



**FORMATIVE EVALUATION OF THE DEPARTMENT OF JUSTICE
PUBLIC SAFETY AND ANTI-TERRORISM (PSAT) INITIATIVE
Summary, Recommendations and Management Response**

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**Evaluation Division
Policy Integration and Coordination Section**



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1. INTRODUCTION

Following the September 11, 2001, terrorist attacks, the need to enhance the security of Canadians, particularly through an intensification of the fight against terrorism, was identified as a priority for the Government of Canada. The Department of Justice (DOJ) plays an important role in this government-wide priority through the development and implementation of legislation, and through related activities both domestically and abroad.

This report presents the mid-term evaluation findings for the DOJ component of the PSAT initiative. As is usual for mid-term evaluations, the focus is primarily on the implementation of the initiative. The data collection phase of this mid-term evaluation was completed between May and September 2004 and the methodology included: review and analysis of key departmental files and documents, distribution of questionnaires to relevant sectors of the Department to gather information on key PSAT activities, and interviews with departmental officials and other key informants representing a cross-section of interests within the federal government.

2. OVERVIEW OF THE INITIATIVE

2.1. Funded Activities

In order to fulfill new and, at times, expanded roles in relation to the fight against terrorism the Department of Justice requested and received additional funding under the Public Safety and Anti-Terrorism (PSAT) Initiative in 2002. This increased PSAT funding was designed to ensure that the Department fulfilled its partnership role in the overall plan to combat and prevent terrorism, particularly in view of the Department's status as legal advisor to the government. However since 2002, more than \$9.5 billion in new investments were made by the Government of Canada in national security initiatives such as the *Smart Border Declaration and Action Plan* in April 2004; *Canada's Security and Prosperity Partnership* in March 2005 and numerous Budgets. With these announcements come expectations that the DOJ will provide timely support in implementing the diverse and complex PSAT initiatives.

The Department of Justice's PSAT resources were restricted by the creation of a special purpose allotment by the Treasury Board. These funds were designated for the following five PSAT activities:

- **Policy and related activities.** The Criminal Law Policy Section (CLPS) is the departmental centre of expertise on criminal law policies related to national security and anti-terrorism. Central to this function is the provision of legal and policy advice with respect to national security and anti-terrorism matters, including the development and ongoing support of legislation, such as the *Anti-terrorism Act*; the development and implementation of international instruments; and the provision of technical assistance in this field. The *Anti-terrorism Act* forms a key component of the Government's Anti-Terrorism Plan.

The Public Law Group provides specialized legal services which support each of the five activity areas and are essential to the Department's ability to meet its PSAT commitments. The Public Law Group was extensively involved in the development of Bill C-36 (the *Anti-terrorism Act*) and Bill C-7 (the *Public Safety Act*) and in the implementation of these *Acts*.

- **Federal Prosecution Service (FPS).** The National Security Group (NSG) within FPS is responsible for developing operational policy related to the prosecution of terrorism offences, providing legal advice to investigative bodies and conducting or supporting prosecutions of terrorism offences. The NSG also provides advice and support for the development and implementation of national security legislation, including Bill C-36, and criminal and civil litigation strategy. The International Assistance Group of FPS is responsible for reviewing and coordinating all extradition and mutual legal assistance requests to Canada and by Canada to other countries.
- **Civil Litigation.** Justice works closely with all government departments and agencies in the defence of a broad range of court challenges and actions against the Crown. A number of the provisions arising out of the *Anti-terrorism Act* were expected to result in an increase in the number and complexity of civil litigation actions.
- **Legal Aid.** Because of enhanced border security measures, various provinces reported increased costs related to immigration and refugee legal aid. As a result of anticipated pressures by the provinces, the Department of Justice, through the Legal Aid Directorate,

was prepared to address these increased costs and to ensure fair and expeditious trials in public security and anti-terrorism legal cases.

- **Citizenship, Immigration and Public Safety Portfolio.** This portfolio provides legal advisory and litigation services to diverse clients whose mandates include citizenship, immigration, refugee protection, combating war crimes and the promotion of public safety and emergency preparedness. The portfolio also provides advice on a range of initiatives such as amendments to current information sharing and privacy agreements and other bilateral or multilateral agreements.

2.2. Resources

PSAT resources were earmarked in the fiscal framework pursuant to the 2001 Budget at a total of \$77.9 million over the five-year period from 2002/03 to 2006/07 (and ongoing). TB ministers directed the DOJ to establish special purpose allotments for PSAT for a period of three years within Vote 1 and Vote 5 commencing in 2002-03 with delegated authority to the Secretary of the Treasury Board to cancel the special purpose allotments after three years. The breakdown of the original Treasury Board approved funding for PSAT in comparison with actual spending and available funds after the cuts offered over the first two fiscal years, and the allocated spending for 2004-05, is as follows:

Year	TB Approved Funding*	Reductions as part of the Government Reallocation Exercise	Funds Available	Actual Spending	Surplus/ (Deficit)
Within Vote 1 - Salary and O & M					
2002-2003	\$8.1M	\$0.0M	\$8.1M	\$6.5M	\$1.6M
2003-2004	\$10.1M	\$3.1M	\$7.0M	\$7.0M	\$0.0M
2004-2005	\$11.6M	\$2.1M	\$9.5M		
Within Vote 5 - Grants and Contributions for Legal Aid					
2002-2003	\$2.5M	\$0.0M	\$2.5M	\$0.0M	\$2.5M
2003-2004	\$2.5M	\$2.5M	\$0.0M	\$0.0M	\$0.0M
2004-2005	\$2.5M	\$2.2M	\$0.3M		

* TB approved funding excluding accommodation (13%) and employee benefits plan costs (20%).

NB: Figures for 2004-05 are based on allocated resources.

3. FINDINGS

3.1. Development of the Legislative Framework

The Department played a key role in the development of two key pieces of legislation to fight terrorism and ensure the safety and security of Canadians following the September 11, 2001 terrorist attacks: Bill C-36, the *Anti-terrorism Act (ATA)*, and Bill C-7, *Public Safety Act (PSA)*. Under normal circumstances, the development of legislation is a time-consuming and complex process. The speed with which Bill C-36 passed into law is a testament to the importance that it was deemed to have in protecting Canadians. Client representatives we spoke to noted that they received timely and high quality support from their legal service counsel at all stages of the development of the legislative framework.

The Department's policy work is clearly seen to have played an important part in the Government's overall effort in the area of counter-terrorism and national security. A key strategic theme is the combination and balancing of measures to ensure that laws and practices maximize effectiveness at identifying and addressing terrorism and security concerns, while at the same time preserving Canadian fundamental values with respect to human rights and human dignity.

3.2. Implementation of the Legislative Framework

Two key activities in implementing the legislative framework were the development of policies and the development and provision of training.

Policy Development. The Criminal Law Policy Section (CLPS) has been a key player in the implementation of the PSAT legislative framework. In the aftermath of the September 11, 2001 terrorist attacks, the CLPS established and has maintained a national security / anti-terrorism policy development and advisory capacity.

The results for Canadians of the Department's work in developing national security and anti-terrorism legislation is considered to be substantial, although hard to quantify because most of the work is either preventive or involves measures that are only used if terrorist activities take place. The results include legislation which contains effective offences, investigative powers and other measures, as well as safeguards to protect human rights. This work has also protected

Canada's international position, ensuring that Canada can provide appropriate forms of assistance and cooperation with other countries in multi-national investigations and can obtain similar cooperation in return.

Training. The National Security Group (NSG) of the FPS was tasked with providing training to prosecutors and law enforcement officers on the scope, intent, and limits of the new *Anti-terrorism Act* offences and powers. These efforts included the production and dissemination of 2,500 English and 1,000 French CD ROMs of a training presentation on the *Act* to police forces across Canada. Feedback from the training sessions indicates that the sessions and materials developed by the Department have been very well received and effectively increased peoples' knowledge and understanding of the *Act*. Other sections of the Department have also contributed to the development and delivery of training, including, the Criminal Law Policy Section, the Public Law Group, the Civil Litigation Branch, and the LSUs the CIPS Portfolio.

3.3. Application of the Legislative Framework (Prosecution and Litigation)

The National Security Group is the independent counsel for all Government of Canada national security operations. Implementation of the *Anti-terrorism Act* increased NSG responsibilities and workload significantly. NSG is also the departmental focal point for coordinating the statutory responsibilities of the Attorney General of Canada relating to the new *Canada Evidence Act* provisions applicable to the handling of sensitive and potentially injurious information.

Use of key provisions of the *Anti-terrorism Act*. Available statistical data indicate that the use of the anti-terrorism provisions in the *Criminal Code*, such as investigative hearings and preventative detentions, has been limited. This reflects the fact that these provisions are for use in the limited number of cases where the circumstances are appropriate. The investigation of potential terrorist activities is also a very time consuming task and some investigations currently underway may lead to prosecutions in the future.

Reliance on IRPA. The *Immigration and Refugee Protection Act (IRPA)* is seen as an important tool that the government uses to exclude, detain or deport individuals deemed to be security risks. *IRPA* provisions related to security certificates, detentions and removals are seen to have been effective in responding to security threats posed by non-citizens as these approaches provide expeditious and practical responses to security threats where criminal investigations and prosecutions may not be available. The use of these provisions has, however, raised a number of human rights issues. While the security certificate procedure found in *IRPA* was held by

Canadian courts to be consistent with the Charter, the use of that and other removal procedures is currently being litigated where removal would expose the person concerned to a substantial risk of torture. Among the issues raised by this litigation is whether Canada should consider alternatives, such as detention or supervised release, to address security concerns where removal would result in serious human rights violations. These questions will need to be further examined as the courts clarify the conditions under which immigration law may continue to be used.

Impact of high profile national security cases on the success of ongoing projects. The Department's work in the national security area has been significantly impacted by a few high profile cases. The relatively small group of people who work in the national security environment has experienced a significant increase in workload relating to these high profile cases. In turn this has adversely affected their ability to make progress in other areas of national security.

Civil litigation related to the *Anti-terrorism Act*. In the two years following passage of Bill C-36, the PSAT-related workload of the Civil Litigation Branch did not materialise as expected. As of September 2004 only two civil suits had been launched against the Crown in relation to PSAT related actions/activities and there had only been two constitutional challenges to *ATA* provisions. However, *ATA*-related civil litigation activity has started to increase gradually. In anticipation of challenges to the *Anti-terrorism Act*, the Civil Litigation Branch took steps to build capacity to address this demand. While Justice has not faced a large number of constitutional challenges to date, the research and preparation of materials in relation to these challenges has placed significant demands on the resources of the Department.

3.4. Legal Advice to the Government

The Department of Justice helps the Government to make the best choices in resolving legal matters related to the laws and policies it administers, including those related to PSAT. Points of service include Legal Service Units (LSUs), which ensure that departments and agencies have the legal advice and support needed to fulfill their statutory responsibilities. The demands placed on some of these units in the months following the September 11, 2001, terrorist attacks significantly strained their resources and affected their ability to support non-PSAT related service demands.

The Citizenship, Immigration and Public Safety (CIPS) Portfolio plays an important role in ensuring that Justice meets its goals in relation to PSAT. In particular, the LSUs at the new

Canada Border Services Agency and Public Safety and Emergency Preparedness Canada (PSEPC), as well as CSIS, Citizenship and Immigration, and the RCMP play key roles in providing legal advice and assistance to the departments and agencies they serve on PSAT related issues.

During the first two years of the Initiative the CIPS portfolio accounted for \$5.1 million (37.5%) of the Department's total PSAT spending. A significant portion of the PSAT allocation to the CIPS portfolio (27% for 2003/2004) was transferred to FPS in support of the airport project operated at Dorval airport, and under consideration for Toronto and Vancouver. Although the Dorval airport project has not been formally evaluated, it is reportedly well regarded by the partner agencies operating at the airport, in that it offers timely and high-quality advice and assistance. This positive reputation has created interest in expanding this type of service to the airports in Toronto and Vancouver.

The RCMP LSU is the primary provider of legal advice to the RCMP. As such, they provide advice on national security issues including the development of operational policies and protocols and the actual investigation of terrorism offences involving the national interest.

The Transport Canada LSU. Transport Canada was the lead department in the development of the *Public Safety Act*. The Transport Canada LSU played a key role in supporting the development of this *Act* as well as other national security policies and procedures.

The Public Law Group provided specialized legal services in relation to public law issues, and contributed to the management and strategic coordination of public law litigation involving the federal government.

Emergency Preparedness. The Department of Justice received separate funding to cover the cost of one FTE for the provision of legal advice and assistance to the Office of Critical Infrastructure Protection and Emergency Preparedness beyond the existing legal services that are client-recovered. While non-cost-recovered legal services were provided by various parts of the Department, allocations of these funds were not tracked.

With few exceptions, the legal services provided to client departments were found to be responsive to client needs and of high quality.

3.5. International Linkages

Given the international nature of the fight against terrorism, virtually all of the Department's work on the PSAT initiative has significant international linkages. Canada is party to some 140 international extradition and mutual legal assistance agreements, which provide two important mechanisms through which Canada can assist the international law enforcement community in the detection and suppression of crime and terrorist activity. A number of these treaties are specifically terrorism-related.

A substantial portion of anti-terrorism work involved international activities in which Canada participated with bilateral partners or global, regional or sub-regional intergovernmental organizations. Global organizations include the United Nations and subject-specific organizations such as the International Civil Aviation Organization (ICAO). Major regional or sub-regional organizations in which Canada has been active include the Organization of American States (OAS), the Council of Europe, the Organization for Security Cooperation in Europe (OSCE), Asia-Pacific Economic Cooperation (APEC) and the G-7/G-8.

The Department's work in the international field has generally been viewed as a positive contribution to international protection against terrorism

3.6. Support for Access to Justice

The Department's PSAT initiative included support for access to justice through the establishment of a PSAT component to the Legal Aid Program. A budget of \$2.5M per year in contribution funding was established, with the objective of ensuring that provincial and territorial legal aid delivery entities had the financial resources to ensure fair and expeditious trials in public security and anti-terrorism prosecutions. As of September 2004, no funding had been expended for PSAT-related Legal Aid. However, subsequent to the reporting period, we understand that there were two PSAT legal aid cases in 2004-2005

3.7. Departmental Management of the Initiative

PSAT Steering Committee. A senior level departmental Steering Committee was established at the outset to oversee the PSAT initiative. Despite the lack of Terms of Reference, the Steering Committee did establish a clear, if narrow, focus for its role in overseeing the initiative. The Committee's focus was almost exclusively on resource allocation issues; it did not see a role for

itself in leading, overseeing or coordinating any of the ongoing subject matter work being conducted by the Department. Following the initial allocation of PSAT funds in late 2002, the Committee was dormant until early 2004 when it reconvened to review PSAT Business Plans from each of the areas requesting PSAT funds. During the period when the PSAT committee was dormant, the Corporate Service Sector assumed additional responsibilities to fill the void and ensure that administrative requirements were met. The Committee appears to have taken a more hands-on approach in reviewing and assessing the 2004-05 business plans. This should lead to better control and coordination of PSAT planning and spending in the future.

Financial and Performance Management. Significant shortcomings were noted in the process for allocating funds during the first two years of the Initiative, when funds were allocated on the basis of the business cases developed in support of the Department's Treasury Board Submission and the TB Decision. This was, at least in part, a result of the PSAT Steering Committee having been dormant during this period and thus not providing timely direction with respect to resource allocation decisions. Managers were told to proceed with PSAT-related activities, and their budgets would be reimbursed at the end of the year. Lacking confidence in this 'cash management' approach, some sectors did not undertake all of the activities they might have out of concern that it could place them in a financially precarious situation. For the 2004-05 fiscal year, the Committee revised the process and the funds were allocated and placed directly into the budgets of the sectors involved based on planned activities for the year.

Another serious concern for the Department relates to the fact that its PSAT funds sunset as of March 31st, 2007 while most other departments have ongoing funding. Several sectors of the Department have experienced significant workload increases that are expected to be ongoing after 2006-07 and, given the Department's central role in providing advice to all of Government, it is crucial that the Department be adequately funded to continue its PSAT-related work.

Given that the Department's spending on PSAT-related activities has been well short of the amount of funding it received, we must conclude that the level of resources originally allocated to the Department was sufficient. However, we were advised repeatedly of resource constraints for areas of the Department providing "public safety" services. The areas of the Department most commonly referred to were regional offices with a heavy volume of immigration litigation and certain activity areas of the National Security Group (NSG). The Department does not consider that it has the flexibility to fund these activities because of the narrow terms of the Department's PSAT funding.

The Department was not always successful in coding PSAT-related spending in the IFMS (Integrated Financial and Materiel System), making it difficult to track this spending. As a result, information is not always available on PSAT spending by individual sectors and sections of the Department. We are thus not able to assess efficiency and effectiveness issues.

Despite the development of an RMAF in 2003 that set out measurement and reporting commitments for PSAT activities, the extent to which departmental participants in the PSAT initiative were able to report on their activities and achievements for the Annual Reports was found to be very uneven.

Overall Coordination of the Initiative. In general, we found that the Department lacked an effective overall coordination mechanism during the first two years of the initiative. More active involvement in ongoing subject matter coordination might strengthen overall governance and horizontal management of the initiative, reduce the risk of overlap and duplication and help align departmental activities with broader governmental objectives.

4. CONCLUSIONS AND RECOMMENDATIONS

The general consensus from interviewees was that the *Anti-terrorism Act* is a very solid piece of legislation and that it has balanced the respect for human rights with the need to protect Canadians.

Coordination of the Initiative

There did not appear to be sufficient coordination of the wide range of PSAT activities being carried out by the DOJ. The PSAT Steering Committee has focused almost exclusively on resource allocation issues and did not see a role for itself in leading, overseeing or coordinating any of the subject matter work of the Department. More active involvement in ongoing subject matter coordination and greater cognizance of the various activities, workloads and results of the PSAT initiative might strengthen overall governance and horizontal management of the initiative. This would reduce the risk of overlap and duplication and help align departmental activities with broader governmental objectives. This would also assist the Steering Committee to prioritize the work being done by the Department, which would in turn assist in the budget allocation exercise.

- **Recommendation #1:** Members of the PSAT Steering Committee should play a greater oversight and coordinating role to ensure that the full implications of the PSAT work of the Department are understood and appropriately funded.

Management Response: Agreed. While the Committee recognizes that each sector needs to continue to be responsible for its own PSAT-related activities, the complexity of the PSAT file and the importance of this issue for the Government require that the Committee ensure more effective horizontal management and overall governance of the initiative. This will allow for a better prioritization of the PSAT-related activities within the Department

Financial Management

The process for allocating funding needs to be strengthened to ensure that managers can undertake and display stewardship towards planned activities with full confidence that budgeted funds will be available according to set priorities. The “cash management” approach that was used during the first two years of the initiative may have had an impact on the achievement of results. Budgets for the 2004-05 fiscal year were not allocated until several months into the fiscal year.

- **Recommendation #2:** Budgets should be allocated earlier in the fiscal year to allow managers to implement business plans and activities.

Management Response: Agreed. An earlier allocation of budgets would improve future forecasting and planning horizon for managers and allow for greater permanency of employment.

Financial and Performance Information

The Department needs to strengthen its capacity to capture and track financial and performance information. The Department does not have an effective initiative-wide reporting system, and is not well prepared to fulfill the reporting requirements of 2007.

- **Recommendation #3:** The Department should ensure that financial information is available by all sectors so that efficiency and effectiveness can be assessed during the final evaluation.

Management Response: Agreed. The Committee will work with Financial Services to determine how it could facilitate the work of managers who need to enter PSAT-related information in the Integrated Financial and Material System (IFMS), taking into account other systems used such as Caseview, the Salary Management System and the Timekeeping System.

- **Recommendation #4:** Current and anticipated performance information needs should be examined and addressed to ensure that the Department’s performance reporting obligations can be met in 2007.

Management Response: Agreed. The Committee will ensure that all sectors collect and track the information identified in the RMAF to allow for the preparation of the upcoming annual reports and the summative evaluation report in a timely and thorough fashion.

The trouble we had in collecting data for this evaluation exercise is highlighted in the lack of performance information for the pilot project at Dorval airport. The Airport project stands out due to the cost of the project and the fact that, while the project accounts for approximately 20% of the Department's total PSAT expenditures, there is no documentation on what the project is accomplishing in terms of PSAT and because there are plans to expand this project to other airports and some funding has already been allocated for this purpose.

- **Recommendation #5:** A detailed evaluation study should be undertaken to assess the efficiency and effectiveness of the Airport Project at Dorval prior to expanding it to other Canadian airports.

Management Response: Agreed. A separate evaluation study will be undertaken to be able to report on the results achieved by the Airport Project.