<i>Examen du rendement et appréciation de l’employé – ERAE</i>)
SPPM	Strategic Planning and Performance Management (<i>Gestion de la planification stratégique et du rendement – GPSR</i>)
TBS	Treasury Board of Canada Secretariat (<i>Secrétariat du Conseil du Trésor du Canada – SCT</i>)

1.0 EXECUTIVE SUMMARY

1.1 AUDIT OBJECTIVE AND SCOPE

The overall objective of this audit was to assess the Ontario Regional Office (ORO)'s management framework within which it provides prosecutorial services. The management framework comprises policies, practices, and procedures relating to planning, organizing, controlling, leading, communicating, and managing human, financial, and material resources.

The audit scope included interviews with senior counsel and corporate service managers at Headquarters (HQ) as well as regional prosecution staff including, the Chief Federal Prosecutor (CFP), Associate Chief Federal Prosecutors (ACFP), the business coordinator, and selected prosecutors, paralegals, legal assistants and other support staff. Procedures, guidelines and practices as well as the monitoring and reporting mechanisms in place were examined. The audit team examined samples of prosecution case files, human resources files, contract files and financial transactions from the 2010-11 fiscal year.

1.2 AUDIT CONCLUSION

Overall, the region has an appropriate management framework with the exception of some administrative practices that require strengthening, mainly related to information management. In addition, there are opportunities for improvement noted for the region and the PPSC, based on good practices identified. Implementing good practices such as a national strategy for quantitative performance analysis and a national approach for the periodic review of completed prosecution cases will strengthen the management framework for prosecutorial services provided.

1.3 SUMMARY OF FINDINGS AND RECOMMENDATIONS

Planning

Formal prosecution plans have only been prepared for some of the region's mega complexity cases. Resource requirements, in terms of anticipated expenditures, have not been adequately addressed in the existing prosecution plans.

- *The ORO CFP should ensure, that an estimate of resources required is developed for all high and mega complexity cases, and that prosecution plans are prepared where required.*

Quantitative

The ORO and the PPSC could use quantitative indicators to manage performance more effectively.

- *The Deputy Director Public Prosecutions (DDPP) should develop a strategy to increase quantitative performance analysis for high/mega and low/medium complexity cases with the objective of enhancing performance management.*

Qualitative

The ORO has several processes in place to ensure the quality, consistency, and supervision of its prosecution cases, however there is limited review of completed cases or ongoing review of complexity determination.

- *The DDPPs should develop a national approach for the periodic review of completed prosecution cases to assess compliance with the Federal Prosecution Service (FPS) Deskbook (and any applicable policies or directives), and ensure the quality and consistency of prosecutions within the ORO and other regional offices.*

Information Management

Information Management practices vary across the region. File management standards should be put in place as prosecution decisions were not consistently documented, and numerous files could not be located at the time of the audit.

- *The ORO CFP should ensure that prosecution decisions, and decision making processes are clearly documented in prosecution files; and develop guidelines for a standard file organization system.*
- *The DDPPs, in consultation with the Chief Information Officer (CIO), should establish a framework for the improvement of information management practices, specifically related to the prosecution file management process.*

Security

[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]

1.4 STATEMENT OF ASSURANCE

In my professional judgment as the PPSC Chief Audit Executive (CAE), sufficient and appropriate audit procedures have been conducted and evidence gathered to support the accuracy of the conclusion provided and contained in this report. The audit findings and conclusion are based on a comparison of the conditions, as they existed at the time of the audit, against pre-established and approved audit criteria that were agreed upon with PPSC management. The findings and conclusion are applicable only to the entity examined. The audit was planned and conducted to be in accordance with the *Internal Auditing Standards for the Government of Canada*.

I appreciate the cooperation and assistance afforded to the audit team by PPSC staff at headquarters and in the Ontario Regional office.

Philip Morton
Chief Audit Executive

2.0 INTRODUCTION

2.1 BACKGROUND

The Office of the Director of Public Prosecutions, whose applied name is the Public Prosecution Service of Canada (PPSC), was created on December 12, 2006 with the enactment of the *Director of Public Prosecutions Act* (DPPA). The PPSC was created by transforming a former branch of the Department of Justice Canada (DoJ), the FPS, into an independent prosecution service.

The Director of Public Prosecutions (DPP) is mandated to perform the statutory responsibilities set out in the DPPA on behalf of the Attorney General of Canada (AG). These statutory responsibilities relate to the performance of powers granted to the AG by Parliament under the *Criminal Code* and other federal statutes. These powers include, amongst others, the power to initiate and conduct prosecutions, to provide advice to investigative agencies on general matters relating to prosecutions and particular investigations that may lead to prosecutions, and to make prosecution policy.

The DPP employs federal prosecutors and retains private counsel to act as agents to perform the duties and functions assigned to him under the DPPA. As of March 31, 2011 the PPSC had 958 employees and retained 224 standing agent firms, representing approximately 535 individual appointed counsel. The PPSC is a national prosecution service with a network of regional offices across Canada in: Vancouver, Edmonton, Saskatoon, Winnipeg, Toronto, Ottawa, Montreal, Halifax, Iqaluit, Yellowknife, and Whitehorse, each headed by a CFP who reports directly to one of the two DDPP's at HQ. Local offices throughout the country expand the PPSC's national presence.

The ORO is the largest regional office with 184 employees as of March 31, 2011, 48 standing agent firms, and an annual budget of just under \$30 million. The staffing complement, by TBS classification group, is made up of approximately 65% in the LA group, including prosecutors, team leaders and managers, 12% in the EC group, primarily para-legals, and 23% in the AS group, mostly support staff.

2010-11 Initial Budget Allocation (in \$) - Ontario Regional Office

	Salary *	O&M	Total
Regular	16,971,348	1,632,729	18,604,077
Drug Prosecution Fund	886,339	9,008,130	9,894,469
Total	\$ 17,857,687	\$ 10,640,859	\$ 28,498,546

Headquartered in Toronto, the ORO has local offices in Brampton, Kitchener, and London. The region is responsible for federal prosecutions throughout southern Ontario, stretching from Windsor to Trenton, and north to Midland and Orillia. Staff counsel operate on a daily basis in the courts in Toronto, Brampton, Kitchener and London. They may also serve in other courts

within the sphere of the ORO. However, in areas where there are no local offices, courts are usually served by agents. Counsel litigate in the Ontario Court of Justice, the Ontario Superior Court, the Court of Appeal for Ontario, and the Supreme Court of Canada. Occasionally, counsel also appear in the Federal Courts. Prosecutors litigate or provide advice in respect of prosecutions under a wide range of federal legislation including: agriculture, immigration, border services, counter-terrorism, environment, fisheries and oceans, competition, copyright, drugs, revenue, and organized crime. Prosecution work has changed dramatically over the past 30 years; criminal cases are taking more court time, and now the only short court appearances are in respect of guilty pleas. The work is highly complex, very demanding, and working conditions for staff are challenging at times.

Every year the Ontario region deals with thousands of cases ranging from simple cases such as possession of a controlled substance to complex cases involving organized crime or terrorism. In 2010-2011 the ORO began with 10,647 open cases, and opened an additional 7,190 cases during the year. 5,084 cases were closed during the year, leaving 12,767 cases open at year end. Each case is categorised by complexity using the following matrix:

Complexity Level	LOW	MODERATE	HIGH	MEGA
Description	<p>Cases</p> <ul style="list-style-type: none"> <input type="checkbox"/> of a routine nature that are resolved through alternate measures (eg. diversion); or which involve the application of well-established law to relatively straight-forward fact situations. 	<p>Cases</p> <ul style="list-style-type: none"> <input type="checkbox"/> which require some analysis and review of the facts or the law; which involve factual circumstances which may be difficult to communicate; or which may involve offences not ordinarily seen by the courts. 	<p>Cases</p> <ul style="list-style-type: none"> <input type="checkbox"/> which may involve complex facts or law; <input type="checkbox"/> which raise legal issues in areas where the law is not clearly established; <input type="checkbox"/> that challenge established laws or procedures; <input type="checkbox"/> which may present novel, multiple, or complex policy and/or legal issues that require significant advance preparation; or <input type="checkbox"/> which give rise to a significant change in established laws or practices. 	<p>Cases</p> <ul style="list-style-type: none"> <input type="checkbox"/> that are extremely demanding and complex; <input type="checkbox"/> involving multiple factual and legal issues of a complex nature; or <input type="checkbox"/> involving issues likely to raise significant legal, social, economic, and/or policy consequences of national importance.

In 2010, the first collective agreement for Association of Justice Counsel became effective. The collective agreement recognises the segmentation of the LA group into six levels, LA-DEV, LA-1, LA-2A, LA-2B, LA-3A and LA-3B. One of the most important articles in the collective agreement relates to the establishment of overtime. Prosecutors at the LA-2A level and below are entitled to over-time pay at a rate of one and a half times regular hourly pay for pre-approved hours in excess of an average of 37.5 hours per week over a four week period. Additionally, the LA group can receive annual incremental pay increases based on performance, ranging from 0% for unsatisfactory performance up to 7% for outstanding performance.

The audit of the ORO was identified in the 2010-2011 risk-based audit plan, recommended by the Departmental Audit Committee and approved by the DPP, as a higher risk area due to the high materiality and degree of dependencies on external partnerships.

2.2 OBJECTIVES AND SCOPE

The overall objective of this audit was to assess the ORO's management framework within which it provides prosecutorial services. The management framework comprises policies, practices, and procedures relating to: planning, organizing, controlling, leading, communicating, and managing human, financial, and material resources.

In particular, the audit team examined and assessed:

- The soundness of the region's resource and relationship management framework, including governance, planning and performance;
- The procedures and practices for controlling the Region's resources; and
- The extent to which a system of management exists governing the prosecution activities and decisions of the region, including a system of delegation of authority, appropriate information management practices, and legal risk management considerations and practices.

The audit scope included interviews with senior counsel and corporate service managers at HQ as well as regional prosecution staff including, the CFP, ACFPs, the business coordinator, and selected prosecutors, paralegals, legal assistants and other support staff. Procedures, guidelines and practices as well as the monitoring and reporting mechanisms in place were examined. The audit team examined samples of prosecution case files, human resources files, contract files and financial transactions from the 2010-11 fiscal year.

This audit was conducted between January and June 2011.

2.3 METHODOLOGY

2.3.1 Planning

The planning phase consisted of obtaining and documenting background information to gain an understanding of the ORO, its operations, key processes, and controls. In February 2011, the audit team travelled to Toronto for a preliminary visit to review a small sample of files from each major prosecution team, interview managers, team leaders, prosecutors and support staff, and observe proceedings at Old City Hall (OCH) and the Ontario Superior Court. The team analysed financial, human resource, prosecution data, Treasury Board of Canada Secretariat (TBS) and PPSC policies, directives and guidelines to develop the audit objectives, scope, and the audit criteria and methodology. In addition, the team reviewed audit and performance reports of international prosecution services to identify best practices. A Terms of Reference document including audit objectives and criteria was developed, shared and accepted by management at the conclusion of the planning phase.

2.3.2 Conduct Phase

The conduct phase, April and May 2011, included the review, analysis of documentation and processes, including roles, responsibilities and accountabilities, monitoring, and risk management practices, and comparison against audit criteria. Interviews were conducted with staff from the PPSC HQ and the region. The audit focused on the Toronto and Brampton amalgamated teams due to the large volume of prosecutions, overtime hours, and less senior staff comprising these teams. A judgemental sample of employee files was selected from these two teams. A judgemental sample of prosecution files was separated into two samples, low and medium complexity cases, selected from the amalgamated teams, and high and mega complexity cases, selected from the Anti-organized crime, revenue, *Integrated Proceeds of Crime (IPOC)*, and appeal teams.

Contract and finance files related to expert witnesses across the region were examined. These were considered to be of higher risk based on the dollar amounts of the payments and the findings of a previous audit. The audit team also assessed whether systems, controls and practices in place could be improved. Finally, the audit team met with the ORO CFP, and the two DDPPs to debrief them on the audit results, and validate the preliminary findings.

2.3.3 Reporting Phase

A draft report was sent to the DPP, the ORO CFP, the two DDPPs and senior management. Internal Audit Division (IAD) reviewed management's comments in response to the report and refined it in consideration of the additional information and clarification provided. The final draft was sent to the ORO CFP and both DDPPs to develop a management action plan in response to the recommendations within the report.

3.0 OBSERVATIONS AND RECOMMENDATIONS

The observations and recommendations are structured around findings based on audit criteria derived from government policies and guidelines, the FPS Deskbook (Deskbook), as well as best practices of other government organizations and prosecution services in other jurisdictions and countries. In particular, this section presents observations on Governance & Strategic Direction; People, Results and Performance; and Stewardship and Accountability.

3.1 GOVERNANCE & STRATEGIC DIRECTIONS

Governance and strategic directions are part of the TBS Management Accountability Framework. They are the essential conditions (internal coherence, corporate discipline, practices, and alignment to outcomes) in place to provide effective strategic direction, management of risks, support to the AG and Parliament, and delivery of results.

3.1.1 Governance

The ORO's governance structure was mostly documented and well understood. The governance structure includes responsibilities for maintaining constructive relationships with external investigative agencies and federal departments.

Corporate governance refers to the processes and structure for overseeing the direction and management of the organization so that it carries out its mandate and objectives effectively. Without strong governance the organization may be at risk of not fulfilling its mandate or achieving its strategic outcome. This is particularly important for the PPSC, due to the ever-evolving Canadian criminal justice system.

Organizational Structure

Organizations can be structured in many ways depending on the environment in which they operate. While the structure may change over time, in order to be an effective tool to achieve objectives, management must ensure the structure is communicated to and accepted by all employees. The audit team analyzed the documented structure and roles and responsibilities and compared them with those in place within the region. The region's organizational structure was well communicated and mostly documented, with the exception of deputy team leader positions. Several committees were found to be in place to support the region's governance structure. See Appendix A for the organizational structure.

The region has a CFP and two ACFPs. One ACFP is responsible for strategic initiatives and operations within the city of Toronto, and the other is responsible for local offices outside the city of Toronto. Prosecution team leaders manage a complement of staff and report to the ACFPs, while general counsel, agent supervision, revenue, appeals, and drug treatment teams/units report directly to the CFP. The CFP appointed four deputy team leaders to the Toronto amalgamated team. These positions were put in place to reduce the span of control, and provide mentorship. Deputy team leaders are senior prosecutors, reporting to the team leader, who conduct judicial pre-trials, vet search warrants, and provide advice and mentor junior

counsel. These positions were not documented by the region, nor recognized by HQ as official positions. The number of levels in the LA group adds challenges to the reporting structure. Most team leaders occupy positions at the LA-2B level, while deputy team leaders occupy positions at the LA-2A level. 57% of prosecutors in the ORO are at the LA-2A level with experience levels ranging from three years to over twenty five. As these positions are appointed, there is a risk that without open and transparent competitive processes, prosecutors at this level may feel that they were passed over for deputy team leader positions. Also, since the deputy team leader is not an official position, there is no work description to establish authority, which if challenged could create a dysfunctional work environment. The audit team has no recommendation. The organization is aware of the positions and has accepted the residual risk.

External Partnerships

Although the PPSC is an independent organization, it cooperates with investigative agencies and other federal departments to prosecute effectively and efficiently. A strong working relationship was evident as expectations, roles and responsibilities were documented, communicated and well understood by all parties. The CFP has delegated much of the responsibility to liaise and engage with local investigative agencies to the ACFPs and team leaders. These delegates meet regularly with investigative agencies and have collaborated to establish protocols and expectations. For example, Toronto Police Service and Peel Regional Police have established disclosure protocols to ensure documents and evidence are received within a specific time frame for low and medium complexity cases and increase the speed of disclosure in high and mega cases. Interviews indicated that this relationship has also resulted in investigative agencies laying more precise charges, and fewer cases being abandoned due to legal technicalities.

It is crucial that the PPSC stay up to date by being actively involved in criminal justice system initiatives. The audit team found that ACFPs and team leaders participate in initiatives to improve the criminal justice system. For example, they participate in bench and bar meetings every two to three months with judges and defence counsel. In smaller jurisdictions, Crown Agents fulfill this responsibility on behalf of PPSC. Another example of this involvement is participation in „Justice on Target“, a strategy to help the people who work in Ontario’s criminal courts reduce delay, get to decision points faster and complete non-complex cases more quickly. The Ontario Attorney General has stated that this strategy benefits victims and witnesses, and creates capacity for criminal justice participants to direct more attention to serious and difficult cases and justice services for the public.

The audit team found that the region’s governance structure was mostly documented and well understood, with the exception of the Toronto amalgamated team deputy team leader positions. The region’s governance structure also included roles for maintaining constructive relationships with external investigative agencies and federal departments.

3.1.2 Planning

Formal prosecution plans have only been prepared for some of the region's mega complexity cases. Resource requirements, in terms of anticipated expenditures, have not been adequately addressed in the existing prosecution plans.

Planning, at the macro level, provides a roadmap outlining how an organization will achieve its mandate and objectives. At the micro level, planning should identify how to achieve a specific desired outcome, which will assist in achieving macro level objectives. At a minimum, planning should consider an objective, actions to be taken, required resources, and risks which may affect the achievement of that objective. In the ORO there are multiple levels of planning, with processes in place to address business and human resource plans for the region, assignment of cases for teams, and prosecution plans for individual cases, all contributing to the success of the PPSC.

Complex Cases

PPSC has long recognised the challenges imposed by lengthy trials. PPSC introduced measures several years ago to recognize the impact that these complex cases have on resource utilization. The Deskbook, Chapter 54 notes: "The administration of justice may be severely strained by trials that stretch over an extended period of time and involve many accused facing several charges. As the Ontario Court of Appeal has observed, „[u]ntil relatively recently a long trial lasted for one week, possibly two. Now, it is not unusual for trials to last for many months, if not years.“"

The PPSC requires prosecution plans for these so-called „mega-trials.“ Prosecution plans serve as a strategic tool in this effort to help ensure the effective and efficient prosecution of unusually long, complex and costly trials. According to the Deskbook, "Plans must address, inter alia:

- “ the nature of the investigation and the key evidence in the case;
- “ the likely resource demands of the case, including an analysis of whether those demands can be satisfied by the regional office in question;
- “ the general contours of the prosecution, including the number of potential accused and charges, and the number of prosecutions;
- “ particular legal challenges likely to arise; and
- “ an assessment of how effectively information is being managed, so that disclosure will be able to be made as soon as practicable after arrest.

“With respect to resource demands, the plan must specifically identify potential expenditures such as personnel costs (Crown counsel, paralegals, project manager, etc.), administration or information management costs, and other costs, such as fees for court-appointed counsel. The [CFP] should identify how the particular demands of the mega-case will impact on the overall management of resources in the region.”

Moreover, the Government of Canada recently introduced new legislation to address these complex cases.¹

The ORO currently prepares prosecution plans at the request of the CFP only on specific mega complexity cases. In the three mega case files reviewed in the audit sample, no prosecution plans were found, although one case was found to be delegated to the Ontario Attorney General. During 2009-2010, only three prosecution plans were prepared nationally in the PPSC for the review of the National Prosecution Advisory Committee, while two additional plans were prepared but did not require committee review / approval.

Further to the three cases noted above from the original audit sample, the audit team reviewed two additional prosecution plans prepared by the ORO and one prepared by another region. While the plans appeared to sufficiently address legal aspects of the prosecution, there was limited information regarding resource demands. A description of the resources required, demonstrating sufficient knowledge and experience to address the demands of the prosecution, and an annex estimating hours required for each resource, at different stages of the prosecution, with the cost was expected. The plans prepared by the ORO contained only basic resource information such as:

- “two senior counsel, and a paralegal”;
- “the commitment will continue for several weeks”; and
- “5 days a week for a three week period.”

The plan prepared by the other region went a step further to identify a similar prosecution and its cost, and included a detailed budget annex with cost information related to O&M expenditures.

For the three mega cases in the audit sample, where prosecution plans could not be found, the total cost of time recorded by the prosecution teams was \$846,000 (an average of \$282,000 per case) based on cost-recoverable rates. In addition, the average cost of the 23 high complexity cases reviewed for which data was available was \$122,000. In the ORO, there are currently over 100 active cases in which the cost has exceeded \$100,000. Due to the significant resources involved in these complex cases, the management of high and mega cases could be improved by requiring resource estimates for these cases, and prosecution plans where required, though not all plans will require committee approval. This increased emphasis on managing resources for complex cases is also being recognized by private sector law firms:

“No one has ever seriously challenged the way [...] major litigation [is handled] where clients essentially write a blank cheque and accept the premise that it’s going to cost what it’s going to cost.” (Law firm project management: The Lawyers Weekly, February 12, 2010)

¹ On June 26, 2011, the *Fair and Efficient Criminal Trials Act* received Royal Assent. “This new legislation will help ensure that so-called „mega-trials,” large and complex cases involving illegal activities such as drug trafficking, white-collar crime, terrorism, organized crime or gang-related activity, can be heard more swiftly and effectively.” (http://www.justice.gc.ca/eng/news-nouv/nr-cp/2011/doc_32608.html)

“Legal project management provides a structured approach to planning, pricing and managing legal work that will bring a law organization’s service delivery model in line with the changing expectations of its clients.” (Project Management for Lawyers – Boake, Barbara, 2011)

While PPSC does not have clients in the traditional sense, ultimately, the client is the Canadian public. In this time of cost-containment in the public sector, the public not only expects, but demands the Government exercise fiscal restraint and scrutinize costs. Adopting a stronger project management approach to prosecution plans will enable team leaders, and regional management to accurately forecast both short-term and longer term resource requirements, and better meet the evolving responsibilities of the PPSC and its staff.

Recommendation:

1. *The ORO CFP should ensure that an estimate of resources required is developed for all high and mega complexity cases, and that prosecution plans are prepared where required.*

3.2 PEOPLE, RESULTS & PERFORMANCE

Monitoring and controlling results and performance of processes and projects is arguably just as important as good governance and planning. There is no one-size fits all, particularly given the diverse environment in which PPSC operates. The audit team examined two facets of results and performance, quantitative, and qualitative, to assess compliance against PPSC policies, directives, protocols. In addition, opportunities for improvement based on best practices of other government organizations and prosecution services in other jurisdictions and countries are presented for management consideration.

3.2.1 Quantitative Results

The ORO and the PPSC could use quantitative indicators to manage performance more effectively.

Quantitative indicators rely on data to assess the effectiveness and efficiency of processes, the region, and the organization as a whole. PPSC’s primary quantitative data source is iCase, a web-based legal information management system that provides timekeeping, billing, case management, document management, and case reporting functions. PPSC captures a variety of valuable data in iCase that is conducive to meaningful quantitative performance analysis. While researching performance indicators used by other prosecution services in Canada and abroad, the audit team did not identify any that had timekeeping data for its prosecution staff. This data will be an asset to the PPSC for informed decision-making as it continues to enhance its use of performance measurement techniques and analyze the costs of its services.

Timekeeping Input & Overtime

PPSC requires all prosecutors and paralegals to record their time in iCase. The National Timekeeping Protocol (NTP) states that time should be entered on a daily basis, and in all

circumstances time entries must be completed by the end of each week. Analysis of ORO timekeeping entries shows that in 2010-2011 approximately 45% of time entries were inputted or last revised, within 1 day, 63% within 7 days, and 90% within 28 days of having performed the activity. This has steadily improved over each of the past four years; in 2007-2008 only 79% of time was inputted within 28 days. The improvement in timekeeping can partly be attributed to the new collective agreement for the LA group. Employees impact themselves when they do not record time into iCase punctually, as they may not be compensated for hours worked. However, they also impact the organization if incomplete bills are sent to concerned departments and agencies for cost-recoverable files, and if overtime is forecasted based on inaccurate historical information.

In 2010-2011, the ORO spent \$852,000 on overtime, approximately 50% of the national total. In 2010-2011, there were 61 employees within the ORO, eligible for overtime, who recorded more than 1950 hours in iCase, the minimum expected hours at 37.5 per week. These employees worked an additional 13,000 hours; this amount of time, when paid out as overtime, equated to approximately 10 FTE worth of staff. Of these 61 employees, 24 (38%) averaged more than 25 hours a month in overtime, which works out to be an extra week of salary every month. One prosecutor worked enough overtime to be compensated an additional 65% of his/her salary, while six other employees were compensated between 36% and 42% of their salary for overtime worked. Interviews indicated overtime was primarily due to the departures of key personnel rather than an increase in the workload. One ACFP had just begun performance analysis on case complexity vs. prosecutorial experience to identify trends in overtime.

The establishment of overtime does not appear to have significantly impacted employees recorded hours. Analysis showed those who had been with PPSC for two full fiscal years (who have taken no maternity or parental leave), the average increase in overall hours was only .05% (excluding fluctuations +/- 30%), while 46% of employees recorded fewer total hours. Over half of the prosecutors at the LA-2B level and above actually recorded more hours, a 6% average increase, though these employees are not eligible for overtime.

While time is being recorded more promptly with the implementation of overtime, the total hours worked only increased slightly over recent years. The high number of hours worked is a result of other factors such as the heavy workload and staff turnover in the ORO, not the implementation of overtime.

Monitoring Performance

PPSC has established certain quantitative performance indicators that are used to monitor its operations. One indicator is the number of open and carried over cases against LA classification levels, and also against complexity over past fiscal years. Complexity reports are produced on a monthly basis to monitor senior prosecutor time on low complexity files by HQ and distributed to CFPs for review. These reports are to ensure that senior prosecutors are used most effectively by spending the majority of their time on high complexity cases, and to review the integrity of the case complexity rating itself.

In the ORO, the iCase administrator produces two reports for each timekeeper every four weeks; one summarizing hours entered each day, and another summarizing time by file and detailing

each timekeeping entry by file, including the activity performed and any applicable notes. These reports are given to the team leaders to review, and disseminate to individual employees. Timekeepers are to review, then go back and enter any time that is outstanding for the preceding four weeks. Team leaders do not have access to reports in iCase to review timekeeping.

Informally, team leaders have a sense of quantitative performance of employees due to the workload, and the way it is assigned through scheduling. If a prosecutor indicated that he/she could not take on another case, or were too busy to attend a bail or intake court as scheduled, or needed additional preparation time, this could be a sign that there may be performance or workload issues.

The length of time a case has been open is monitored as there is a risk that prosecutions may be stopped due to unreasonable delays. However, quantitative performance of cases is not monitored, and there are no standard benchmarks for the number of hours required for cases, specifically low/medium complexity cases, to be compared against. The two timekeeping reports produced by the iCase administrator contain limited quantitative performance information and are not used for that purpose. Without quantitative analysis, performance can not be effectively monitored to determine when a prosecution will take more hours than originally estimated.

While the PPSC has not fully developed quantitative performance measures for in-house prosecutors, the quantitative performance of Crown Agents is highly controlled. The Agent Affairs Unit (AAU) at PPSC HQ has an Audit & Systems group (ASG) dedicated to monitoring agents' quantitative performance. Resource estimates are monitored to track the cost of prosecutions. If the original estimate is exceeded, the agent must explain the cause and in consultation with the ASG, revise the estimate. In addition, the group reviews a sample of agent files to conduct an analysis of: the overall work of the agent firm against established benchmarks for particular cases; how the agents are spending their time, for example, ratios of preparation time vs. court time vs. waiting/travelling time; the length of time a case has been open; proper assignment of case complexity; the efficient use of resources, using an appropriate mix of junior and senior counsel; and duplicate time entries. This analysis is documented in a memorandum which is put in the agent's file and sent to the regional ASU. The IAD considers this process to be a good practice; though not fully applicable to in-house employees and cases, some aspects could be used to increase the effectiveness and efficiency of in-house operations.

Additional quantitative performance measures would support improved planning and allow management to have the required level of control to ensure that prosecution services are delivered in a cost effective manner. Specifically, management would better be able to:

- 1) Determine any potential efficiencies in the current model of resource allocation and identify opportunities for improvement;
- 2) In appropriate categories of cases, determine if the quantum of work given to the case is sufficient and if the effort expended is matched by the complexity of the case; and
- 3) Measure the performance of their employees' regular hours of work, and determine if the overtime requested is warranted in light of the needs of the cases.

Recommendation:

2. *The DDPPs should develop a strategy to increase quantitative performance analysis for high/mega and low/medium complexity cases with the objective of enhancing performance management.*

3.2.2 Qualitative Results

The ORO has several processes in place to ensure the quality, consistency, and supervision of its prosecution cases, however there is limited review of completed cases or ongoing review of complexity determination.

Quality and consistency in prosecutions are key parts of the PPSC's guiding values. They are critical to the success of the organization given the independence of prosecutors and the high visibility and level of scrutiny applied to the PPSC. While this section highlights opportunities for improvement, the audit team did note that the PPSC has many national committees/working groups and initiatives underway that are focused on the quality of prosecution matters of national interest. In addition, the criminal justice system itself acts as an external quality control measure, as the work of PPSC's prosecutors is reviewed by investigative agencies, judges and defence counsel on each and every case they prosecute.

Supervision and Consistency

Prosecutors have independence in day to day decision making, but are accountable for their decisions to managers, and ultimately the DPP. This ensures confidence in the reliability of the prosecution function as a whole. Managers and employees have developed several processes and systems to ensure the quality, consistency and supervision of cases. Although the processes are heterogeneous, they serve the unique environments that each team operates in, and similarities were noted in processes among teams.

For low complexity cases, there is a significant likelihood that multiple prosecutors will be involved in one case, providing an opportunity for "peer review" of the previous prosecutors' work. The prosecutor assigned to a courtroom on a particular day will usually handle all of the day's cases in that courtroom, even though it may be their first time looking at a case which is in its final stages. Interviews indicated that if a prosecutor notices an inconsistency, he will confer with other prosecutors who have dealt with the file, or similar files, for clarification. Alternatively, in the case of significant discrepancies, the prosecutor may approach the team leader for an opinion. Interviews also indicated that the team leader will send an email to the entire team highlighting an inconsistency, in general terms without identifying the individual, to avoid future related issues. The audit team noted a culture of openness and support. Supervisors and senior prosecutors indicated they were regularly willing to answer questions and provide input on legal issues; this was confirmed by junior prosecutors who found it helpful.

Quality control procedures for low and medium complexity cases have been established providing a review of files before key events. The Brampton team leader performs a readiness assessment on all case files destined for trial before proceeding. At OCH, deputy team leaders review all files destined for judicial pre-trial. On both teams, files are reviewed to ascertain the positions taken, and to ensure these positions are consistent with what has been issued to the team. Furthermore, at OCH deputy team leaders are responsible for performing judicial pre-trials, and in Brampton, a senior prosecutor has been assigned to attend to all cases at Assignment Court.

Case complexity is determined at the file creation stage by an iCase clerk and inputted into iCase. The audit team noted there was no documentation found, apart from the file itself, to support the decision in assigning case complexity, and did not see evidence of prosecutors proactively reviewing the rating; though there is a complexity matrix used to assist in the determination, and prosecutors indicated that the decision making is straightforward. PPSC uses case complexity for reporting purposes and relies on its accuracy. Prosecutors should review case complexity when they are assigned cases, and subsequently revise the complexity if impacted by new developments such as unexpected *Canadian Charter of Rights and Freedoms* challenges.

The processes in place allow for a separate review of each file to ascertain the validity of key prosecutorial decisions taken, and the adherence to the Deskbook.

Quality Control Documents

Standardized documents, such as forms and checklists, assist with quality control, facilitate review and reduce preparation time for prosecutors who are not familiar with a specific case. The audit team found that the ORO, and its individual teams have created various documents that have been adopted by prosecutors and paralegals. Checklists (orange sheets) were developed at OCH for paralegals to ensure a case is properly prepared before it goes to trial. Templates (blue sheets) in both the Brampton and OCH offices capture information about: the prosecutor, the officer in charge, defendants, offences, disclosure, required witnesses, time estimates, and crown positions. There is also a chart of sentencing positions, based on precedents from the Ontario Court of Appeal, to guide prosecutors. The audit team found that the information contained within checklists and templates can be useful to improve decision making, and the review of business and prosecution decisions. However, these documents are not always retained, nor reviewed at the end of the prosecution.

Quality Assurance

Many professions and organizations have implemented post activity review procedures to ensure quality and consistency across a large area, such as a region or an entire organization. Some have a qualified, independent group perform assessments to ensure compliance with policies, procedures, and professional standards. The United Kingdom, in 2000, established, Her Majesty's Crown Prosecution Service Inspectorate, an independent body that reviews prosecution work to ensure quality and consistency, while increasing the effectiveness and efficiency of prosecution activity. Quality reviews are important as they provide information which can be used to improve processes and formally identify lessons learned related to:

- How prosecutors have prepared their cases and the results;

- The results of initiatives such as disclosure protocols with investigative agencies; and
- Prosecutors and areas where they should focus on professional development.

The audit team did not find evidence that the PPSC had implemented similar measures though the audit team views such measures as best practices, facilitating trend analysis, ensuring compliance with policies and directives, and improving decision making.

Recommendation:

3. *The DDPPs should develop a national approach for the periodic review of completed prosecution cases to assess compliance with the FPS Deskbook (and any applicable policies or directives), and ensure the quality and consistency of prosecutions within the ORO and other regional offices.*

3.2.3 Employee Development and Performance

Learning plans were developed for all but one employee. Learning plans should include formal training to address the Law Society’s requirements. Performance Review and Employee Appraisals (PREA) were developed for all employees. PREAs should be balanced to identify meaningful opportunities for improvement.

All PPSC employees play a key role in the Canadian criminal justice system. As such it is important that they have acquired the necessary skills, knowledge and capabilities, and that they perform at the level expected by the courts and the public.

Learning and Training Plans

Learning and training plans must be developed annually by each employee. In 2010-2011 learning plans were completed for 14 of the 15 employees in the audit sample. The majority of learning plan goals consisted of peer-to-peer prosecution opportunities such as being involved in a jury trial, or in a wiretap case. Formal training opportunities were only identified in four learning plans. Interviews indicated that this is in part due to the uncertainty of available training funds at the beginning of the fiscal year. Employees can, however, request learning and training throughout the year. If recommended by the employee’s supervisor, the ACFP will approve requested training based on available resources. For example, in March 2011, the PPSC held its second national training conference with 175 delegates from across the country, including 34 from the ORO. The subject of the conference was „Adapting Federal Prosecutions Practice to Technology Changes“. It was also noted that all new employees in the sample had attended the School for Prosecutors (PPSC in-house training tailored to the work of federal prosecutors).

As of January 1, 2011, the Law Society of Upper Canada requires 12 hours of Continuing Professional Development (CPD) annually for all prosecutors and paralegals who have been practising or providing legal services for more than two years, including at least three hours focused on professional responsibility, ethics, and/or practice management. In addition, they are required to report their CPD hours to the Law Society annually. Learning and training plans can

be used as a tool to track CPD hours and address this reporting requirement, ensuring prosecutors and paralegals are practising law, or providing legal services competently and ethically.

Recognition

A PREA is the tool used to evaluate employee performance on an annual basis, to determine performance pay for eligible employees, and used in decision making related to staffing, training, development and succession planning. The audit team found PREAs in the HR files of every employee in the sample, though areas for development were often only identified as opportunities for employees to prosecute types of cases they had not in the past. PREAs contained detailed information about specific cases the prosecutors worked where the individuals demonstrated prowess, based on employee narratives. PREAs contained almost entirely positive information about the performance of prosecutors. Additionally, the audit team observed that the region has regularly recognized noteworthy achievements and teams were keen to give well deserved praise. PREAs may be more effective by including observations on performance, techniques, or skills that employees can use constructively in their professional development.

Recommendation:

- 4. The ORO CFP should establish and communicate learning and training commitments for employees at the beginning of each fiscal year, and ensure that employees' professional training requirements are met.*

3.3 STEWARDSHIP AND ACCOUNTABILITY

Appropriate stewardship identifies how activities should be performed to prohibit inappropriate action and achieve objectives. Stewardship relies on a diverse range of controls from policies and procedures, financial management practices and controls, to physical and information security. Accountability defines authority, responsibility, and reporting to support effective coordination between all parts of the organization.

3.3.1 Information Management

Information Management practices vary across the region. File management standards should be put in place as prosecution decisions were not consistently documented, and numerous files could not be located at the time of the audit.

The objective of the TBS Policy on Information Management is to achieve efficient and effective information management to support program and service delivery; foster informed decision making; facilitate accountability, transparency, and collaboration; and preserve and ensure access to information and records for the benefit of present and future generations.

Prosecution Decisions

Prosecutions require numerous decisions to be made throughout, typically beginning with the decision to prosecute, and ending with a sentencing recommendation, or decision to file an appeal. Prosecutors are given the independence to make these decisions themselves, in accordance with the Deskbook, and are accountable for those decisions to the DPP, who is accountable to the AG, and ultimately Parliament, and the Canadian public.

The TBS Policy on Information Management requires the DPP to ensure that decisions and decision-making processes are documented to account for and support the continuity of departmental operations, permit the reconstruction of the evolution of policies and programs, and allow for independent evaluation, audit, and review. The Directive on Information Management Roles and Responsibilities also requires employees to document their activities and decisions. The audit team found that prosecution decisions were made by an individual with the appropriate authority, but were inconsistently documented.

The Deskbook states: *“Crown counsel must consider two issues when deciding whether to prosecute. First, is the evidence sufficient to justify the institution or continuation of proceedings? Second, if it is, does the public interest require a prosecution to be pursued?”* The Deskbook also encourages prosecutors to include notes of the assessment of the decision to prosecute on the file. Without documentation describing how these two criteria were met, it makes it difficult to determine if the decision adhered to the Deskbook. No specific documentation was found related to the decision to prosecute in any file examined in the audit sample. Furthermore, the decision to stop a prosecution or withdraw charges was rarely documented on file, and was found in only one high/mega complexity case, and in one low/medium complexity case. Where a decision is made not to institute proceedings, it is recommended that a record be kept of the reasons for that decision. Furthermore, counsel should be conscious of the need in appropriate cases to explain a decision not to prosecute to, for example, the investigative agency.² Prosecutorial decisions have consequences, due in part to the media attention in high profile cases, and the need to maintain confidence in the justice system. Moreover, individuals may take the PPSC to court for malicious prosecutions if they feel they were unfairly prosecuted. Decisions regarding Crown Appeals were generally well documented, including formal decisions from an appeals committee.

Decisions and decision-making processes should be clearly documented and easily accessible. This will help with the efficiency of the review process if a team leader or senior prosecutor questions the decision. It will also facilitate accountability and communication.

Prosecution File Management

A prosecution file management system should ensure files are easily accessible, documents are retained within a file in a logical manner so anyone reviewing the file can follow the sequence of events and the decisions taken, and finally that completed files are „closed“ and properly stored.

² The Federal Prosecution Service DESKBOOK: 15.3.2 The Public Interest Criteria

The audit team requested a sample of 34 high or mega complexity prosecution case files, and 32 low or medium complexity prosecution case files. Of the 66 prosecution case files requested, four (6%) could not be located, though an additional 12 (18%) were not available during the site visit and were not examined. There is an electronic system (iRIMS) to track files which uses barcodes to sign files in and out. Some files were marked as being in the file room, but could not be located. Other files were marked as being signed out, though informal discussions indicated that sometimes files are signed out to the wrong individual in the system. With any number of missing files, there is a high risk that required documents will not be available when needed for appeals or other purposes

High and mega complexity files can range in size from one pocket, which holds approx 1,000 pages of documentation, to over two hundred pockets. While pocket indices were prepared for 16 of 17 large files, there is no standard format or guidelines in use for managing documents within a file. Paralegals are responsible for organizing files each using their own methodology. Documents were not retained within files in a sequential manner, and it was difficult to find supporting documentation for decisions. For example, multiple copies / drafts of forfeiture applications were found in files, without a signed final copy.

Another challenge of file management is the use of both iCase and hardcopy files. Neither the iCase, nor the hardcopy files were complete, and each contained different documents depending on the case and the prosecutor's / paralegal's use of iCase, although the hardcopy files appeared to be the most complete. Inconsistencies were found when comparing hardcopy court dates to those found in iCase. In three files within the low/medium complexity sample, court appearances found in the hardcopy file were not entered in the system. iCase also acts as a document management system though it has limited functionality, demonstrated by the lack of a document search feature. In many instances hardcopy case files are sent to the PPSC from investigative agencies and due to the volume it may not be cost effective to scan every document. In the ORO, the investigative agencies are increasing the use of evidence in electronic format, such as external hard drives.

Prosecutions are considered closed on the sentencing date so that the retention period of the file can be appropriately determined. Prosecutors must notify iCase clerks that prosecutions have ended in order for them to be closed in iCase. The closing date can be back-dated to any date, and standard practice is to have it match the sentencing date. There were three files (9%) in the low/medium sample that contained discrepancies between the closing date and the sentencing date. Additionally, two files (6%) in the high/mega sample were not closed though there had been no iCase activity for several years. HQ occasionally sends the region a list of files with no iCase activity in the past five years for review. The most recent list contained 2,499 files, or 20% of all open files. A number of these open files may be attributed to staff turnover where cases that require no additional court appearances are not closed, or files left upon due to outstanding warrants or pending appeals. Given the high number of cases opened each year, prosecution staff focus on addressing current workload, rather than administrative matters pertaining to completed cases.

A formal prosecution file organization methodology would help ensure consistency in files across the region, facilitate quality review of completed prosecutions, and most importantly create efficiencies over time in organizing files.

Recommendation:

5. *The ORO CFP should ensure that prosecution decisions, and decision making processes are clearly documented in prosecution files; and develop guidelines for a standard file organization system.*
6. *The DDPPs, in consultation with the CIO, should establish a framework for the improvement of information management practices, specifically related to the prosecution file management process.*

3.3.2 Security

[REDACTED]

The TBS Policy on Government Security states that security is the assurance that information, assets and services are protected against compromise and individuals are protected against workplace violence.

Information Security

[REDACTED]

Physical & Personnel Security

Physical security is particularly important for organizations dealing with accused persons.

[REDACTED]

[REDACTED]

Recommendation:

7. [REDACTED]

3.3.3 Stewardship

Stewardship has improved over the past fiscal year; however, errors were detected in the overtime reconciliation process and missing files continues to be an issue.

A longstanding objective of the Federal Government has been to strengthen public sector financial management and its leadership, thereby contributing to appropriate stewardship of public resources, effective decision-making, and efficient program delivery. It was noted that the ORO has financial management processes in place and had one of the lowest budget variances of all regional offices.

Overtime Reconciliation

Overtime for prosecutors is reconciled on a four week period as defined in the collective agreement. The process used to verify overtime forms relies on spreadsheets and has not been automated. It is time consuming, tedious, and is susceptible to human error. The audit team found instances of overtime reconciliation where work performed on days of rest was treated as regular working days, and systemic rounding errors.

Once all time is inputted in iCase, the prosecutor determines how many hours were recorded above the 150 standard working hours are eligible for overtime, in accordance with their pre-approval forms, the PPSC Policy / Directive on Hours of Work, Overtime, Exceptional Leave, Travelling Time, and Reimbursement of Meal Expense for the Law Group (LA) (the Policy / Directive), and the collective agreement. Overtime reconciliation is verified at ORO HQ, and then approved by the CFP.

The Directive states that daily hours over 8.5 hours will be credited as actual hours, in 30-minute blocks to be rounded down. This contradicts the TBS's interpretation that hours over 8.5 should

be credited as actual hours, and rounded down on the sum of the 4 week period, as opposed to rounding down on a daily basis. There is an overtime Q&A document produced by HRD that clarifies this, though the Directive has not been updated.

iCase contains an overtime reconciliation tool which automates the reconciliation process. Though the tool has not been formally adopted by the PPSC, some prosecutors use it to reconcile their overtime. This tool should be used by all prosecutors as it could greatly reduce the time required to verify overtime and mitigate the risk of human error.

Contracting and Accounts Payable

The objective of government procurement is to acquire goods and services in a manner that enhances access, competition and fairness and results in best value or, if appropriate, the optimal balance of overall benefits to the Crown and the Canadian people.

The audit sample consisted of twelve invoices totalling \$173,878, and six contracts of selected high-risk transactions. Only two invoices were not available during the site visit. In the ten invoices examined, all were approved by a delegated authority under Section 34 of the *Financial Administration Act*. However, in eight of ten expert witness payments, worth \$148,591, documentation was not retained to demonstrate the expert witness had adequately performed the work. It would be useful to retain documentation, such as an email from the prosecutor, detailing the work performed by the expert witness, as the delegated Section 34 authority likely would not have firsthand knowledge of the work performed. Additionally, two expert witness contracts were prepared after the work had been performed, though they were detected and substantiation forms were completed.

In 2009-2010, the IAD conducted an audit of account verification. That audit found that in sample of the ORO's financial files, no vendor payments over \$1000 had contracts in place before work began, 27% of vendor payments did not have proper Section 34 approval, and 13% of documents were missing. The ORO has improved over the past fiscal year in these areas except with regards to missing invoices.

ASU

Agent supervisors are responsible for the Crown Agents within their jurisdiction. They ensure that agents provide quality legal services at a reasonable cost and are required to review memos from the A&S group, perform additional analysis as required, and formally discuss the results with the agent. This responsibility is part of the Section 34 approval process for Crown Agent invoices. The discussion should be documented, including corrective actions to be taken, and then be sent back to the A&S group. Currently there is approximately a three month backlog in responding to the A&S memos, and the agent supervisor has not been able to visit agents to better monitor and improve performance. This can be somewhat attributed to the ASU's low resource level when compared to the PPSC national average of FTE to agent fees, although for the past year there has been one vacant position. Due to the current lack of available resources, the ASU is challenged to fulfill all of its required work and responsibilities in a timely manner. We found that the initial salary budget for the ORO ASU was \$891,959 while the actual expenditures were only \$359,750 according to the March 31, 2011 Financial Situation Report. This surplus of \$532,209 could be used to staff additional supervisor positions to mitigate the

legal and financial risks associated with Crown Agents. At the time of the audit, the agent supervisor was preparing a business case for additional FTE positions.

The stewardship processes the ORO has in place are contributing to appropriate management of public resources, effective decision-making, and efficient program delivery. However there are opportunities to strengthen these processes.

Recommendation:

8. *The Director General of the HRD should update the Directive on Hours of Work, Overtime, Exceptional Leave, Travelling Time, and Reimbursement of Meal Expense for the Law Group (LA) to reflect TBS's interpretation of overtime reconciliation.*
9. *The ORO CFP should consider formally adopting the use of the iCase overtime reconciliation tool to verify overtime.*

4.0 CONCLUSION

The IAD assessed the Region's management framework within which it provides prosecutorial services against pre-determined audit criteria based on TBS policies and directives, PPSC policies, directives, protocols and procedures/guidelines such as the FPS Deskbook, as well as good practices of other government organizations and prosecution services in other jurisdictions and countries. The management framework comprises policies, practices, and procedures relating to planning; organizing; controlling; leading; communicating; and managing human, financial, and material resources.

Overall, the region has an appropriate management framework with the exception of some administrative practices that require strengthening, mainly related to information management. In addition, there are opportunities for improvement noted for the region and the PPSC, based on good practices identified. Implementing good practices such as a national strategy for quantitative performance analysis and a national approach for the periodic review of completed prosecution cases will strengthen the management framework for prosecutorial services provided.

The management action plan is located in section 5.0 of the report. In six to twelve months, the CAE will follow-up with the CFP and the DDPP to determine the extent to which the management action plan has been implemented.

5.0 MANAGEMENT ACTION PLAN

Risk Ranking	<i>Recommendation</i>	Management Response and Action Plan	Office of Primary Interest	Initial Target Date for Completion
Planning				
High	1. <i>The ORO CFP should ensure that an estimate of resources required is developed for all high and mega complexity cases, and that prosecution plans are prepared where required.</i>	ACFPs and team leaders have been instructed on the need to have prosecution plans prepared for all mega complexity cases, as well as high complexity cases that have a potential client impact. The prosecution plans will include a dollar estimate of the cost, based on the estimated hours to complete the prosecution, and the number and rank of the personnel assigned to the file.	ORO CFP	March 2012
Quantitative Results				
High	2. <i>The DDPPs should develop a strategy to increase quantitative performance analysis for high/mega and low/medium complexity cases with the objective of enhancing performance management.</i>	<p>Work is already underway to identify performance measures. In relation to in-house prosecutions, the level of direct on-site supervision of the prosecution-related work, including the requirements for advance approval of overtime, already provides a means of ensuring adequate performance measurement</p> <p>In relation to low and medium complexity cases, the DDPPs will develop and test on a pilot basis a performance measurement system that includes standard benchmarks for hours per case. The results of the pilot project will determine the feasibility of increased quantitative performance analysis while ensuring that any such analysis can</p>	DDPP	June 2012

Risk Ranking	<i>Recommendation</i>	Management Response and Action Plan	Office of Primary Interest	Initial Target Date for Completion
		<p>be undertaken within current resource limitations and the availability of data that would permit meaningful analysis of these particular categories of prosecutions.</p> <p>High and mega complexity cases present diverse challenges that are often difficult to predict and comparison among them is far more difficult than comparisons of low and medium complexity files. The DDPPs, in conjunction with the ORO CFP, will periodically monitor the actual resources spent of the cases against the prosecution plans described in recommendation #1 as a means to improve performance management of these more complex cases. In addition, the Major Case Advisory Committee will monitor the results of the cases on which they are consulted.</p>		

Risk Ranking	Recommendation	Management Response and Action Plan	Office of Primary Interest	Initial Target Date for Completion
Qualitative Results				
Medium	<p>3. <i>The DDPPs should develop a national approach for the periodic review of completed prosecution cases to assess compliance with the FPS Deskbook (and any applicable policies or directives), and ensure the quality and consistency of prosecutions within the ORO and other regional offices.</i></p>	<p>Currently, the ongoing supervision provided in the regions as well as the information provided to HQ subject matter experts is an effective manner of ensuring compliance.</p> <p>The DDPPs, in conjunction with the ORO CFP, will conduct a pilot review of a sample of high and mega complexity cases in order to determine whether additional file review beyond the current on-site supervision model would be of assistance in ensuring greater quality and consistency of prosecutions than currently exist.</p>	DDPP	June 2012
Employee Development And Performance				
Low	<p>4. <i>The ORO CFP should establish and communicate learning and training commitments for employees at the beginning of each fiscal year, and ensure that employees' professional training requirements are met.</i></p>	<p>The ORO CFP, in consultation with the DDPPs, will establish and communicate a minimum commitment for formal learning activity hours for employees as part of the annual individual learning plan process.</p> <p>With respect to professional requirements, this can be achieved by instructing counsel that their Learning Plans should include these requirements. Ultimately, it is counsel's responsibility to ensure fulfillment of these requirements which the PPSC will facilitate.</p>	ORO CFP	April 2012

Risk Ranking	Recommendation	Management Response and Action Plan	Office of Primary Interest	Initial Target Date for Completion
Information Management				
Medium	<p>5. <i>The ORO CFP should ensure that prosecution decisions, and decision making processes are clearly documented in prosecution files; and develop guidelines for a standard file organization system.</i></p>	<p>In the majority of files (low and medium complexity) the continuation of the prosecution indicates that a decision has been taken that the evidence is sufficient to meet the test that there is a reasonable prospect of conviction. As the Deskbook notes, in most instances, the public interest will then require a prosecution. In relation to high and mega cases, the prosecution plans will provide this assessment. In the case of all mega cases and certain high complexity, the plans will be reviewed by the Major Case Advisory Committee composed of senior practitioners from across the country.</p> <p>The ORO CFP will disseminate instructions to counsel, after discussion with ACFPs and team leaders, regarding the preparation of documentation in the file. The decisions to prosecute will be documented for cases of medium, high and mega complexity. For low complexity files, only decisions to withdraw charges will be documented.</p> <p>On a national level, a number of regional offices have standardized approaches to file organization. Initially, the DDPP will ensure that all regional offices have such internal standardized approaches for medium, high and mega complexity</p>	ORO CFP	January 2012

Risk Ranking	<i>Recommendation</i>	Management Response and Action Plan	Office of Primary Interest	Initial Target Date for Completion
		prosecution files. (Low complexity prosecution files often do not result in the creation of files and rely upon the police package that is returned to the police at the conclusion of the prosecution.). Best practices could be identified to create a national approach while permitting flexibility to reflect regional approaches. Implementation would be gradual to avoid operational disruption.		
High	6. <i>The DDPPs, in consultation with the CIO, should establish a framework for the improvement of information management practices, specifically related to the prosecution file management process.</i>	The CIO acknowledges the need to provide legal practitioners (prosecutors, paralegals, legal assistants etc.) with greater direction concerning the management of prosecution files and associated documents and will collaborate with the DDPPs and CFPs in developing an approach to improving information management practices as they relate to the prosecution file management process. This approach will include guidelines and minimum standards for managing information related to prosecution files, such as storage media, security classification, sharing with others, and retention.	DDPPs / CIO	June 2012
Security				
Medium	7. [REDACTED]	[REDACTED]	ORO CFP	March 2012

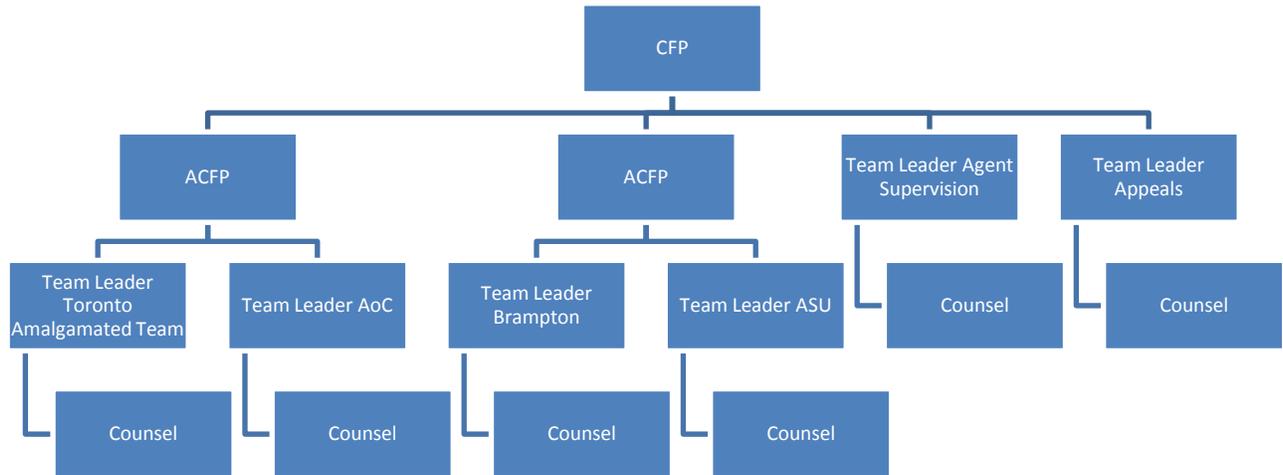
Risk Ranking	Recommendation	Management Response and Action Plan	Office of Primary Interest	Initial Target Date for Completion
	<p>██████████ ██████████ ██████████ ██████████</p>	<p>██████████</p>		
Stewardship				
Low	<p>8. <i>The Director General of the HRD should update the Directive on Hours of Work, Overtime, Exceptional Leave, Travelling Time, and Reimbursement of Meal Expense for the Law Group (LA) to reflect TBS's interpretation of overtime reconciliation.</i></p>	<ul style="list-style-type: none"> • The policy and the directive have been reviewed and updated to ensure that they are consistent with TBS interpretations as it relates to the changes to the rounding period. The documents will be communicated to all affected staff upon approval; • Qs and As have been developed to clarify process and entitlements related to overtime; • A template for reconciling Overtime claims has been developed and will be distributed to staff and managers. 	DG HRD	December 2011
Medium	<p>9. <i>The ORO CFP should consider formally adopting the use of the iCase overtime reconciliation tool to verify overtime.</i></p>	<p>The ORO CFP, along with the DDPPs and CFP colleagues in other regions, will consider adopting this system following consultation across all regions to determine the utility of doing so. These consultations are currently underway. If at the conclusion of the consultations it is determined that net benefits can be obtained, instructions will be given to counsel to do so after conferring with ACFPs and team leaders.</p>	ORO CFP	January 2012

APPENDIX A – ORGANIZATIONAL STRUCTURE

The ORO’s team chart, as of January 2011, identifies the following main teams/units:

- | | | |
|------------------------|----------------------------|---------------------------|
| • General Counsel | • Toronto Amalgamated Team | • Immigration Unit |
| • Agent Supervision | • Kitchener | • Newmarket / London IPOC |
| • Anti-Organized Crime | • Brampton Amalgamated | • Revenue Prosecution |
| • INSET / CFSEU | • Appeals Unit | • Drug Treatment Court |
| • Fine Recovery | • iCase | • IMET Advisory |

The organizational chart below does not include all teams and is meant only to illustrate the structure of the ORO.



The PPSC has established several national oversight bodies to ensure appropriate governance and stewardship. The ORO has at least one member on nearly all of the national committees. Committees have also been formed within the region responsible for specific local responsibilities.

The *Confidential Advice to Counsel Committee* essentially serves as a sounding board for significant legal issues and advice on matters that affect the PPSC nationally and which are not related to a specific on-going prosecution or investigation.

The *National Prosecution Advisory Committee*: reviews and approves prosecution plans for mega-cases and examines issues in relation to the FPS Deskbook; monitors emerging trends in federal prosecution practice and makes recommendations as to how the PPSC should adjust to such trends; ensures consistency of approaches by the PPSC throughout the country including in respect of work done by agents; and identifies regional practices or approaches that may be of national interest and make recommendations for their broader diffusion.

The *National Litigation Committee*: makes recommendations regarding applications for leave to appeal in the Supreme Court of Canada; makes recommendations regarding the approval of factums to be filed in the Supreme Court of Canada; makes recommendations regarding the approval of any intervention made on behalf of the Director of Public Prosecutions (DPP) in any court; provides comments and input regarding factums to be filed in the Supreme Court of Canada on behalf of the Attorney General of Canada in matters of interest to the DPP; and provides advice to the DPP on any legal issue referred to the Committee.

The *Executive Council*: establishes the strategic directions and priorities of the PPSC and monitors their implementation.

The *Senior Advisory Board*: discusses trends and issues, identifies priorities and risks, sets the forward agenda and considers lessons learned; performs a tour de table to provide to the Director and the Deputy Directors an informal „heads-up“ on breaking issues from across the PPSC; provides an opportunity for senior management to share information and coordinate developments on substantive issues; identifies, analyses and makes recommendations to the Executive Council on emerging issues; recommends strategic directions and PPSC priorities taking into account regional, national and horizontal perspectives, legal service practice areas, policy directions and public sector management imperatives, and monitors progress; and serves as a forum for horizontal integration of “lessons learned” (i.e. performance management frameworks).

The *Security Committee*: develops and recommends to Executive Council procedures and policies for a security program including the following elements: personnel security; employee protection; information security; information technology security and security investigations; and monitors and reviews Business Continuity Plans prepared by Regional Offices and Headquarters.

The *Finance Committee*: recommends the initial resource allocation and other resource allocations for projects, governmental-wide and departmental initiatives and contingency issues to Executive Council; recommends departmental financial management and acquisition policies and costing models to Executive Council; assesses national/regional business plans for presentation to

Executive Council; informs Executive Council on key financial management and acquisition reports such as Estimates, Financial Situation Report, Financial Statements and other reports with financial data such as the Report on Plans and Priorities and the Departmental Performance Report; approves resource allocations from the Operational Reserve and additional resources from Supplementary Estimates; approves financial management and acquisition directives; approves acquisition strategies for procurements of high risk or high profile, as determined by the Acquisition Manager. It includes requests for exception and requests that do not comply with the Treasury Board Contracting Policy or the *Government Contracts Regulations*; approves significant contract extensions (either in terms of sensitivity or value or time) as determined by the Acquisition Manager; acts as the first line of recourse to address complaints and resolve disputes between contractors and PPSC not already resolved by the Finance and Acquisition Directorate.

In addition, the ORO has established a local appeals committee, and a regulatory committee. The appeals committee is an ad-hoc oversight body made up of an available three of nine or twelve qualified prosecutors that review and recommend appeals to the CFP, who retains veto power over the committee. The regulatory committee consists of the CFP, the leader of revenue prosecutions and two senior Canada Revenue Agency officials formed to address high level issues involving PPSC and its external partners.

APPENDIX B – LINKS TO RELATED LEGISLATION , POLICIES, DIRECTIVES, GUIDELINES AND FRAMEWORKS

[Agreement between the Treasury Board and the Association of Justice Counsel](#)

[Director of Public Prosecutions Act](#)

[Fair and Efficient Criminal Trials Act](#)

[FPS Deskbook](#)

[TBS Directive on Information Management Roles and Responsibilities](#)

[TBS Performance Pay Administration Policy for Certain Non-Management Category Senior Excluded Levels](#)

[TBS Policy on Information Management](#)

[TBS Policy on Government Security](#)

APPENDIX C – AUDIT CRITERIA

Criteria		Management Accountability Framework (MAF) Element
1.1	There is a well documented organizational structure within the Region that describes roles and responsibilities	Governance G-1, G-2
1.2	The Region has appropriate plans in place for the allocation of financial and human resources	Governance G-4
1.3	The Region's performance is regularly monitored using a mix of quantitative and qualitative indicators	Results and Performance RP-2, RP-3 Stewardship ST-16
1.4	The Region is positively and effectively engaged with investigative agencies and federal departments. The expectations, roles and responsibilities of these parties are documented, communicated and understood.	Governance G-5, G-8 Citizen-Focused Service CFS-2
1.5	The Region's staff are qualified and receive training that develops and maintains the skills they need to execute their current and future responsibilities effectively.	People PPL-4, PPL-5, PPL-6
2.1	Human resource utilization is monitored and controlled	Results and Performance RP-4 Stewardship ST-17
2.2	Financial resource utilization is monitored and controlled	Stewardship ST-18, ST-15, ST-4, ST-13
2.3	Access to the Region's premises and property is controlled	Stewardship ST-9, ST-12

Criteria		Management Accountability Framework (MAF) Element
3.1	Prosecution decisions are undertaken by individuals with delegated authority, and the records of the region demonstrate this.	Accountability AC-1, AC-2
3.2	The records of the region demonstrate complexity rating considerations for prosecution cases of high and mega complexity	Risk Management RM-2
3.3	The prosecution records of the region are accessible, relevant and comprehensive. Case files demonstrate proper recordkeeping and include key prosecution information.	Stewardship ST-12, ST-19