

Indigenous Services Canada

Crown-Indigenous Relations
and Northern Affairs Canada

Audit of Litigation Management

Internal Audit Report

Prepared by: Audit and Assurance Services Branch

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Acronyms

ADM	Assistant Deputy Minister
CFRDO	Chief Finances, Results and Delivery Officer
CIRNAC	Crown–Indigenous Relations and Northern Affairs Canada
DG	Director General
DGLC	Directors General Litigation Committee
DM	Deputy Minister
ISC	Indigenous Services Canada
JUS	Justice Canada
LMOD	Litigation Management Oversight Directorate
LMU	Litigation Management Unit
LSU	Legal Services Unit
MOU	Memorandum of Understanding
OGD	Other Government Department
SCI	Strategic Case Intake
SMLC	Senior Management Litigation Committee

Executive Summary

Context

The management of Indigenous litigation by Crown–Indigenous Relations and Northern Affairs Canada (CIRNAC) and Indigenous Services Canada (ISC) is essential to advancing reconciliation, managing risk, and supporting broader government objectives. In 2019, the departments transitioned from a centralized approach to a model designed to better integrate litigation management with policy and program areas. Under this approach, Litigation Management Units (LMUs) were established within each department, supported by a Litigation Management Oversight Directorate (LMOD) within CIRNAC.

Litigation management involves close collaboration with Justice Canada (JUS). Advisory services are provided by the CIRNAC/ISC Legal Services Unit (LSU), while litigation, and some regional advisory, services are delivered by the National Litigation Sector. Memoranda of Understanding (MOU) between each department and JUS establish expectations related to governance, costing, and performance in respect of the demand for and provision of legal services. Between 2020-21 and 2023-24, CIRNAC and ISC spent a combined average of \$82.9 million per year on legal services, including both litigation and advisory services¹.

Indigenous litigation represents considerable reputational, financial, and legal risk for the Government of Canada. *The Attorney General's Directive on Civil Litigation Involving Indigenous Peoples* guides departments to adopt approaches consistent with reconciliation objectives. Given their mandates, CIRNAC and ISC manage a high volume of complex litigation that can affect departmental policies, Government of Canada priorities, and contingent liabilities.

The objective of this audit was to provide assurance that CIRNAC and ISC have processes and practices in place to support the effective management, resolution, and prevention of litigation. The audit examined practices between 2019-20 and 2023-24, including how legal costs are managed and how CIRNAC and ISC LMUs collaborate with Other Government Departments (OGDs²). JUS was consulted on a limited basis to better understand its role as it was being assessed.

The audit found that the current approach provides sectors with increased flexibility and accountability in managing litigation, and that many key processes and tools are in place to support these activities. LMOD's Toolkit and governance committees offer resources and forums for oversight, and some LMUs have developed additional materials tailored to their specific mandates. Formal agreements with JUS define processes for collaboration and financial forecasting, and efforts are underway to improve the timeliness and accuracy of cost information.

However, there are opportunities to enhance clarity and strengthen governance and oversight to ensure expectations are applied consistently across sectors and functions. Roles and responsibilities are not always clearly understood, and activities related to strategic analysis and litigation prevention sometimes lack defined ownership. Financial reporting practices and cost

¹ Source: LMOD Litigation and Advisory Financial Effort Reports.

² As part of this, the audit focused on collaboration with OGDs involved in managing litigation activities related to their respective mandates; collaboration with central agencies responsible for funding and coordinating departmental activities was not examined as part of the audit.

accountabilities could be clarified further to support effective management of expenditures. Collaboration with external stakeholders, including JUS and OGDs, is also essential to managing litigation effectively in an environment where complexity is increasing and resources are under pressure.

Effective governance, clear accountabilities, and strong collaboration, both internally and externally, will be critical to ensuring litigation management remains responsive, efficient, and aligned with reconciliation objectives.

Opportunities for improvement were identified in several areas, resulting in the following recommendations:

Recommendation 1: Strengthen Governance Structures and Oversight Committees

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with the relevant committee chairs and applicable partners and stakeholders, should review and update the governance structures supporting litigation management. As part of this work, the departments should:

- a) Review and update the Terms of Reference for the Directors General Litigation Committee and the Senior Management Litigation Committee to clearly define their mandates, purpose, and expectations for engagement by LMUs and sector leadership, along with those of partners, where applicable;
- b) Communicate the updated Terms of Reference and expectations to all relevant stakeholders to ensure consistent understanding and use of these governance forums; and
- c) Conduct an assessment of the current governance structures to determine if adjustments are required to better support oversight, coordination, and strategic direction in litigation management.

Recommendation 2: Clarify and Communicate Roles and Responsibilities

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with applicable partners and stakeholders, where applicable, should define, document, and communicate clear expectations for the roles, responsibilities, and oversight functions of LMOD, LMUs, and the departmental LSU in litigation management. As part of this work, the departments should:

- a) Clarify the oversight role of LMOD and the LSU, including responsibilities for monitoring, reporting to senior management, and supporting litigation activities across both departments;
- b) Define and communicate expectations for strategic analysis, integration of litigation management with policy and program areas, and prevention of future litigation; and
- c) Establish mechanisms to ensure these expectations are consistently understood and applied.

Recommendation 3: Strengthen Guidance Development, Assessment, and Support

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, should improve the consistency and completeness of litigation management guidance by:

- a) Establishing a formal process to regularly assess the adequacy and completeness of existing guidance across departments and identify areas requiring more detailed or tailored content (for example, managing class action lawsuits);
- b) Determining appropriate support mechanisms for LMUs that do not have sufficient resources or capacity to develop and maintain guidance materials specific to their operational context;
- c) Facilitating access to consistent guidance and reference materials to support LMUs in carrying out their litigation management responsibilities effectively.

Recommendation 4: Develop and Implement a Comprehensive Training Strategy

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, should develop and implement a comprehensive, mandatory training and knowledge transfer strategy to build capacity and support consistency in litigation management practices. This strategy should:

- a) Provide orientation for new LMU employees and periodic refresher training, including coverage of strategic analysis, integration with policy and program areas, and prevention activities; and
- b) Establish mechanisms to support the retention and transfer of corporate knowledge to mitigate the impacts of staff turnover.

Recommendation 5: Strengthening Forecasting and Reporting of Legal Services Costs

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with LMOD and Justice Canada, should build on existing efforts to strengthen mechanisms to forecast, monitor, and report legal services costs by:

- a) Continuing to review and update the Memorandum of Understanding to further clarify expectations, timelines, and roles for forecasting and reporting;
- b) Enhancing the consistency, timing, and level of detail in financial reports to support effective validation and monitoring throughout the fiscal year; and
- c) Establishing processes to proactively identify and communicate potential cost variances to enable timely planning and effective budget management.

Recommendation 6: Enhancing Controls Over Services Requests

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with LMOD and relevant stakeholders, should reinforce controls over legal advisory services by continuing to:

- a) Clarify expectations and approval channels for requesting advisory services, including distinguishing advisory support related to litigation from policy or program advice;

- b) Define a consistent approach to track requests and related costs to improve transparency and oversight; and
- c) Assess the results of the Legal Services Request Form pilot and, as appropriate, consider measures to increase its use and effectiveness across CIRNAC and, where feasible, ISC.

Recommendation 7: Clarifying Escalation and Expectations for OGDs Engagement

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with LMOD, should document clear expectations for how LMUs identify and coordinate with OGDs in Indigenous litigation, including when engagement is led directly by LMUs and when JUS is expected to act as intermediary, and develop a consistent approach for escalating questions of departmental responsibility when timely agreement cannot be reached.

Statement of Conformance

The audit conforms with *the Institute of Internal Auditors' Global Internal Audit Standards* and the Government of Canada's *Policy on Internal Audit*, as supported by the results of the Quality Assurance and Improvement Program.

Management's Response

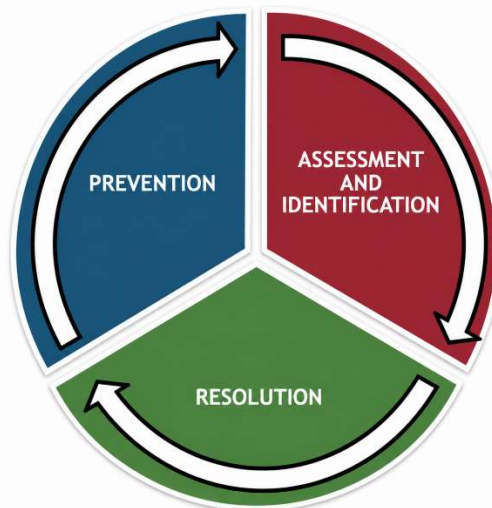
Management is in agreement with the findings, has accepted the recommendations included in the report and has developed a management action plan to address them. The management action plan has been integrated into this report.

1. Context

Indigenous litigation management within the Government of Canada, specifically, CIRNAC and ISC, has three primary objectives:

1. Strategic Management of Litigation, including Assessment, Identification, and Mitigation of Risks – Working with key partners such as JUS, CIRNA/ISC, LMOD/LMUs work with programs, and sectors to determine the legal, policy, operational, business, and financial risks to the Crown that could result from Indigenous litigation and develop potential strategies for response. This includes providing departmental input and instructions to JUS counsel; ensuring the Crown's relevant documents and information are produced; providing support to JUS for any hearings or trials; and determining appropriate mitigation measures to be implemented.
2. Resolution – Identifying the most favourable or appropriate resolution mechanisms that consider the long-term priorities of the Government of Canada, including reconciliation with Indigenous Peoples, and working with JUS and Central Agencies, among others, to secure approval of settlement mandates and funding as appropriate.
3. Prevention – Assessing root causes and triggers of litigation as well as developing strategies and mechanisms (i.e., programs, policies, legislation, regulations) to prevent future litigation.

Figure 1: CIRNAC and ISC Primary objectives



In 2019, litigation management within CIRNAC and ISC was decentralized to improve integration between litigation management, policy, and programs, and to increase sector-level accountability in Indigenous litigation management. Previously managed by the Litigation Management and Resolution Branch within Policy and Strategic Direction Sector, responsibilities were reallocated to LMUs³ within most sectors (excluding the First Nations and Inuit Health Branch)⁴ and supported

³ A separate Litigation and Resolution Directorate was created in July 2018 in the Resolution and Partnerships Sector, which has primary responsibility for the implementation of the Indigenous Childhood Claims Litigation Strategy.

⁴ The MOU between CIRNAC and ISC identifies First Nations and Inuit Health Branch as one of the sectors to which it applies; however, no personnel or salary resources were specifically allocated for a LMU within the First Nations and Inuit Health Branch.

by a centralized Litigation Management Oversight Directorate within Policy and Strategic Direction Sector.

As is standard JUS practice with all clients, MOUs have been entered into between CIRNAC, ISC, and JUS. These MOUs outline governance arrangements, cost structures, and performance regimes regarding the demand for and provision of legal advisory and litigation services, with some minor adjustments to reflect the specific CIRNAC/ISC context.

As mandated by the *Department of Justice Act*, JUS is the exclusive provider of legal services to both departments, including legal advice and representation in litigation. Specifically, section 5 sets out the role of the Attorney General of Canada to “advise the heads of the several departments of the Government on all matters of law connected with such departments” and “have the regulation and conduct of all litigation for or against the Crown or any department, in respect of any subject within the authority or jurisdiction of Canada”. JUS supports the Attorney General of Canada in this role through the provision of advisory and litigation services. In doing so in the Indigenous context, JUS has been informed (along with all departments) by the *Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples* (released in 2018) and the *Attorney General of Canada’s Directive on Civil Litigation Involving Indigenous Peoples* (released in 2019).

Legal services are delivered through two streams:

- **Advisory services**, provided by JUS advisory counsel in departmental LSU, usually co-located with the client departments (i.e., CIRNAC and ISC) and National Litigation Sector counsel; and
- **Litigation services**, delivered by National Litigation Sector, with litigation counsel.

Legal advisory services include, but are not limited to: preparing and reviewing legal documents (e.g. contracts, treaties, agreements); providing legal advice and opinions on client legislative proposals, policies and operations; support to the client in legislative drafting; support to client in negotiations; supporting strategic analysis by clients of legal and litigation trends and developments; supporting clients in providing litigation instructions; and providing legal training and seminars to CIRNAC and ISC officers and employees.

Litigation services include, but are not limited to: representing the federal government before all courts and most administrative tribunals; advising clients on potential use of appropriate dispute prevention and resolution methods that promote early settlement, where appropriate; gathering evidence from clients in accordance with applicable rules of evidence; identifying legal risks in the context of litigation; and developing litigation strategies and legal positions in consultation with clients and LSUs with a view to preserving the interests of CIRNAC, ISC, and the federal government as a whole.

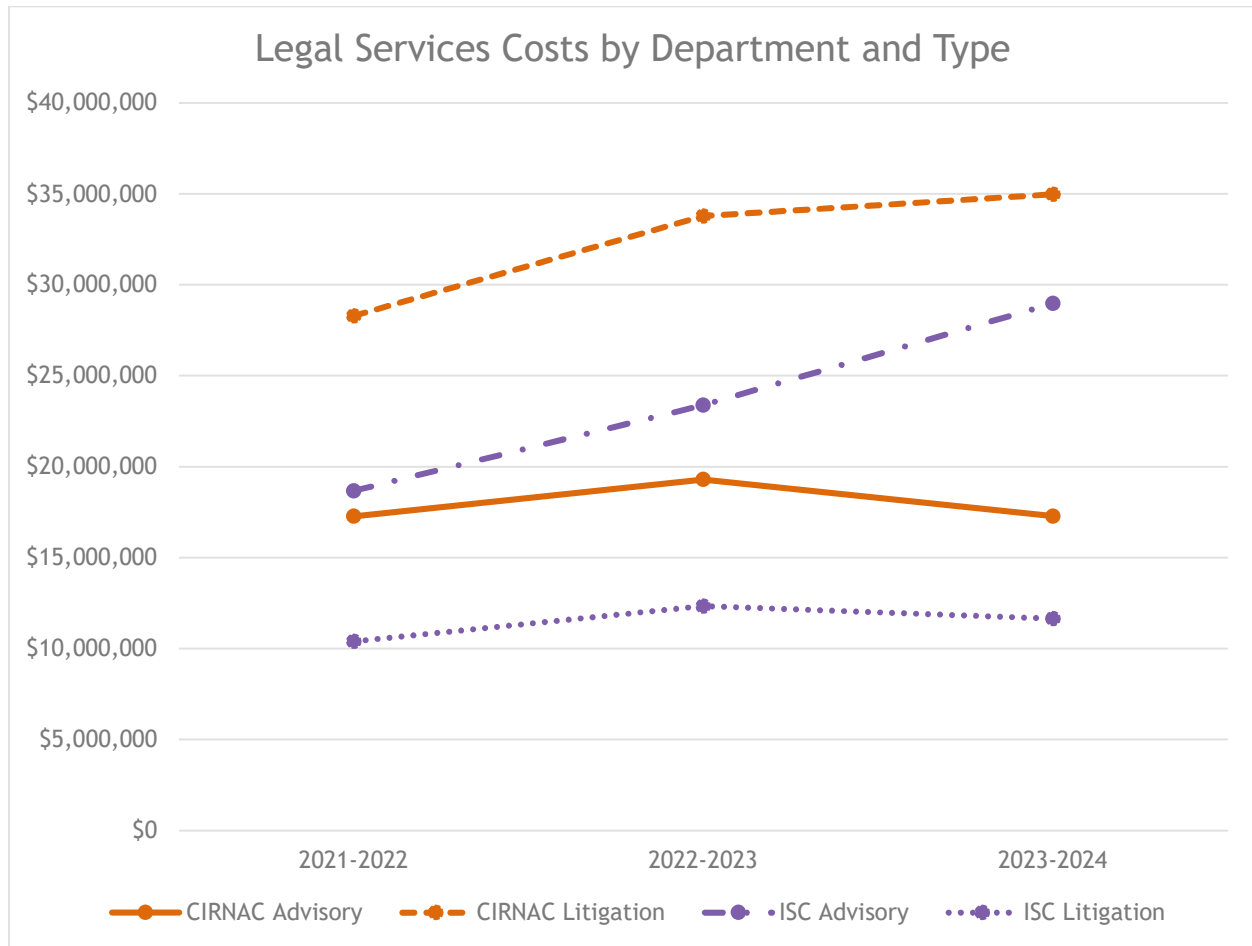
Legal Services – Funding

Within CIRNAC and ISC, LMUs and their programs and policy counterparts within their respective sectors request legal advice and litigation services from JUS, while seeking to manage the demand for legal services, recognizing that the demand is often driven by factors outside of Canada’s control (i.e. litigation processes). In CIRNAC, sectors fund their advisory services by transferring funds to LMOD, which works with the Chief Finances, Results and Delivery Officer

(CFRDO) to manage payments. LMOD and CIRNAC's CFRDO oversee litigation-related payments, while ISC's CFRDO manages payments for both advisory and litigation services. A breakdown of these costs over the past four fiscal years is included below.

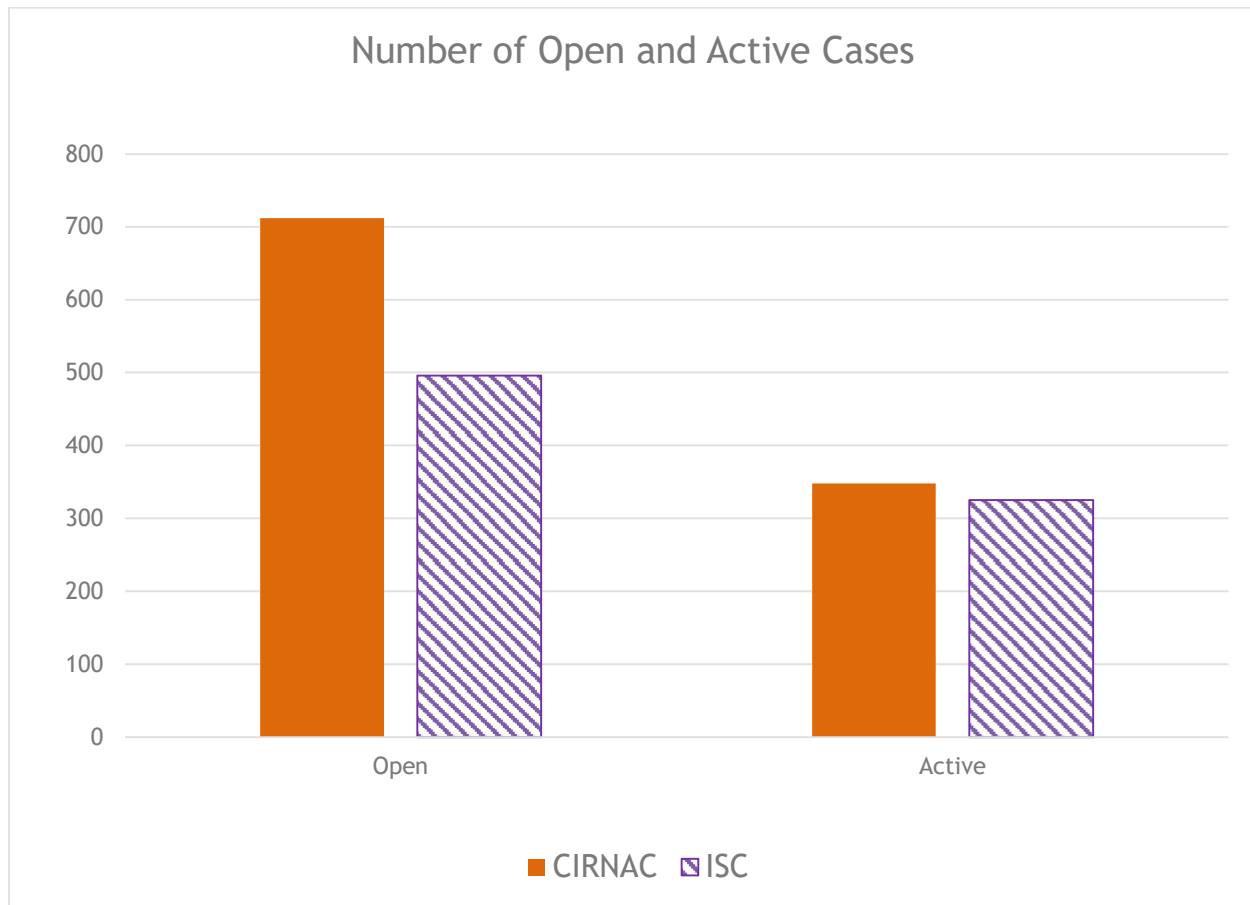
Table 1: Advisory and Litigation Expenditures by Department and Fiscal Year

Fiscal Year 2020-2021			
	CIRNAC	ISC	Total CIRNAC and ISC
Advisory	\$20,262,984	\$12,623,003	\$32,885,987
Litigation	Split by regions	Split by regions	\$42,283,587
Total	-	-	\$75,169,574
Fiscal Year 2021-2022			
	CIRNAC	ISC	Total CIRNAC and ISC
Advisory	\$17,280,392	\$18,676,596	\$35,956,988
Litigation	\$28,300,376	\$10,401,176	\$38,701,552
Total	\$45,580,768	\$29,077,772	\$74,658,540
Fiscal Year 2022-2023			
	CIRNAC	ISC	Total CIRNAC and ISC
Advisory	\$19,299,950	\$23,381,800	\$42,681,750
Litigation	\$33,791,847	\$12,343,323	\$46,135,170
Total	\$53,091,797	\$35,725,122	\$88,816,920
Fiscal Year 2023-2024			
	CIRNAC	ISC	Total CIRNAC and ISC
Advisory	\$17,285,855	\$28,985,406	\$46,271,261
Litigation	\$34,984,233	\$11,653,526	\$46,637,759
Total	\$52,270,088	\$40,638,932	\$92,909,020

Figure 2: Legal Services Costs by Department and Type*Source: LMOD Litigation and Advisory Financial and Effort Reports*

As of February 20, 2025, CIRNAC manages 712 open cases ⁵of which 348 are active (49%) and ISC manages 496 open cases of which 325 are active (66%). Active cases refer to matters currently in progress within the court system, with ongoing litigation or procedural activity. Inactive cases are those that are not advancing, typically due to prolonged delays, lack of recent filings, or other indications of inactivity within the judicial process.

⁵ The approach to determining open case numbers between CIRNAC/ISC and JUS may vary due to differences in systems and approach.

Figure 3: Number of Open and Active Cases

An overview of the litigation management process, specifically as it relates to out-of-court settlements, can be found in Annex A.

Litigation Management Oversight Directorate

LMOD assists LMUs and senior management by performing a range of responsibilities, which include but are not limited to the following activities (with additional details provided in Annex B):

- Developing guidance material and delivering training;
- Supporting the activities of the departmental and government-wide litigation committees;
- Coordinating weekly litigation briefings to the Ministers and/or the Ministers' Offices (with the exception of doing so for Settlement Agreement and Childhood Claims Branch) with support from relevant stakeholders;
- Coordinating the strategic case intake (SCI) process (the process of intaking, assessing, and assigning new cases to lead departments, lead sectors, and lead Case Managers); and
- Managing the budget that is accessed by the CIRNAC LMUs to fund litigation activities.⁶

⁶ This is a non-exhaustive list of LMOD's responsibilities for the purposes of the audit's report and scope. For a comprehensive list of LMOD's responsibilities, please see Annex B.

LMOD is made up of the following units:

- **Research and Systems Unit** – Provides guidance to Case Managers on litigation-related research, manages evidence handling and record filing in the Nuix database, oversees standing offers with research firms, administers authorization to use Exceptional Contracting Limits Authority for contracting research and expert services, facilitates access to departmental archives, coordinates implementation of litigation holds and document collection to meet disclosure obligations, and oversees a central research budget.
- **Outreach Unit** – Includes the External Outreach Unit, responsible for managing the MOUs between JUS and CIRNAC/ISC and overseeing litigation-related financial expenditures, and the Internal Outreach Unit, which coordinates information sharing across LMUs, manages weekly litigation briefing materials, and administers the Litigation Management System. Where appropriate, coordination with stakeholders and partners takes place to support effective outreach.
- **Resolution Unit** – Supports LMUs with the out-of-court settlement mandating process, assists sectors in negotiations⁷, manages SCI, and coordinates contingent liability reporting for litigation cases.
- **Policy Unit** – Serves as the Secretariat for departmental litigation governance committees, leads horizontal analysis in coordination with LMUs, and develops training, toolkits, and guidance materials.

Litigation Management Units

The LMUs are responsible for the management and resolution of litigation cases, which includes seeking legal advice from and working with the departmental LSU and JUS litigators during the litigation lifecycle and negotiation of out-of-court settlements. In addition, LMUs are responsible for performing strategic analysis on litigation matters and working with their program and policy counterparts to prevent future litigation cases within their respective sectors. Strategic analysis implies that LMUs gather and share litigation causes and outcomes and lessons learned with sectoral policy and program teams to allow for more integrated sectoral and departmental approaches to litigation and Indigenous affairs, which, in turn, should ultimately reduce or prevent future litigation.⁸

Both departments have a decentralized litigation management model with LMUs located within the sectors and accountable to their respective Assistant Deputy Ministers (ADMs). As a result, their structures and operations vary due to contextual factors and operational needs.

Within CIRNAC, there are the following LMUs and Litigation and Resolution Directorate:

- Treaties and Aboriginal Government / Implementation Sector / Northern Affairs Organization (LMU within Treaties and Aboriginal Government Sector)
- Specific Claims Branch (LMU within Resolution and Partnerships Sector)

⁷ Except for the Litigation and Resolution Directorate within the Settlement Agreement and Childhood Claims Branch.

⁸ This is a non-exhaustive list of the LMUs' responsibilities for the purposes of the audit's report and scope. For a comprehensive list of LMU responsibilities, please see Annex C.

- Settlement Agreement and Childhood Claims Branch (Litigation and Resolution Directorate commonly referred to as “Childhood Claims”) within Resolution and Partnerships Sector)

At the time the audit was conducted, within ISC, there are the following LMUs:

- Lands and Economic Development / non-Individual Affairs Branch / Regional Operations / Indian Oil and Gas Canada (LMU within Lands and Economic Development Sector)
- Education and Social Development Programs and Partnerships (LMU within Education and Social Development Programs and Partnerships Sector)
- First Nations Child and Family Services (LMU within Child and Family Services Reform Sector)
- Individual Affairs Branch (LMU within Regional Operations Sector)
- First Nations and Inuit Health Branch had a new LMU within the Assistant Deputy Minister’s Office and a LMU responsible for litigation related to Jordan’s Principle and Inuit Child First Initiative who reports to a separate Assistant Deputy Minister’s Office.

2. About the Audit

An Audit of Other Claims was included in CIRNAC’s Risk-Based Audit Plan for 2023-24 to 2024-25, which was presented to the Departmental Audit Committee and approved by the Deputy Ministers in May 2023. The Audit of Other Claims changed to the Audit of Litigation Management based on the risks identified during the planning phase of the audit and the determination to expand the scope outside of Other Claims. The audit also included both CIRNAC and ISC.

2.1 Why It Is Important

Indigenous litigation represents considerable reputational, financial, and legal risk for the Government of Canada. *The Attorney General’s Directive on Civil Litigation Involving Indigenous Peoples* guides JUS and departments to adopt approaches aligned with reconciliation. Given their mandates, CIRNAC and ISC manage complex, high-cost litigation that can increase contingent liabilities and affect departmental policies, government programs, and reconciliation priorities. These activities involve significant public expenditures and long-term financial impacts.

2.2 Audit Objective

The objective of the audit was to provide assurance that CIRNAC and ISC have processes and practices to support effective management, resolution, and prevention of litigation.

2.3 Audit Scope

The audit assessed processes and practices within CIRNAC and ISC related to managing litigation for the period of 2019-20 to 2023-24. This included cross collaboration and the management of legal services and their costs. The scope included all LMUs within CIRNAC and ISC to ensure an accurate reflection of their respective operating environments. Areas examined included roles and responsibilities, guidance, training activities, and processes for coordinating litigation services management.

The audit did not assess processes under the purview of JUS or examine the legal merits of individual litigation cases. The review of interdepartmental collaboration focused only on processes and practices within CIRNAC and ISC, and did not include the processes or performance of OGDs. Legal advisory services requested by program and policy areas were initially excluded from the scope of this audit. However, during the conduct phase, advisory-related observations emerged and were subsequently examined. Additionally, litigation management activities related to the research process and the information management system remained out of scope, as they were assessed as lower risk during the planning phase.

2.4 Audit Approach and Methodology

The audit was conducted in accordance with the requirements of the *Treasury Board Policy* on Internal Audit and *the Institute of Internal Auditors' International Professional Practices Framework*. The audit examined sufficient, relevant evidence and obtained sufficient information to provide a reasonable level of assurance in support of the audit conclusion.

Fieldwork took place from May 2023 to December 2024 and followed three phases: planning, conduct, and reporting. During planning, the audit objective and scope were developed through a comprehensive risk assessment and were approved in February 2024 by all sectors involved in litigation management, as outlined in the audit's Terms of Reference.

Key audit techniques included:

- Interviews with stakeholders from CIRNAC and ISC, including representatives from LMOD and various sectors and branches;
- Review of documentation such as operational guidance, procedures, training materials, MOU, legal services forecasts and invoices, and governance records;
- Process walkthroughs with selected LMUs; and
- Follow-up meetings to validate preliminary observations.

Audit criteria were developed to guide the assessment, and these are detailed in Annex D.

All LMUs were included to provide full departmental coverage across the audit criteria. Additional details about how LMUs were selected for more detailed examination are provided in Annex E.

3. Key Findings and Recommendations

3.1 Roles and Responsibilities

Background

The current approach to litigation management involves multiple LMUs within CIRNAC and ISC, each structured and operating differently while managing activities in a decentralized way. However, there is an expectation that litigation management is delivered consistently and coherently across both departments, given the interdependencies between cases and the need for a common Government of Canada approach to Indigenous litigation.

When managing litigation, LMUs collaborate with OGDs as appropriate. LMUs rely on JUS to carry out the litigation strategy, representing the departments before all courts and most

administrative bodies, and negotiating out-of-court settlements. OGDs may also be involved in a number of ways, including providing instructions to JUS and sharing litigation costs if claims explicitly implicate them or relate to their mandates.

LMOD, located within CIRNAC, supports the LMUs within CIRNAC and ISC by providing guidance, training, and centralized functions. Within this audit's scope, these functions include coordinating ministerial briefings, providing secretariat support for departmental litigation committees.

Given the complexity and the number of parties involved, the audit expected that roles and responsibilities would be clearly defined, documented, and carried out as intended. It also expected departmental officials to receive appropriate guidance and training to support effective and efficient litigation management.

Risk

There is a risk that undefined roles and responsibilities could impact the effective and efficient management, resolution, and prevention of litigation. Even where roles are defined and documented, there is a risk that they may not be carried out with sufficient oversight, limiting coherence in the departmental approach and not meeting the expectations of the decentralized model, namely, greater integration between litigation management, policy, and programs, and increased sector-level accountability in Indigenous litigation.

Finding

3.1.1 Documentation and Performance of Litigation Management Roles, Responsibilities

Clearly defining and documenting roles and responsibilities is essential to promoting clarity, accountability, and collaboration, while supporting effective and efficient litigation management.

Within CIRNAC and ISC, these roles and responsibilities are outlined in several high-level agreements and guidance documents. These include MOUs between CIRNAC and ISC, individual MOUs between CIRNAC's Policy and Strategic Direction Sector, Treaties and Aboriginal Government Sector, and Resolution and Partnerships Sectors, as well as separate MOUs between CIRNAC, ISC, and JUS.

To further support clarity and consistency, LMOD developed the Litigation Management Toolkit, which outlines roles and responsibilities and provides recommended practices for conducting litigation activities.

Some LMUs, such as the Settlement Agreement and Childhood Claims Branch's Litigation and Resolution Directorate and the First Nations and Inuit Health Branch Jordan's Principle and Inuit Child First Initiative team, have developed additional guidance to reflect their specific operational contexts. In most cases, these documents remain consistent with the Toolkit, with a few noted exceptions:

- Settlement Agreement and Childhood Claims Branch's toolkit addresses the unique nature of childhood claims and Indian Residential Schools Settlement Agreement litigation.

- First Nations and Inuit Health Branch Jordan's Principle and Inuit Child First Initiative have "Litigation 101" and "Back to Basics Approach" guidance documents available for staff.

Collectively, these MOUs and guidance documents form a framework for managing key litigation activities, including SCI, ongoing case management, out-of-court settlements, senior management and ministerial briefings, support for governance committees, and contingent liability reporting. However, despite the existence of these reference documents, the audit found that certain roles and responsibilities could be further defined.

Although "management oversight" is part of LMOD's title, the review of documented roles and responsibilities indicated that its oversight role is limited to support functions such as approving certain settlement mandates, developing and providing high-level guidance documents, delivering ad hoc training to LMUs, and coordinating SCI exercises and ministerial briefings. Current documentation does not define the type of operational oversight that LMOD should provide across the full spectrum of departmental litigation activities. These responsibilities could include providing direction, analysis, decision-making, and broader oversight. LMOD's limited resources, its position within CIRNAC, and its limited insight or authority over ISC officials and activities prevent it from providing a more complete and effective level of operational oversight, especially over ISC LMUs.

The role of the departmental LSU in supporting litigation activities could also be further defined. While the audit did not include an examination of JUS activities, interviews indicated that CIRNAC and ISC employees have observed that the departmental LSU plays a key role in monitoring and reporting to senior management on litigation activities and interacting with JUS litigators on steps to be taken in resolving cases. The LMOD Toolkit references the LSU's limited involvement in SCI and ministerial briefings but does not establish responsibilities in other areas, such as reporting directly to senior management. Interviewees suggested that the current Toolkit should more clearly define the LSU's role in litigation-related matters to avoid confusion and overlapping responsibilities with LMUs.

Walkthroughs with selected LMUs (Settlement Agreement and Childhood Claims Branch, Education and Social Development Programs and Partnerships, First Nations Child and Family Services, First Nations and Inuit Health Branch–Assistant Deputy Minister's Office, as well as Jordan's Principle and Inuit Child First Initiative) found that roles related to SCI and out-of-court settlements are generally carried out as defined. However, the Settlement Agreement and Childhood Claims Branch's Litigation and Resolution Directorate, which operates in a unique context due to the sensitive nature of the litigation it manages, uses paper-based communication during the SCI process to protect sensitive information, or receives cases directly from JUS through a paper-based process.

While LMUs are structured within sectors to support integration with policy and program teams, there are no specific expectations on how strategic analysis and prevention of future litigation are to be performed. This prevented the audit from validating whether these activities were being carried out. It is also unclear whether LMUs have the capacity and ability to perform activities related to strategic analysis and prevention on top of managing the daily workload of litigation cases. Previously, these analysis and prevention activities were reportedly performed by the Litigation Management and Resolution Branch under the centralized model. With

decentralization, responsibility for strategic analysis and litigation prevention has been transferred to the LMUs, but the demands of other litigation activities have left limited capacity for such efforts.

Inconsistencies in how litigation management roles and responsibilities are defined and carried out were observed across LMUs. A lack of clear expectations and guidance on specific activities such as strategic analysis and prevention contributes to these inconsistencies and may lead to ineffective or inefficient litigation management, limited oversight, and a lack of a coherent departmental approach.

3.1.2 Litigation Management Guidance and Training

The audit noted that guidance to support effective management of litigation activities is defined and documented through overarching documents such as LMOD's Toolkit and various guides developed by LMOD and individual LMUs.

The LMOD Toolkit is available to all LMUs and serves as a high-level reference for conducting litigation activities, including SCI and out-of-court settlements. It has been reported as a useful resource. In addition, LMOD has developed several guidance documents describing authorities, roles, responsibilities, and step-by-step processes to obtain and execute settlement mandates. LMOD also chairs weekly and monthly calls with LMUs to discuss guidance and answer questions.

As described previously, certain LMUs, such as the Settlement Agreement and Childhood Claims Branch, Education and Social Development Programs and Partnerships, and First Nations and Inuit Health Branch Jordan's Principle and Inuit Child First Initiative, have created supplementary guidance to expand on the information contained in LMOD's Toolkit. However, some LMUs reported that they do not have sufficient resources or time to develop tailored guidance reflecting the specific nature of their work. As a result, important aspects of LMU operations, such as managing class action lawsuits, are not described in any LMOD or LMU-level guidance. In the absence of specific guidance, LMU officials often rely on more experienced colleagues, other LMUs, or JUS for information and assistance. The audit also found that there is no formal process in place to regularly assess the adequacy and completeness of existing litigation management guidance across CIRNAC and ISC.

The audit found that existing guidance does not describe expectations for conducting strategic analysis, integrating litigation management with policy and program activities, or preventing future litigation. Interviews indicated that expectations for these activities were unclear, and there was no consistent understanding of how to approach strategic analysis, integration, or prevention efforts. This is important because the decentralized model was intended to enable LMOD, as an oversight body, to support strategic analysis and facilitate prevention measures in collaboration with LMUs and program and policy units. However, this is difficult to achieve without clearly defined expectations and activities to guide efforts.

While LMOD and LMU guidance materials also serve as training resources for new LMU employees, there is no formal litigation management training program in place. Interviews indicated that case managers possess valuable corporate knowledge about litigation management, which is often lost when employees leave. Orientation sessions provided by LMOD

are not mandatory, and training is typically offered on an ad hoc basis in response to new requirements or specific LMU requests.

The audit noted that, in the current decentralized environment, LMUs demonstrate different levels of knowledge, experience, and capacity related to their litigation management responsibilities. Some lack resources to create and maintain training materials, relying on LMOD for overarching guidance and training. Unique mandates have also led some LMUs to develop their own tailored guidance and practices, resulting in inconsistencies within each department and potentially different approaches to managing litigation risks. Without comprehensive guidance and mandatory training, litigation management activities may not be performed effectively or efficiently, preventing the intended objectives of the decentralized model from being fully achieved. Additionally, a lack of focus on defining and implementing litigation prevention activities may negatively impact the litigation landscape over time.

3.1.3 Governance and Oversight Structures

LMOD supports and serves as the Secretariat for a series of Director General–level and Senior Management–level governance committees on litigation management. These include:

- **Directors General Litigation Committee (DGLC):** Comprised of Director General (DG) level members and representative(s) from the LSU, provides direction on key litigation matters such as issues requiring corporate-level input, including mandates for settlement negotiations, litigation strategies, new litigation policies, and contingent liability matters. The DGLC may also refer matters to the Senior Management Litigation Committee where appropriate.
- **Joint Fiscal and Business Issues Committee:** Comprised of representatives from CIRNAC, ISC, and JUS, this committee oversees the partnership concerning legal services. It typically meets every six (6) weeks to provide advice and recommendations on the business and financial aspects of legal services and to coordinate and monitor departmental MOUs to ensure resource use aligns with each organization's strategic priorities and financial capacity.
- **Directors General Railway Committee:** Serves as an interdepartmental forum to discuss issues or claims related to railway lands, with membership including DGs from ISC, CIRNAC, Transport Canada, and JUS.
- **Senior Management Litigation Committee (SMLC):** Comprised of sector heads and Deputy Ministers (DMs) and representative(s) from the LSU, provides a forum for discussion and direction on Indigenous litigation issues with substantial operational and policy implications for CIRNAC, ISC, and OGDs.
- **Deputy Minister Working Group on Indigenous Litigation:** Established by the CIRNAC DM in June 2024, this group serves as a forum for discussion and whole-of-government direction on managing Indigenous litigation. Membership includes DMs of CIRNAC, ISC, JUS, Department of Finance, Privy Council Office, and Treasury Board Secretariat. The DM Working Group is supported by a DG-level Working Group on Litigation Management coordinated by LMOD.

Although each governance structure has a dedicated Terms of Reference, most DG-level committees and working groups meet on a demand-driven basis. The audit noted inconsistencies across LMUs in their use of the DGLC. Some LMUs regularly engage the DGLC in line with its mandate, while others work directly with their policy and program units and JUS without involving the DGLC on their litigation files.

Additionally, the SMLC paused meetings from 2022 to 2024, resuming quarterly in June 2024 in response to increased attention on Indigenous litigation and associated contingent liabilities.

The current demand-driven approach to using certain governance structures may stem from unclear communication of their mandate, purpose, and value to sector leadership. Without fully leveraging governance structures for operational and strategic oversight, there is a risk that a coherent departmental approach to Indigenous litigation management may not be achieved. This could contribute to inefficiencies in resource allocation, misalignment of priorities, and challenges in supporting the Government of Canada's reconciliation objectives.

Recommendation 1: Strengthen Governance Structures and Oversight Committees

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with the relevant committee chairs and applicable partners and stakeholders, should review and update the governance structures supporting litigation management. As part of this work, the departments should:

- a) Review and update the Terms of Reference for the Directors General Litigation Committee and the Senior Management Litigation Committee to clearly define their mandates, purpose, and expectations for engagement by LMUs and sector leadership, along with those of partners, where applicable;
- b) Communicate the updated Terms of Reference and expectations to all relevant stakeholders to ensure consistent understanding and use of these governance forums; and
- c) Conduct an assessment of the current governance structures to determine if adjustments are required to better support oversight, coordination, and strategic direction in litigation management.

Recommendation 2: Clarify and Communicate Roles and Responsibilities

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with applicable partners and stakeholders, where applicable, should define, document, and communicate clear expectations for the roles, responsibilities, and oversight functions of LMOD, LMUs, and the departmental LSU in litigation management. As part of this work, the departments should:

- a) Clarify the oversight role of LMOD and the LSU, including responsibilities for monitoring, reporting to senior management, and supporting litigation activities across both departments;
- b) Define and communicate expectations for strategic analysis, integration of litigation management with policy and program areas, and prevention of future litigation; and
- c) Establish mechanisms to ensure these expectations are consistently understood and applied.

Recommendation 3: Strengthen Guidance Development, Assessment, and Support

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, should improve the consistency and completeness of litigation management guidance by:

- a) Establishing a formal process to regularly assess the adequacy and completeness of existing guidance across departments and identify areas requiring more detailed or tailored content (for example, managing class action lawsuits);
- b) Determining appropriate support mechanisms for LMUs that do not have sufficient resources or capacity to develop and maintain guidance materials specific to their operational context;
- c) Facilitating access to consistent guidance and reference materials to support LMUs in carrying out their litigation management responsibilities effectively.

Recommendation 4: Develop and Implement a Comprehensive Training Strategy

The Senior Assistant Deputy the Minister of Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, should develop and implement a comprehensive, mandatory training and knowledge transfer strategy to build capacity and support consistency in litigation management practices. This strategy should:

- a) Provide orientation for new LMU employees and periodic refresher training, including coverage of strategic analysis, integration with policy and program areas, and prevention activities; and
- b) Establish mechanisms to support the retention and transfer of corporate knowledge to mitigate the impacts of staff turnover.

3.2 Management of Legal Services Costs

Background

Legal services encompass both advisory and litigation activities. Justice Canada's Legal Services rates are set by Treasury Board Secretariat.

Legal advisory services include, but are not limited to: preparing and reviewing legal documents (e.g. contracts, treaties, agreements); providing legal advice and opinions on client legislative proposals, policies and operations; providing support to the client in legislative drafting; providing support to client in negotiations; supporting strategic analysis by clients of legal and litigation trends and developments; supporting clients in providing litigation instructions; and providing legal training and seminars to CIRNAC and ISC officers and employees.

Litigation services include, but are not limited to: representing the federal government before all courts and most administrative tribunals; advising clients on potential use of appropriate dispute prevention and resolution methods that promote early settlement, where appropriate; gathering evidence from clients in accordance with applicable rules of evidence; identifying legal risks in the context of litigation; and developing litigation strategies and legal positions in consultation with clients and LSUs with a view to preserving the interests of CIRNAC, ISC, and the federal government as a whole. Justice Canada's Legal Services rates are set by Treasury Board Secretariat. Any increase in these costs has a direct impact on the cost of legal services for clients.

Costs for both advisory and litigation services are also influenced by the volume, nature, scope, and complexity of the cases in the CIRNAC/ISC litigation inventory, as well as by client strategies and instructions (e.g. whether to litigate/appeal/judicially review a case, negotiate a settlement or do both in parallel).

According to LMOD guidance, LMUs are responsible for managing the demand for legal services related to their litigation files. This includes coordinating requests and instructions to JUS counsel for legal opinions, legal risk assessments, draft litigation pleadings, and other documentation. Other than overseeing the funding relationship through the MOU, LMOD is typically not involved in coordinating legal services for cases outside the Policy and Strategic Direction Sector files it manages directly.

As litigation often involves strict timelines and evolving requirements, there are limited mechanisms to fully contain costs, which are driven in part by court schedules and procedural demands.

Risk

Without effective controls to estimate and manage legal services costs, there is a risk that CIRNAC and ISC may be unable to fund litigation management in a way that meets departmental and broader governmental legal obligations. There is also a risk that accountabilities within the sectors, LMUs, and LMOD are not well defined and understood to support the effective management of legal services costs.

Finding

3.2.1 Forecasting and Management of Legal Services Costs

LMOD and the sectors/LMUs are reliant on JUS to provide accurate, reliable, and timely forecasts in accordance with the timelines established in the CIRNAC-JUS and ISC-JUS MOUs 2021–24. According to the MOUs:

- Joint strategic planning sessions are held between CIRNAC/ISC and JUS to inform the forecasting and monitoring process for the demand and provision of legal services.
- The results of the planning and forecasting sessions are documented in Annex B.2 (Advisory) and Annex E (Litigation) of the MOU. Advisory services forecasts are shared by LMOD with the programs for review and feedback, and litigation service forecasts are shared by LMOD with the LMUs for review and feedback.
- JUS requires receipt of all MOU renewals by April 1 of each year and aims for signed annual Annex B updates as early as possible in each fiscal year; however, there may be delays .
- An Advanced Billing schedule is also established for the payments made by CIRNAC and ISC to JUS, typically broken down as follows:
 - 1st installment (50% of the approved forecast) scheduled for July to September;
 - 2nd installment (40% of the approved forecast) scheduled for November; and

- 3rd installment (10% of the approved forecast) scheduled for February (i.e., one more pre-payment before fiscal year end).
- Legal services reports are to be provided by JUS to CIRNAC and ISC, at minimum, on a quarterly basis to demonstrate actual costs incurred compared to forecasts. Supporting information by business line (advisory and litigation) is also to be provided by JUS in line with the department's revenue forecast exercises (October, December, and February) as well as at year-end in early April.
- Any changes made to the forecasted amount payable should be reflected in an In-Year Adjustment to Forecast worksheet.

However, interviews and documentation review indicate that challenges have occurred in consistently meeting all tasks, duties, and commitments under the MOUs related to forecasting and billing. In particular, the timing and level of detail of information exchanged between parties have at times made it difficult to maintain a fully aligned and timely forecasting and billing cycle. While forecasts and reports are shared regularly, the timing of their delivery and the need for clarification have occasionally delayed the finalization of related MOU annexes. In addition, variations in the format and level of detail of reports have limited the ability of departments to fully validate and reconcile information as part of the forecasting process.

These challenges and the inherently challenging nature of the litigation cycle contribute to difficulty in effectively estimating and managing legal services costs throughout the litigation management process. At the time of the audit, LMOD was negotiating revised MOUs between CIRNAC-JUS and ISC-JUS to better align JUS's financial reporting practices with MOU expectations and support cost management. LMOD also established a Tiger Team, which includes representatives from JUS and CFRDO CIRNAC (but not ISC)⁹, to address reporting issues. The Joint Fiscal and Business Issues Committee can also serve as a forum through which CIRNAC, ISC, and JUS engage in collaborative discussions on the MOUs. LMOD and JUS have taken steps to improve coordination and reporting clarity, including enhanced segmentation of reports by sector and region. Continued efforts in this area are expected to support more consistent and timely forecasting and cost-management practices going forward.

3.2.2 Accountability Over Legal Services Costs

Given the decentralized nature of litigation management in the departments, accountability for it resides with the Sector ADMs. However, there is a lack of consistent understanding among stakeholders (i.e., the LMUs and LMOD) regarding accountability for the associated legal services costs. LMOD manages the relationship with JUS through the MOU but does not control the extent of legal services accessed by sectors and LMUs. Within CIRNAC, CFRDO CIRNAC allocates legal advisory services budgets to sectors at the beginning of the fiscal year, with sectors responsible for managing their legal advisory services budgets. LMOD manages the litigation services budget for LMUs. In case of cost overruns for both advisory and litigation services, CFRDO CIRNAC may use departmental reserves or reallocate budgets. As a result, reallocations

⁹ The Tiger Team was composed of individuals directly involved in addressing the specific issue, with the goal of identifying challenges and enhancing the process. ISC was not included, as it was not directly implicated in this particular area.

resulting from higher advisory or litigation costs may not always be clear to sector ADMs as they are part of broader departmental reallocation exercises. Within ISC, CFRDO ISC pays JUS for both litigation and advisory services through a custodial account, resulting in a disconnect between those who pay for the legal services and those who request them.

Regardless of the approach taken to litigation management, without consistent understanding and clear accountabilities over legal services costs, cost overruns may be incurred. It is also important to ensure continued collaboration with JUS and improved clarity on roles expectations as it relates to costing details and justifications.

3.2.3 Requesting Legal Advisory Services

The audit examined how CIRNAC and ISC used JUS services and if it was aligned with established departmental responsibilities, and whether measures were in place to help manage legal expenditures related to requests. Interviews and documentation review did not identify instances where LMUs requested JUS support for matters that could have been handled internally. However, the assessment was limited by several factors that affected the ability to fully analyze the nature and extent of legal advisory services.

The audit found that the volume of advisory services requested by LMUs is relatively low compared to those initiated by policy and program sectors. In some cases, organizational structures combine litigation management with policy or program functions, making it difficult to distinguish requests related to litigation from those related to broader legal or policy advice. Further clarity on the delineation between litigation-related legal advice and other advisory services would support a more consistent understanding of when to seek LSU input.

Processes for requesting and tracking legal advisory services vary across LMUs and are not applied systematically. Approaches range from designated points of contact for requests to more informal or ongoing arrangements, with limited documentation of related costs. This variability limits the ability to consistently monitor and assess the nature and extent of advisory services.

In 2023 JUS and LMOD began a pilot project to estimate hours for the 35 largest files, which account for about 62% of anticipated billings to CIRNAC. If successful, this project may later extend to ISC. LMOD indicated its use remains limited, covering only about \$30,000 in advisory costs to date. As policy and program areas are the main users of advisory services, most LMUs do not need to use the Legal Services Request form separately from the advice received through JUS litigation files. Efforts are ongoing to expand use of the form within CIRNAC, including discussions with LSU to clarify responsibilities for completing estimates. Broader rollout to ISC is planned only once the model has been proven effective in CIRNAC.

However, there is an opportunity for LMOD to continue assessing results of the current pilot project and implement further steps to increase it within CIRNAC. Additional clarity around expectations and approval channels may also be needed.

Recommendation 5: Strengthening Forecasting and Reporting of Legal Services Costs

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with LMOD and Justice Canada, should build on existing efforts to strengthen mechanisms to forecast, monitor, and report legal services costs by:

- a) Continuing to review and update the Memorandum of Understanding to further clarify expectations, timelines, and roles for forecasting and reporting;
- b) Enhancing the consistency, timing, and level of detail in financial reports to support effective validation and monitoring throughout the fiscal year; and
- c) Establishing processes to proactively identify and communicate potential cost variances to enable timely planning and effective budget management.

Recommendation 6: Enhancing Controls Over Services Requests

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with LMOD and relevant stakeholders, should reinforce controls over legal advisory services by continuing to:

- a) Clarify expectations and approval channels for requesting advisory services, including distinguishing advisory support related to litigation from policy or program advice;
- b) Define a consistent approach to track requests and related costs to improve transparency and oversight; and
- c) Assess the results of the Legal Services Request Form pilot and, as appropriate, consider measures to increase its use and effectiveness across CIRNAC and, where feasible, ISC.

3.3 Collaboration with Other Government Departments

Background

CIRNAC and ISC litigation management requires collaboration with JUS and implicated OGDs when necessary. JUS provides legal advisory and litigation services, while OGDs can be involved in various ways, including:

- Managing their own litigation cases that may raise similar legal issues with CIRNAC and ISC files;
- Participating in the SCI process to determine their role in a new claim, if their mandates are implicated;
- Sharing litigation costs when cases involve common interests and engage their respective mandates; and
- Coordinating the disclosure of relevant documents, information, and expertise when requested.

LMUs are responsible for managing litigation activities and consulting with OGDs, as outlined in the LMOD Toolkit. While LMOD manages the funding relationship with JUS, it does not explicitly oversee collaboration with OGDs. The MOU more broadly commits JUS and CIRNAC/ISC to work together to develop mechanisms for managing multi-departmental litigation.

As each case has unique requirements, collaboration with OGDs often involves negotiations to define responsibilities and cost-sharing arrangements, which in turn affect instructions to JUS. Given the importance of these relationships, the audit expected to find effective processes supporting whole-of-government litigation management.

Risk

Without effective collaboration processes, there is a risk that Indigenous litigation management at the federal level may not be effective, particularly in advancing key strategic priorities. There is also a risk that ineffective coordination and collaboration could create additional pressures on the budgets of CIRNAC and ISC.

Finding

The audit found that while processes exist to support collaboration with OGDs, including the SCI process, JUS LSUs involvement, and cost recovery mechanisms, they are often informal or applied inconsistently. The SCI process, conducted internally by CIRNAC and ISC, primarily serves to assign lead departments and sectors within the two organizations. While it can also provide early indications of which OGDs may be implicated, it is not designed to definitively identify all responsible departments at the outset. This limitation is partly due to the fact that SCI occurs when limited information is available about the scope of claims.

LMOD estimates that OGDs are correctly identified during SCI about 50% of the time. Determining proportional responsibility is often complicated by evolving departmental mandates and the need for historical records. In some cases, there is hesitation from involved parties to accept shared responsibility where mandates are unclear or where they perceive Indigenous law issues to be predominant.

As most departments do not have dedicated LMU functions or case managers, LMUs typically rely on JUS litigation counsel to coordinate engagement with OGDs. While this reflects the normal practice in many files, it can result in delays when confirming the right contacts and obtaining instructions and getting agreement among the involved parties of the percentage apportionment of litigation costs.

While some cost-sharing agreements are established for settlements, there are no consistently applied protocols or expectations to document responsibilities and financial arrangements for legal services costs. Tracking and monitoring of OGDs involvement also varies between LMUs and within LMOD.

LMOD created an Interdepartmental Working Group in 2021-22 to improve coordination, but the group was dissolved by 2023 due to limited participation. When issues arise between LMUs and OGDs, there are no formal escalation processes beyond briefing ADMs.

These challenges likely reflect the complexity of Indigenous litigation, resource limitations, and the lack of a clear mechanism to escalate and resolve questions of departmental responsibility in a timely way.

Recommendation 7: Clarifying Escalation and Expectations for OGDs Engagement

The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with LMOD, should document clear expectations for how LMUs identify and coordinate with OGDs in Indigenous litigation, including when engagement is led directly by LMUs and when JUS is expected to act as intermediary, and develop a consistent approach for escalating questions of departmental responsibility when timely agreement cannot be reached.

4. Conclusion

The audit concluded that the current approach to litigation management provides sectors with greater flexibility and accountability for managing their files. The audit also noted that many key processes are in place to support litigation management across CIRNAC and ISC. However, there remains room for improvement in several areas, including the clarity of roles and responsibilities, the effectiveness of oversight and governance structures, the forecasting and management of legal services costs, as well as the consistency of collaboration both within the departments and with key partners such as JUS and with OGDs.

As litigation grows in complexity and demands on departmental budgets increase, strengthening these elements will be essential to ensuring that litigation management processes are effective, transparent, and aligned with strategic objectives. Effective governance and clear accountabilities, including well-defined roles and responsibilities, are critical to success, regardless of the approach taken to litigation management.

5. Management Action Plan

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
1) The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with the relevant committee chairs and applicable partners and stakeholders, should review and update the governance structures supporting litigation management. As part of this work, the departments should: a) Review and update the Terms of Reference for the Directors General Litigation Committee and the Senior Management Litigation Committee to clearly define their mandates, purpose, and expectations for engagement by LMUs and sector leadership, along with those of partners, where applicable; b) Communicate the updated Terms of Reference and expectations to all relevant stakeholders to ensure consistent understanding and use of these governance forums; and c) Conduct an assessment of the current governance structures to determine if adjustments are required to better support oversight, coordination, and strategic direction in litigation management.	Policy and Strategic Direction – LMOD will work with sectors, Justice Canada, and other stakeholders to review and improve governance, including terms of reference of the Directors General Litigation Committee (DGLC) and Senior Managers Litigation committee (SMLC), and whether additional structures or adjustments are recommended to provide oversight and strategic direction. All recommendations will be brought to DGLC and SMLC for input and approval and will be shared by Policy and Strategic Direction – LMOD to all stakeholders. LMOD Toolkit on litigation management and MOUs would be updated accordingly.	Lead: Policy and Strategic Direction Sector Sub-Lead: CIRNAC/ISC Sector LMUs Responsible Manager: Senior Assistant Deputy Minister, Policy and Strategic Direction, (CIRNAC) Deputy Minister, (ISC)	June 30, 2026
2) The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with applicable partners and stakeholders, where applicable, should define, document, and communicate clear expectations for the roles, responsibilities, and oversight functions of LMOD, LMUs, and the departmental LSU in	Policy and Strategic Direction – LMOD will work with sectors and Justice to clarify roles and responsibilities, and internal oversight functions, of LMOD, LMUs, and the departmental LSU in litigation management, taking into consideration the audit report's findings and the 2019 MOUs internal to ISC and CIRNAC, that established the Policy and Strategic Direction – LMOD and LMU structure and roles.	Lead: Policy and Strategic Direction Sector Sub-Lead: CIRNAC/ISC Sector LMUs Responsible Manager:	December 31, 2026

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
litigation management. As part of this work, the departments should: a) Clarify the oversight role of LMOD and the LSU, including responsibilities for monitoring, reporting to senior management, and supporting litigation activities across both departments; b) Define and communicate expectations for strategic analysis, integration of litigation management with policy and program areas, and prevention of future litigation; and c) Establish mechanisms to ensure these expectations are consistently understood and applied.	Policy and Strategic Direction – LMOD will work with sectors to determine specific needs and requirements to provide support, awareness and understanding with regard to roles and responsibilities and to identify any areas of uncertainty or overlap. Policy and Strategic Direction – LMOD will undertake consultations and a detailed review of the Toolkit and other guidance material to determine where updates are required. In consultation with Justice where appropriate, Policy and Strategic Direction – LMOD will work with LMU Directors to develop recommendations on how to best ensure consistent application. All recommendations will be brought to DGLC and SMLC for input and approval. LMOD will work with Justice (LSU), in consultation with Sector ADMs, to better define LSU's role in litigation. Policy and Strategic Direction – LMOD will work with LMUs to develop guidelines on how strategic analysis and prevention of future litigation are to be performed and the roles and responsibilities of each relevant stakeholder within ISC/CIRNAC. Any changes to the role of LMOD, Justice (LSU), or LMUs would be brought to DGLC and SMLC for input and approval. As part of CIRNAC/ISC's <i>Action Plan For A More Sustainable, Long-Term And Whole-Of-Government Management Of Indigenous Litigation</i>, CIRNAC and ISC are working on a number of initiatives to better analyze the litigation inventory, develop strategies for management and prevention of litigation as well as enhanced oversight and line of sight. Given the organizational changes which have occurred at CIRNAC and ISC since the MOUs were signed in 2019, Policy and Strategic Direction – LMOD will work with sectors to potentially update and improve internal	Senior Assistant Deputy Minister, Policy and Strategic Direction, (CIRNAC) Deputy Minister, (ISC)	

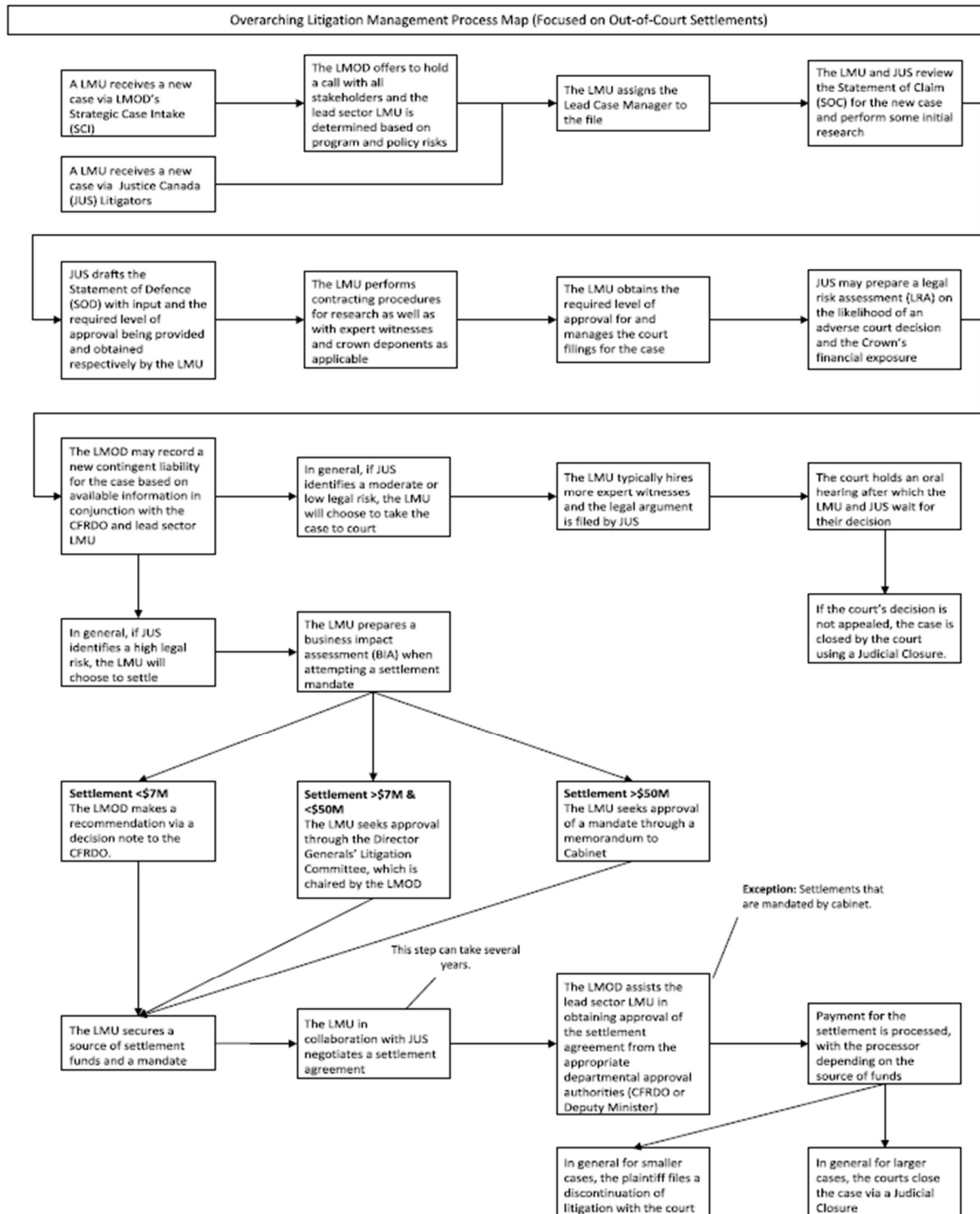
Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	MOUs.		
3) The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, should improve the consistency and completeness of litigation management guidance by: a) Establishing a formal process to regularly assess the adequacy and completeness of existing guidance across departments and identify areas requiring more detailed or tailored content (for example, managing class action lawsuits); b) Determining appropriate support mechanisms for LMUs that do not have sufficient resources or capacity to develop and maintain guidance materials specific to their operational context; c) Facilitating access to consistent guidance and reference materials to support LMUs in carrying out their litigation management responsibilities effectively.	Policy and Strategic Direction – LMOD will work with LMUs to improve the consistency and completeness of litigation management guidance. The response plan to these recommendations will be incorporated into the activities in response #2, as detailed above. Policy and Strategic Direction – LMOD in consultation with LMUs will develop a schedule for regular updates to the Toolkit. Policy and Strategic Direction – LMOD will consult with LMUs to document the existing support systems and explore potential options for additional cross-sectoral support systems. All recommendations will be brought to DGLC and SMLC for input and approval.	Lead: Policy and Strategic Direction Sector Sub-Lead: CIRNAC/ISC Sector LMUs Responsible Manager: Senior Assistant Deputy Minister, Policy and Strategic Direction, (CIRNAC) Deputy Minister, (ISC)	December 31, 2026
4) The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, should develop and implement a comprehensive, mandatory training and knowledge transfer strategy to build capacity and support consistency in litigation management practices. This strategy should: a) Provide orientation for new LMU employees and periodic refresher training, including coverage of strategic analysis,	Policy and Strategic Direction – LMOD will work with sectors to discuss challenges or gaps in operational capacity in order to identify additional areas of support and improvement. Policy and Strategic Direction – LMOD will consult with LMU partners to determine an optimal schedule for recurring training, and methods to ensure consistency. Policy and Strategic Direction – LMOD will work with LMUs to assess gaps in current training programs and to review processes and procedures for the retention of corporate knowledge, including research collections. All recommendations will be brought to DGLC and SMLC	Lead: Policy and Strategic Direction Sector Sub-Lead: CIRNAC/ISC Sector LMUs Responsible Manager: Senior Assistant Deputy Minister, Policy and Strategic Direction, (CIRNAC) Deputy Minister, (ISC)	December 31, 2026

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
integration with policy and program areas, and prevention activities; and b) Establish mechanisms to support the retention and transfer of corporate knowledge to mitigate the impacts of staff turnover.	for input and approval.		
5) The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with LMOD and Justice Canada, should build on existing efforts to strengthen mechanisms to forecast, monitor, and report legal services costs by: a) Continuing to review and update the Memorandum of Understanding to further clarify expectations, timelines, and roles for forecasting and reporting; b) Enhancing the consistency, timing, and level of detail in financial reports to support effective validation and monitoring throughout the fiscal year; and c) Establishing processes to proactively identify and communicate potential cost variances to enable timely planning and effective budget management.	LMOD and CFRDOs of CIRNAC and ISC will continue to work with Justice to strengthen forecasting, monitoring, and reporting of legal services. This initiative will help to enhance and improve predictability and transparency. Efforts will be made to improve collaborative planning to provide clients with opportunities to prioritize and validate Justice workplans. Policy and Strategic Direction – LMOD will offer to work with Justice to implement a strategic projections exercise model to ensure that available legal services funding is appropriately allocated to services based on departmental priorities. Policy and Strategic Direction – LMOD in collaboration with CFRDOs and Justice may develop an approach to managing requests for Justice support that could involve ADM-level approval or other controls as deemed necessary. Policy and Strategic Direction – LMOD and CFRDO are also working with Justice to enhance the level of understanding of Justice billings, as well as regular communication of legal services costs to relevant CIRNAC/ISC ADMs for monitoring purposes. Policy and Strategic Direction – LMOD will continue to collaborate with Justice to ensure cost-related variances are proactively identified and communicated. All recommendations will be brought to DGLC and SMLC for input and approval.	Lead(s): Policy and Strategic Direction Sector and CIRNAC/ISC CFRDOs Sub-Leads: CIRNAC and ISC Sectors Responsible Manager: Senior Assistant Deputy Minister, Policy and Strategic Direction, (CIRNAC) Deputy Minister, (ISC)	March 31, 2026

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
6) The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with LMOD and relevant stakeholders, should reinforce controls over legal advisory services by continuing to: a) Clarify expectations and approval channels for requesting advisory services, including distinguishing advisory support related to litigation from policy or program advice; b) Define a consistent approach to track requests and related costs to improve transparency and oversight; and c) Assess the results of the Legal Services Request Form pilot and, as appropriate, consider measures to increase its use and effectiveness across CIRNAC and, where feasible, ISC.	Policy and Strategic Direction – LMOD will engage with sectors and Justice to determine appropriate controls over legal advisory services to provide senior management oversight over costs. Policy and Strategic Direction – LMOD can work with CFRDOs to develop an approach to managing requests for Justice legal advisory services, building on lessons-learned from the implementation of Request for Legal Services Forms and will be determining next steps, in consultation with CFRDOs and Justice (LSU), as well as options for expanding initiatives to provide for improved line of sight on all departmental legal expenses. All recommendations will be brought to DGLC and SMLC for input and approval.	Lead(s): Policy and Strategic Direction Sector and CIRNAC/ISC CFRDOs Responsible Manager: Senior Assistant Deputy Minister, Policy and Strategic Direction, (CIRNAC) Deputy Minister, (ISC)	March 31, 2026
7) The Senior Assistant Deputy Minister of the Policy and Strategic Direction Sector, CIRNAC, and the Deputy Minister, ISC, in collaboration with LMOD, should document clear expectations for how LMUs identify and coordinate with OGDs in Indigenous litigation, including when engagement is led directly by LMUs and when JUS is expected to act as intermediary, and develop a consistent approach for escalating questions of departmental responsibility when timely agreement cannot be reached.	Policy and Strategic Direction – LMOD will work with LMUs and Justice to document clear roles, responsibilities and expectations as part of the Strategic Case Intake process, to identify OGDs implicated in Indigenous litigation as early as possible, and to expedite the determination of appropriate proportional billing responsibility among implicated departments. This will include escalation options to help resolve disputes on distribution of responsibility as expeditiously as possible. ISC/CIRNAC will work in consultation with Justice to ensure that implicated OGDs are appropriately involved in litigation where they would appropriately lead, co-instruct or support on litigation. Co-developed options would be brought to DGLC and SMLC for discussion and endorsement.	Lead(s): Policy and Strategic Direction Sector Sub-Lead(s): CIRNAC/ISC Sector LMUs CIRNAC/ISC CFRDOs Responsible Manager: Senior Assistant Deputy Minister, Policy and Strategic Direction, (CIRNAC) Deputy Minister, (ISC)	December 31, 2026

Annex A: Overview of the Litigation Management Process

The process map below intends to provide a high-level overview of the activities involved in the litigation management process. Please note that some activities may be omitted from the process map and the timing of these activities may differ depending on the unique mandates of the LMUs as well as the requirements of a given litigation case.



Annex B: Comprehensive List of LMOD's Responsibilities

The following is a comprehensive list of LMOD's litigation management responsibilities which is meant to complement the more selective list provided in the main body of the report that highlighted responsibilities subject to the audit.

- Coordinating the SCI process, assigning LMU leads, and registering cases in the Litigation Management System;
- Management, training, and maintenance of the case management database, the Litigation Management System, the primary information repository for all litigation in ISC and CIRNAC;
- Coordinating litigation updates and information sharing, including weekly litigation calendars across ISC and CIRNAC, sharing court decisions amongst LMUs, and organizing weekly Ministerial briefings;
- Supporting the gathering and handling of evidence, including the management, maintenance, and record filing into the Nuix database; managing standing offers for research firms; managing authorization to use of Exceptional Contracting Limits Authority for contracting of research, expert witnesses, and Crown deponents; facilitating access to Departmental archives; managing process for litigation holds; and managing a central budget for research;
- Providing guidance and support in identifying and seeking funding sources to support settlement of cases, including managing a budget to cover the First Million of CIRNAC settlements costs;
- Facilitate the processing of court awards and manage access to a First Million for covering CIRNAC court awards;
- Developing guidance material and delivering training for consistent approach to litigation across the LMUs;
- Governance support and leadership, including secretariat and chair of the Directors General Litigation Committee; secretariat for the Senior Management Litigation Committee; secretariat for the Deputy Minister Working Group on Indigenous Litigation; chair and secretariat of the Directors General Working Group on Indigenous Litigation; convene weekly coordination calls with all LMUs; convene and chair the Mandate, Settlement and Court Awards working group and Litigation Management System working group; convene and chair meetings with Directors of LMUs as well as a series of meetings with CFRDOs and JUS on costs and contingent liability; and support other litigation meetings as required;
- Coordinating the reporting of contingent liability for litigation cases;
- Conducting cross-cutting policy analysis and developing relating documents for senior-management and central agencies;
- Managing the financial relationship with JUS and negotiating the annual MOU with JUS on provision of services; and
- Coordinating litigation briefings to the Ministers and other corporate reporting requirements.

Annex C: Comprehensive List of Sector LMU Responsibilities

Based on the LMOD Toolkit, the Sector LMUs are responsible for the following activities as it relates to litigation management:

- Liaising with CIRNAC and ISC LSU and JUS litigation counsel;
- With advice from the CIRNAC and ISC LSU, providing instructions to JUS litigation counsel on behalf of the Sector(s);
- Communicating with officials from other Sectors to ensure policy and program risks are considered;
- Determining program and policy impacts of litigation and seeking input from affected units within the Sector(s), as needed, in collaboration with CIRNAC and ISC LSU counsel;
- Consulting with other departments with respect to multi-departmental litigation;
- Preparing briefings and recommendations for senior management on litigation activities, impacts and strategies in collaboration with CIRNAC and ISC LSU counsel;
- Seeking approvals required for court filings, in collaboration with CIRNAC and ISC LSU counsel;
- Managing research, including research contracts, to meet legal obligations for document disclosure;
- Managing contracts for Crown deponents and expert witnesses with the aim of ensuring that all research deliverables align with the contract requirements;
- Consulting with the LMOD to secure funding for contracts and forecasting financial needs against the contracts;
- Managing electronic discovery processes, including the preparation of litigation hold letters;
- Working with Communications to develop communication products and media lines;
- Preparing Question Period cards and other Parliamentary inquiries;
- Drafting contingency plans as needed for any pending significant court decisions, in collaboration with CIRNAC and ISC LSU and JUS litigation counsel;
- Advising and taking the necessary steps when court decisions are released, including briefing senior management, in collaboration with CIRNAC and ISC LSU and JUS litigation counsel;
- Seeking settlement mandates and conducting out-of-court settlements in consultation with LMOD and in collaboration with CIRNAC and ISC LSU and JUS litigation counsel;
- Managing the response to formal Access to Information requests; and
- Preparing briefing notes and briefing senior management.

Annex D: Audit Criteria

To ensure an appropriate level of assurance to meet the audit objectives, the following audit criteria were developed to address the objectives.

Audit Criteria	
1. CIRNAC and ISC have processes and practices in place to manage and oversee litigation activities effectively as well as integrate them with corresponding programs and policies.	
1.1	Roles and responsibilities associated with litigation activities are carried out as defined to support greater integration of litigation management with programs and policies and increased accountability for sectoral decision makers.
1.2	There is guidance and training delivered to employees to support effective management of litigation activities.
1.3	Services sought from JUS fall beyond the established roles and responsibilities of CIRNAC and ISC.
1.4	There is management oversight over the alignment of available resources and litigation priorities.
2. CIRNAC and ISC have processes and practices in place to foster effective collaboration with OGDs in the conduct of litigation management activities.	
2.1	There are processes and practices in place that support the resolution of litigation cases in a collaborative manner, as well as the communication of CIRNAC and ISC priorities related to litigation management.
2.2	There are mechanisms in place to escalate and resolve interdepartmental issues.
3. CIRNAC and ISC effectively manage legal services costs.	
3.1	There are controls in place to estimate and manage legal services costs at stages of the litigation management process.
3.2	Accountability mechanisms for cost overruns and savings related to legal services and litigation costs are established and implemented.

Annex E: Sampling Approach Details

All LMUs were scoped in to allow for full departmental coverage over all three audit criteria. However, specific LMUs were further selected for each criterion to allow the audit team to conduct more in-depth review.

The following selection risk factors and conditions were used to identify the selected LMUs each criterion:

- Department (i.e., CIRNAC or ISC)
- Number of open claims as of January 2024
- Structure and size of the LMU
- Nature of the LMU's relationship with LMOD
- Risk level of the LMU for audit criteria (based on findings from planning phase interviews and documentation received)

Audit Criteria	Selected LMUs for In-Depth Review	Procedures and Notes
1. CIRNAC and ISC have processes and practices in place to manage and oversee litigation activities effectively as well as integrate them with corresponding programs and policies.	• Settlement Agreement and Childhood Claims Branch • Education and Social Development Programs and Partnerships • First Nations Child and Family Services • First Nations and Inuit Health Branch (Assistant Deputy Minister's Office and Jordan's Principle)	Process walkthroughs were designed and conducted with the selected LMUs to assess whether strategic case intake, out-of-court settlements, strategic analysis and prevention of future litigation activities were carried out by as defined in LMOD and/or the LMU's respective Litigation Management Toolkits, as applicable.
2. CIRNAC and ISC have processes and practices in place to foster effective collaboration with OGDs in the conduct of litigation management activities.	• Specific Claims Branch • Treaties and Aboriginal Government • Lands and Economic Development • Individual Affairs Branch	Interviews with LMU representatives and review of relevant documentation were conducted to determine if there were processes and practices in place to foster effective collaboration with OGDs in the conduct of litigation management activities.
3. CIRNAC and ISC effectively manage legal services costs.	• Treaties and Aboriginal Government • Settlement Agreement and Childhood Claims Branch • Lands and Economic Development • First Nations and Inuit Health Branch	Interviews with LMU representatives and review of relevant documentation were conducted to determine if there were processes and practices in place to support effective management of costs. The audit team noted, however, that First Nations and Inuit Health Branch did not participate in interviews related to Audit Criteria #3 as the LMU informed the audit team that they would not be able to speak to the audit procedures outlined the audit program. While documentation implicating all eight LMUs was reviewed as a part of the audit (such as Litigation Inventory Reports), key findings from interviews were predominantly derived from discussions with the three LMUs selected as a part of the sample for Audit Criteria #3.