



Department of Justice
Canada

Ministère de Justice
Canada

EVALUATION DOCUMENT

PROCEEDS OF CRIME PROSECUTIONS AND CASE MANAGEMENT AND DIVERSION

**Department of Justice Component of the
Integrated Proceeds of Crime Initiative**

A Review

September 2000

**Evaluation Division
Policy Integration and Coordination Section**

Canada 

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EXECUTIVE SUMMARY

This report represents the second annual (1998-1999) assessment of the Department of Justice (DOJ) proceeds of crime (POC) prosecutions and case diversion and management functions as they relate to the five-year Integrated Proceeds of Crime (IPOC) initiative. As part of the initiative's accountability structure, Treasury Board required that annual evaluations be conducted and that in the year 2000, a comprehensive evaluation be completed. Since there were two separate and distinct aspects to the initiative, investigation and prosecution, it was agreed that the Solicitor General Secretariat would be responsible for evaluating the IPOC units (the investigative role). DOJ, on the other hand, would be responsible for reviewing the prosecution function.

Background

The Integrated Proceeds of Crime (IPOC) initiative is an inter-departmental strategy that responds to the federal government's resolve to deter organized crime activities. Its primary objective is *to intensify and make more efficient and effective the investigation and prosecution of major organized criminals and crime groups operating in Canada*. The initiative is a five-year, \$180.523 million federal government strategy (1996/97 to 2000/01) that brings the combined efforts of various federal, provincial and municipal resources into ten additional proceeds of crime investigative units located across the country. Their mandate is to pursue the illegal proceeds of drug, smuggling and other enterprise crimes such as fraud and gambling. It is expected that more intensive and effective law enforcement efforts directed at those involved in organized crime would reduce their ability to mount large scale criminal enterprises, and take away their economic power and influence.

DOJ Role

DOJ was eligible for \$38.880M over a four-year period (1997/98 - 2000/01) to support its participation in the IPOC initiative. These resources would be used to:

- implement a case diversion and management strategy;
- support the expanded number of IPOC units by providing legal advice and services over the course of an investigation; and

- address the continuing caseload pressures of proceeds of crime (drug) prosecutions.

Review Objective

The objective of this review was to quantitatively assess departmental results including the efficiency and effectiveness of POC prosecution and case diversion and management resources. This approach was taken because limited quantitative performance information had previously been available on prosecution performance.

Review Methodology

The review design involved a comparative analysis of initiative performance across numerous years employing multiple sources and approaches including a case study of the Montreal Regional Office. Multiple approaches were needed because of historical performance monitoring and reporting problems within the department. While the approach did not allow for a comprehensive and valid depiction of all Federal Prosecution Service proceeds of crime prosecution activities, the results have provided a useful picture of performance.

Proceeds Of Crime Findings

No systematic performance information was available on departmental activities and performance. However, there was evidence to suggest that the nature of POC prosecutions has changed, thereby affecting not only work volume and efficiency but also the way in which work has been resourced. Results from the departmental complexity survey and Montreal case study revealed that POC cases were more complex. They involved greater numbers of accused and charges, took longer to complete, and were assigned more prosecution resources. At the same time, annual POC file closures from the Seized Property Management Division (SPMD) revealed that numbers of proceeds of crime and offence-related property file closures rose throughout the mid 1990's and have more recently declined. Case study findings suggested that reductions may be associated with Government tax reductions on tobacco.

There were mixed results in terms of prosecution performance. Montreal POC prosecutions resulted in relatively high conviction and forfeiture percentages. At the same time, evidence from SPMD suggested that the introduction of the Controlled Drugs and Substances Act may

have affected property-related offence results and therefore overall national performance. More research is required in this area to determine the cause(s) and corrective action.

Forfeiture trends were generally positive indicating that DOJ's prosecution role has contributed to overall program objectives. Since 1993/94 overall forfeitures increased on an annual basis. As of March 31, 2000, the cumulative total, less SPMD operational costs, has reached \$60,317,974.93. While annual fluctuations occurred, Montreal Regional Office results were also strong.

The Montreal case study demonstrated the added value of IPOC units. While units initiated a small proportion of total case inventor, large proportions of the total assets forfeited came from these files. These results have also demonstrated that Quebec's IPOC units have focussed their activities on larger criminal operations with positive outcomes.

Adequate information on resource utilization and costs, as well as long-term program impacts on organized crime was not available. This has affected the department's ability to account for initiative funds and demonstrate effectiveness.

Case Management and Diversion Findings

There was no systematic performance information on the amount, type and results of charge screening being completed across the Department. As well, the total amount and type of diversion activity conducted by or for the Department was not clear. This included alternative sentencing conducted for the Department through Provincial programs or by DOJ agents. However, the review and analysis of Diversion Checklist forms and other performance reports indicated that:

- diversion volume was increasing,
- alternative sentences were successfully completed;
- the process was completed in a timely manner; and
- that added economic and social benefits had been realized.

The availability of diversion programs for federal charged offenders continued to be an issue. For example, in Halifax, attempts were being made to link up with provincial programs while in Alberta, the onus for finding an alternative measures program lay with the defendant or their counsel.

While the results showed considerable numbers of cases had been diverted from the court, the extent program success has led to reductions in prosecution and/or court costs has yet to be determined.

Conclusions and Next Steps

The results were generally encouraging in that FPS prosecutions has contributed to the recovery of over \$60 million in POC revenues to be shared across partners. The Montreal Regional office along with its IPOC units has made substantial contributions to this total. As well, the review established that overall diversion activity had increased with mostly positive results. At the same time, performance and information monitoring gaps were noted. These included:

- information on resource utilization and costs;
- forfeiture performance issues associated with the introduction of the CDSA;
- sufficient and reliable reports on all departmental POC, diversion and case management activities and results;
- impacts of POC convictions and forfeitures on future criminal behaviour; and
- diversion impacts on court backlogs, court costs and recidivism.

The review also established a model for tracking and reporting on POC as well as diversion performance. This included information on the changing nature and volume of POC and diversion activities, resource implications, prosecution efficiency and results. By systematically implementing such a performance model, along with information on costs, managers would be better able to operationally and strategically plan, make adjustments and report. Until such a systematic approach is taken, FPS will continue to have performance monitoring and reporting problems.

1. INTRODUCTION

This report represents the second annual (1998-1999) assessment of the Department of Justice (DOJ) Proceeds of Crime (POC) prosecutions and case diversion and management functions as they relate to the five-year Integrated Proceeds of Crime (IPOC) initiative. As part of the initiative's accountability structure, Treasury Board required that annual evaluations be conducted and that in the year 2000, a comprehensive evaluation be completed. Since there were two separate and distinct aspects to the initiative, investigation and prosecution, it was agreed that the Solicitor General Secretariat would be responsible for evaluating the IPOC units (the investigative role). DOJ, on the other hand, would be responsible for reviewing the prosecution function.

At the request of Legal Operations, the Evaluation Division has completed a review of the Justice component for year three (1998-99) of the initiative. Given that the program was due for renewal and that limited information on DOJ activities and results had been previously available, the review expanded its scope to include, as much as possible, multiple years of program activities and results. This would provide baseline information on prosecution activities and allow for a more comprehensive analysis and reporting of performance.

IPOC is an inter-departmental initiative that responds to the federal government's resolve to deter organized crime activities. The initiative is a five-year, \$180.523 million federal government strategy (1996/97 to 2000/01) that brings the combined efforts of various federal, provincial and municipal resources into ten additional proceeds of crime investigative units across the country. The units, located in Vancouver, Toronto, Montreal, Edmonton, Calgary, Ottawa, London, Halifax, Fredericton, Winnipeg, Regina, Quebec City and St John's, are staffed with a mix of federal, provincial and municipal police, Canada Customs and Revenue Agency officers and forensic accountants, as well as DOJ counsel. Their mandate is to pursue the illegal proceeds of drug, smuggling and other enterprise crimes such as fraud and gambling. It is expected that more intensive and effective law enforcement efforts directed at those involved in organized crime would reduce their ability to mount large scale criminal enterprises, and take away their economic power and influence.

As part of the overall initiative, DOJ was provided with additional resources. These would be used to prosecute IPOC (drug) cases as well as to implement a case diversion and management strategy that would respond to current backlogs of drug-related cases and the future growth in proceeds of crime caseloads.

1.1 Review Objective

The objective of this review was to quantitatively assess departmental results including the efficiency and effectiveness of POC prosecution and case diversion and management resources. A quantitative approach was taken because previous reviews had relied almost exclusively on qualitative assessments of performance.

1.2 Methodology

The review design involved a comparative analysis of initiative performance across numerous¹ years employing multiple lines of evidence. The methodology included a review of existing performance information; the collection and analysis of multiple years of departmental diversion activities; the collection and analysis of multiple years of POC activities and results for one regional office (case study); and interviews with various key informants. Information sources included:

- previous audits, evaluations, reviews and/or key studies;
- program documentation;
- DOJ management information reports on proceeds of crime, anti-smuggling and drug prosecution resources, activities and results available through the departmental time management systems “Caseview”;
- activity and performance reports from the Seized Property Management Division (SPMD) of Public Works and Government Services Canada (PWGSC);
- POC case study information from the Montreal Regional Office;
- DOJ Diversion Checklists and/or regional office diversion activity reports; and
- interviews with various DOJ headquarters, regional managers and Financial administration officers as well as SPMD management.

¹ Depending on the availability of information, the review includes trends from as far back as 1989. Most information covers the previous three to six fiscal years.

1.2.1 Methodological Challenges and Limitations

Multiple lines of evidence, and in particular a case study approach, were needed because of historical performance monitoring and reporting problems within the department. These were the result of inconsistent and/or absent data collection processes and systems as well as a problematic file management structure.

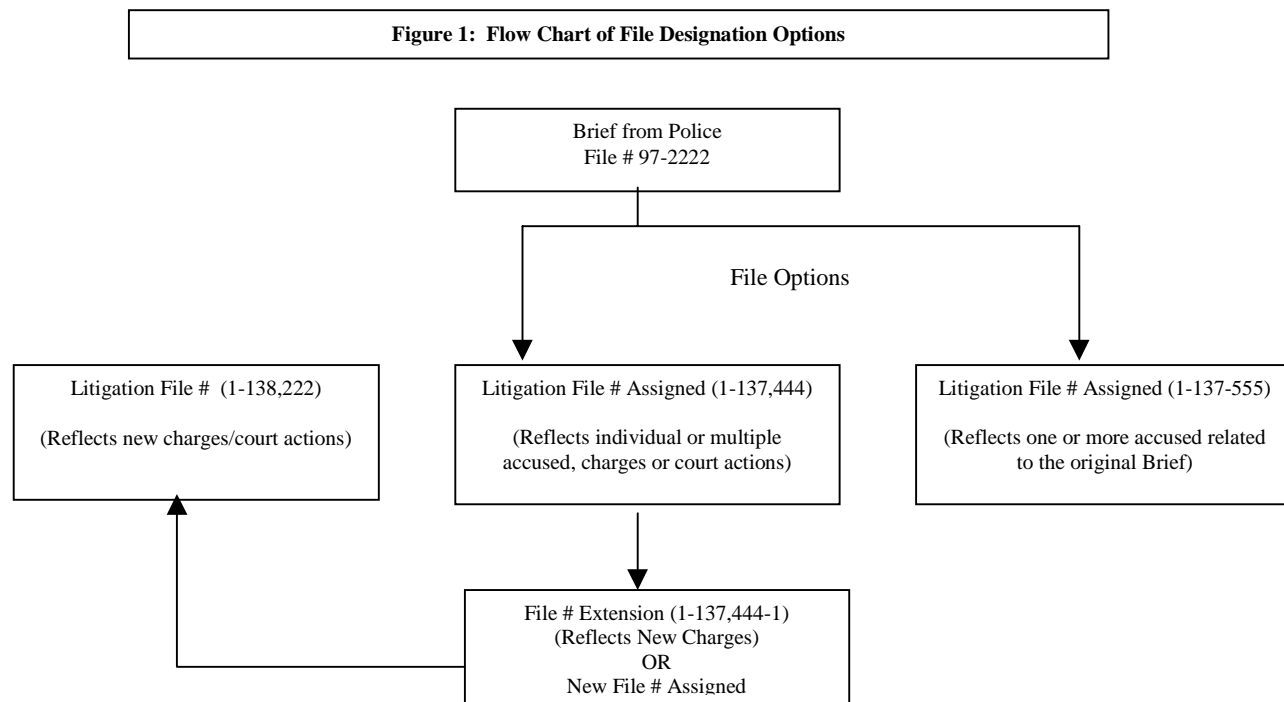
For FPS, systematic information on program-related prosecutions such as proceeds of crime had not generally been tracked. In addition, file management processes had not been uniformly applied, thereby putting into question the reliability and validity of existing litigation volume and workload information. This diverse file management structure developed as a function of:

- the varying types of charges laid;
- the manner in which prosecution cases unfold (e.g., individual or groups of accused, charges and court actions)
- regional differences, as well as,
- prosecutor, defense or accused preferences.

For example, historically case briefs have arrived from the police with their police case file number attached. The briefs would reflect one or more accused and charges. At a minimum, a DOJ file number would be assigned. However, depending on the nature of the work or even defence requests, prosecutors could decide to separate the brief and its associated casework into distinct files. Therefore, a file could represent prosecution work related to:

- an individual with one or more types of charges (e.g., drug, smuggling, POC) and court actions;
- several accused with one or more types of charges and court actions; or
- a mega project associated with a large police investigation that involved multiple accused, charges, court cases and prosecutors.

A file could also have linked extensions that represented additional charges. The flow chart below (Figure 1) provides a simplistic representation of the historical file designation options available. With this type of structure, it became very difficult to plan, monitor and report on prosecution activities and performance at any meaningful level - accused, court case, project, or initiative.



In order to obtain a more valid picture of FPS prosecution activities and performance, a major file review (Complexity Study²) of prosecution cases was conducted in 1998. Baseline information on the nature, volume, complexity and anticipated outcomes of prosecution cases was collected. A systematic sample (1,021) was taken of 10% of all (estimated at 10,210) active prosecution files as of July 1998. The sample was considered accurate and reliable within two to three percent at the national level and less so (10% to 15%) at the regional level. Based on this sample, it was estimated that over 2,000 files involved proceeds of crime related work. These included 1,040 proceeds of crime prosecutions and 960 property-related seizure cases. The study was a milestone for the department in its attempt to document the volume and complexity of workload performed. This study acted as a primary source of baseline information for the review.

As part of its efforts to improve its file management structure and monitoring capabilities, in April 1999, the department instituted 'Caseview', its new file management information system. The system has the capacity to track departmental litigation activities, resource use and results, including initiative based activities and results. It was expected that reports from Caseview would provide multiple years of initiative performance. At the time of this review, both

² Prosecution Case Complexity Survey, Department of Justice, October 1998.

historical departmental and Caseview information did not provide an adequate picture of proceeds of crime prosecution activities and results. Specifically, there were indications that the majority of diversion and proceeds of crime activities were not explicitly documented, and even when they were, duplication of volume and effort occurred where files included both drug and POC charges. Therefore, these reports could not be used as a basis for assessing and reporting on POC or diversion performance. Efforts are currently being made throughout the department to remedy this situation.

Therefore, as an alternative, the Review obtained information on annual file closures, percentage of forfeitures and annual forfeiture amounts from SPMD. These would act as proxy indicators for departmental POC prosecution activities and performance. The advantages included:

- performance could be assessed at the national level; and that
- the performance information reflected all proceeds-related activities, i.e., POC prosecutions and offence-related property cases.

The limitations included:

- the type and nature of POC prosecutions could not be identified;
- limited information was available on prosecution results;
- seized amounts were not available; and
- IPOC unit involvement could not be reliably assessed.

Because the Montreal Regional Office had instituted a simple management information system that specifically tracked POC prosecution activities, a case study approach was also employed as part of the Review. Using management reports as the preliminary basis, Montreal office staff further reviewed the files and provided detailed documentation on prosecution activities and results for input and analysis. In order to identify IPOC participation, a unit staff member noted those files with IPOC involvement. While this approach provided valuable performance information, several constraints have been identified that limit the range of results.

- The POC reports did not generally include offence-related property seizures.
- The case study information did not include the substantive drug (e.g., possession, trafficking) smuggling, or other Criminal Code conspiracy charges).
- Not all IPOC unit involvement may be reflected in the results because identification was based on memory.
- The activities and results represented the work of one regional office only.

Despite these concerns, the case study approach did provide the opportunity to:

- review the Region's unique POC management information system using a performance based approach;
- report specifically on POC prosecution activities, outputs and outcomes; and
- develop a model of performance information that could be used by managers and incorporated into Caseview.

The approach also allowed for the organization and analysis of Montreal POC information at three levels - record³, case⁴ and larger file or project⁵. This would provide a better understanding of the nature, activities and results of prosecution work and help guide decisions on the most appropriate level(s) to be used for planning, monitoring and reporting.

Finally, from interviews with management, it was noted that copies of Federal Prosecution Service Diversion Checklists were sent to Headquarters. The Checklist was developed to assist prosecutors in the selection of appropriate cases for diversion. These forms had information on the approval and outcome of alternative sentence applications. This would allow some measure, at the national level, of diversion activities and performance. While regions were required to provide HQ with a copy of the Checklist once diversion had been approved and completed, there was no systematic management process in place to ensure such was the case. For example, not all offices were able to provide Checklist information. Some provided actual Crown case information, while others furnished summary figures only. In addition, the consistency and completeness of information provided varied across offices. This included information on potential diversion cases that were refused. Despite these weaknesses, the results provided a useful picture of diversion performance.

1.3 Organization of Report

This report comprises the following elements:

³ A record reflects the POC documentation identified in the Montreal management information report. This included the departmental file and court number information, accused, prosecutor, key dates and forfeiture totals. In many cases, the record contained a single file number and court action. In others, it represented multiple files, accused and court actions.

⁴ A case represents the integration of records that had common file and/or court numbers where it appeared the prosecutor would have prepared a case for trial. This integration allowed for an analysis of the time, resources and results associated with specific court casework.

⁵ A "file" or "project" represents the integration of several "cases" that have a common project code name related to a major police investigation.

- background material on the mandate and nature of Federal Prosecution Service work, the IPOC initiative and FPS role in the initiative;
- proceeds of crime findings;
- case diversion and management findings; and
- conclusions and next steps.

2. FPS ROLE

The criminal justice process, in particular the court process, is an increasingly complicated, time consuming and costly system to operate. Therefore, as a policy instrument, it is considered to be the choice of last resort. Generally, the process involves many steps. In way of a simplistic example:

- crimes are reported to/by the police,
- police investigate and screen evidence to determine if charges should be laid, individual(s) are charged,
- prosecutors review the cases to determine if sufficient evidence exists to prosecute,
- Crown disclosure is undertaken by prosecutors and the information provided to the accused or their defence attorney(s),
- early resolution offers are presented/negotiated on an on-going basis,
- various preliminary court dates and proceedings are incurred,
- cases are built, resolved by plea or prosecuted,
- trials occur and judgments are made,
- post judgment appeals may follow,
- and finally, if convictions stand, sentence adjudication follows.

Within this process, FPS plays a vital and expanding role.

2.1 FPS Mandate

FPS is responsible for conducting prosecutions throughout Canada under a wide range of federal statutes. These include the Controlled Drugs and Substances Act, Proceeds of Crime (Money Laundering) Act, Customs Act, Excise Act, the Income Tax Act and other competition, labour, environmental shipping, bankruptcy and wildlife protection laws. In the territories, the FPS is the sole prosecution authority. Through such initiatives as IPOC, fine collection, and international commitments, FPS's role has expanded to include the investigative as well as the adjudication phases of the justice process. With this expanding role and increased focus on organized crime, the efficient and effective use of its resources becomes critical.

FPS has at its disposal 302 in-house counsel and approximately 300 privately contracted lawyers, including those associated with the IPOC funding (Table 1). These individuals are involved in

various activities associated with operational policy development and implementation, management and support and the provision of advice and prosecution services.

Resources	Internal Counsel	Agents
Lawyers (LA's)	316	233 Standing Firms with 763
Paralegals (SI's)	29	authorized Counsel
Secretaries (Scy's)	116	
Total	461	

Source: Human Resources Directorate, Civil Law and Corporate Management Sector, Department of Justice

2.2 Nature of FPS Workload

FPS prosecution workload is driven by external agencies. Police activities (RCMP, Provincial and Municipal) generally determine the amount and type of cases that will be processed. Figures from Statistics Canada for 1997 and 1998 reveal that the majority (75% - 77%) of potential prosecution work comes from drug-related charges (Table 2). These mostly involve drug possession (46%) and trafficking offences (24%).

Most Serious Charge	1997		1998	
	#	%	#	%
Drugs: Total	38,878	75%	40,788	77%
Possession	23,748	46%	25,409	48%
Trafficking	12,346	24%	12,432	23%
Cultivation	2,325	4%	2,516	5%
Importation	459	1%	431	1%
Other Federal Statutes: Total	13,169	25%	12,308	23%
Bankruptcy Act	145	0%	436	1%
Canada Shipping Act	992	2%	969	1%
Customs Act	259	0%	96	0%
Excise Act	653	1%	358	1%
Immigration Act	730	1%	543	1%
Other	10,390	20%	10,399	19%
GRAND TOTAL	52,047	100%	53,096	100%

Source: Statistics Canada – Catalogue no. 85-205-XIE and 85-205XPE, Canadian Crime Statistics, 1997 and 1998.

The department has responded to these pressures by focussing its activities on drug prosecutions. The departmental survey demonstrated that FPS had, at any one time, over 10,000 active case files, the majority (63%) of which was drug prosecutions (Table 3).

Offence Type	%
Drugs	63
Criminal Code	25
Proceeds of Crime	15
Anti-Smuggling	6
Extradition	2
Immigration	2
Mutual Legal Assistance	1
Fisheries	1
Bankruptcy Act	1
Tax	6
Environment	0
Competition	0.1
Other	7.3

Source: Review of the Proceeds of Crime Prosecutions Function, Program Evaluation Division, Policy Sector, DOJ, January 1999.

Along with drug prosecutions, FPS workload involved considerable amounts of Criminal Code and proceeds of crime prosecutions. According to the survey, approximately 25% and 15% of FPS's respective workload comprised these offences. What is important to understand about these prosecutions is that in a majority of instances, the cases are linked. That is, 93% of proceeds of crime and 48% of Criminal Code prosecutions could be linked to specific drug prosecutions or with each other. This is because in order to obtain proceeds of crime convictions and forfeitures, it must first be established that a commercially motivated crime (e.g., trafficking drugs, smuggling) has occurred. Therefore, the same file could include multiple charges (drug, proceeds of crime, and other Federal Act charges) and court actions, making it difficult and cumbersome to track resource time, outputs and outcomes.

The nature of prosecution files and casework can also be quite complicated. In fact, Federal prosecution cases, and in particular POC prosecutions, have become more problematic. This was in part, a result of landmark decisions from the Supreme Court of Canada, in particular, the *Askov*⁶ and *Stinchcombe*⁷ decisions. For POC prosecutions, the effect of these decisions, along

⁶ *R. v. Askov* [1990] 2 S.C.R. 1199. Applying the Charter of Rights, Section 11b, the Court affirmed an individual's right to a speedy trial. In this case, there had been an almost two-year institutional delay. The decision effectively established time frames within which an accused person

with other complicating factors such as linking assets to crimes, having multiple accused and charges, and requiring forensic and accounting reports, has made these cases more difficult and drawn out. A previous review⁸ of the FPS function established that POC cases were more complicated and required more time and effort than typical property seizure related offences (Table 4).

Table 4 Comparison of File Complexity and Processing Time		
Issue	% POC Cases	% Offence Related Property Cases
Complexity		
Low	8%	37%
Moderate	35%	46%
High	26%	12%
Very High	15%	4%
Mega Case	15%	1%
Processing Time (Person Days/Months)		
3 or less days	8%	38%
4 - 10 days	21%	31%
11 - 20 days	17%	8%
1 - 2 months	17%	16%
2 - 6 months	12%	7%
> 6 months	25%	0%

Given the nature, source and complexity of FPS workload, any shift in policing practices and crime trends could have significant resource implications for FPS. In fact, a recent drug profile and projection study conducted within the department⁹ predicted a 6% increase in the number of adults charged with drug offences over the next five years. In particular, increases are expected to occur in Saskatchewan, the Atlantic provinces, Quebec, Alberta, Manitoba, the Northwest Territories and Yukon (Table 5).

must have a trial for an indictable offence. The time frames ranged from 6 to 8 months after committal for trial. Consequently, this case and 58,000 other Ontario criminal cases were either stayed or withdrawn.

⁷ *R. v. Stinchcombe* (1991) 3 S.C.R. The Stinchcombe decision established the constitutional right of an accused to all information in the possession of the state that might be of assistance in the preparation of a defence. This has resulted in the need to document and review large volumes of information generated during the investigation phase of a case.

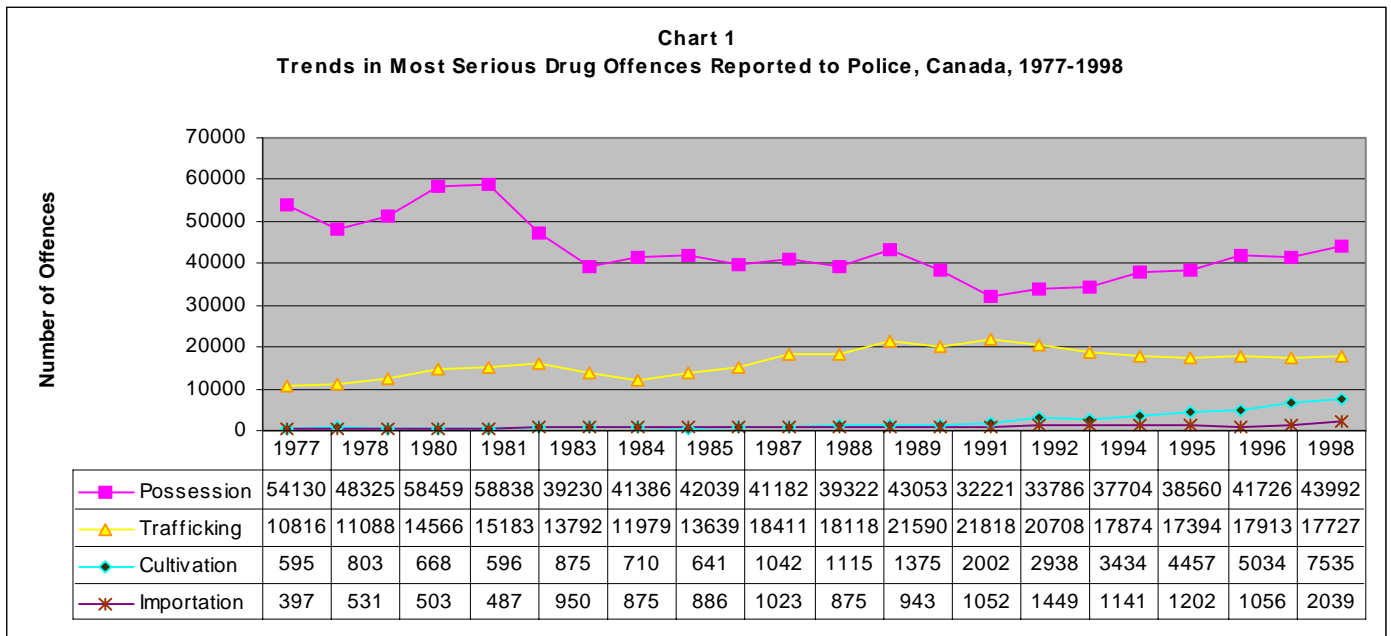
⁸ Review of the Proceeds of Crime Prosecution Function. Program Evaluation Division, Department of Justice. January, 1999.

⁹ Hung, K. and Quann., N. Profile and Projections of Drug Offences in Canada. Research and Statistics Division, Department of Justice, February, 2000.

Province/Region	Percent Increase	# Of Adults Charged 1998	2003
Atlantic	12%	2,378	2,652
Quebec	12%	8,122	9,118
Ontario	2%	14,354	14,583
Manitoba	11%	1,297	1,436
Saskatchewan	21%	1,285	1,561
Alberta	4%	3,504	3,658
British Columbia	4%	7,069	7,373
NWT	39%	150	208
Yukon	79%	39	70
TOTAL	6%	38,198	40,660

Source: Profile and Projection of Drug Offences in Canada, Research and Statistics Division, Department of Justice, February/March, 2000.

Trends appear to point to increases in all types of drug offences and particularly those that would likely lead to POC charges. Information from Statistics Canada shows that while the numbers of reported drug possession and trafficking offences have historically been down, recently, there have been slight increases. More importantly, cultivation and importation charges have been steadily climbing (Chart 1).



Source: Statistics Canada – Catalogue no. 85-002-XIE Vol. 19 no. 1, Juristat, Canadian Centre for Justice Statistics.

If predicted increases in the numbers of charges do occur, departmental resource pressures will continue to rise to meet the demand. This could lead to requests for more resources and/or changes in workload priorities and practices. While FPS prosecutors have discretionary powers at an individual case level, significant changes in Department workload priorities would only be achieved through strategic policy decisions approved by Ministers. This would involve a review and decisions on:

- the role and mandate of FPS;
- the focus of its prosecution work (local, national, international);
- the classes of offences that will or will not be prosecuted (e.g., simple possession of soft drugs); and
- its relationships with provinces and international agencies.

FPS, as part of the Reference Level Review, is involved in such a review, which is expected to be completed by the Fall.

2.3 IPOC Initiative

Over the past ten years, the federal government has been systematically implementing various policy instruments to combat organized crime and money laundering. These included legislative changes (Proceeds of Crime (Money Laundering) Act and Seized Property Management Act), as well as various initiatives (Integrated Anti-Drug Profiteering Pilot Unit, Anti-Smuggling Initiative). These mechanisms focused on curtailing smuggling and profiteering by allowing the seizure and forfeiture of illicit profits and property obtained through illegal activities. It is believed that the removal of the illegally obtained assets of these criminals *should reduce their economic power, influence and ability to mount large-scale criminal enterprises*.

The precursor to IPOC was the Integrated Anti-Drug Profiteering Pilot initiative (IADP), identified and funded initially through the renewed Canada Drug Strategy (1992). Its main objective was to ensure a more effective application of the new Proceeds of Crime legislation by removing the profits from illegal drug activities of major organized crime groups. The project involved operating three multi-jurisdictional investigative units. Each unit brought together RCMP, provincial and municipal police officers, Department of Justice counsel and forensic accountants (Revenue Canada-Customs) to participate in drug profiteering investigations and seizures that would lead to charges and prosecutions. DOJ counsel were available to address any legal issues that may arise at various stages of the investigations and to prepare the applications and undertakings necessary to freeze and seize assets alleged to be proceeds of crime. Based on

annual evaluations, it was determined that this integrated approach to law enforcement improved anti-drug profiteering investigations and prosecutions. Therefore, the project was considered a success, which prompted the recommendation for expansion.

The current IPOC initiative is the enhancement and expansion of the IADP pilot. Over a five-year period (1996-97 to 2000-01), \$180.523M would be allocated among the same partners to expand the number of integrated units from three to thirteen and increase the coverage of organized crime activities. Its primary objective is *to intensify and make more efficient and effective the investigation and prosecution of major organized criminals and crime groups operating in Canada*. In addition to removing criminals' profits from illegal drug activities, IPOC units would now target profiteering from a whole range of enterprise crimes in which organized criminals engage.

2.4 FPS Role in IPOC Initiative

FPS plays a vital role in the initiative. Various Criminal Code sections, Federal Acts (NCA, CDSA, C&E) along with the Proceeds of Crime legislation permit the seizure and eventual forfeiture of monies and goods obtained through crime. It is expected that these forfeitures will both reduce criminals' influence and power and allow governments to redistribute the revenues for public good. Therefore, in order to have the desired effects, prosecutions and convictions must occur.¹⁰

With the improved capacity to investigate profiteering activities as well as seize or restrain proceeds of crime assets, an increase in the volume and/or complexity of Federal proceeds of crime investigations and prosecution cases was anticipated. In response, DOJ would need additional resources to:

- implement a case diversion and management strategy;
- support the expanded number of IPOC units and continue to provide legal advice and address legal issues that might arise during an investigation; and
- address the continuing caseload pressures of proceeds of crime (drug) prosecutions.

Through these resources and activities, it was expected that:

¹⁰ It is important to point out that an emphasis on obtaining convictions is viewed, within the legal community, as being in conflict with the role of the prosecutor. Their role is not to obtain convictions but rather to present credible evidence to the court in an efficient and fair manner. See *Boucher v. The Queen* [1954], 110 C.C.C. 263 at 270 (S.C.C.).

- early charge screening, disclosure, resolution and diversion of low risk cases would reduce the backlog of court cases, court time and costs, ensure timely processing, and allow more serious federal and proceeds of crime cases to be prosecuted;
- the added value of having legal advice and assistance during the investigative stage of proceeds of crime cases would lead to increased seizures/restraints and eventual forfeitures; and
- DOJ would be able to effectively respond to proceeds of crime caseloads.

FPS proceeds of crime prosecution responsibilities were twofold. Within the IPOC units, their primary role was to identify and deal with legal issues that could give rise to problems during the prosecution of charges. This involved providing advice on proceeds of crime issues; preparing or assisting in various wiretap and warrant applications, agreements and Crown briefs, and providing other advice and services.

From a prosecution perspective, DOJ's primary role was to prosecute POC offences with an emphasis on drug-related charges. However, depending on the nature of the file, this could include:

- various possession and/or laundering of proceeds of crime offences¹¹;
- record-keeping violations contrary to the Proceeds of Crime (Money Laundering) Act; or
- the conduct of offence-related property forfeiture hearings under the Criminal Code (CC 490.1 or CC490.2) once a drug conviction had been entered, but where no proceeds charges had been laid.

As noted earlier, it was generally incumbent upon the prosecution to establish that a commercially motivated crime had occurred before POC prosecutions and forfeitures could ensue. Therefore, a major role for the Department was to prosecute these substantive offences.

2.5 Resources

The DOJ submission for IPOC funding was a complicated proposal. It involved integrating various initiative resource requests - IPOC, Anti-Smuggling Initiative (ASI) and the Canada Drug Strategy (CDS). The department estimated it needed sufficient funds to resource 108.3 FTE's to support its participation in the initiative. These resources included prosecutors, paralegals and secretarial support. Specifically, the resources were associated with:

¹¹ Possession of proceeds of crime and/or laundering charges can be found under the Customs and Excise Acts (Articles 163.1 and 126.1 respectively), the Narcotic Control Act (Sections 19.1, 19.2), and the Controlled Drugs and Substances Act (Sections 8(1), 9(1)).

- POC prosecutions (39 FTE's);
- Case management and diversion (25 FTE's);
- IPOC unit counsel (23 FTE's);
- ASI offsets for POC prosecutions (13.3 of a total of 48 ASI FTE's);
- CDS offsets for IPOC unit counsel and policy direction and/or to reduce the department's liability under the IPOC initiative (8 FTE's).

Applying these estimates, the department requested \$9.874 million for 1997-98 and \$9.778 million for each of the fiscal years 1998-99 through 2000-01 for a total of \$39.208 million. Treasury Board approved \$38.880 million over the four-year period thereby reducing the department's annual resource capacity (Table 6). As well, because of funding limits on permanent prosecution resources, all temporary prosecution resources were funded at 80%. This reduced the full-time equivalent complement from 87 to 84.

Table 6
Department of Justice Canada Resource Allocation for IPOC

Resource Activities/Source	1997/98	1998/99	1999/00	2000/01
Prosecution Resources (POC Drug Prosecutions)	\$3.000M	\$3.000M*	\$3.000M*	\$3.000M*
IPOC Counsel	\$2.404M	\$2.402M**	\$2.402M**	\$2.402M**
Case Diversion and Management	\$2.438M	\$2.344M**	\$2.344M**	\$2.344M**
Sub Total	\$7.842M	\$7.746M	\$7.746M	\$7.746M
Canada Drug Strategy (CDS)	\$0.650M	\$0.650M	\$0.650M	\$0.650M
Anti-Smuggling Initiative (ASI)	\$1.300M	\$1.300M	\$1.300M	\$1.300M
TOTAL ***	\$9.792M	\$9.696M	\$9.696M	\$9.696M

* Includes A-base funding limit of \$1.7 million, the remainder of which would be financed through the Operating Reserve and treated as an advance/loan.

** A \$96,000 reduction in requested resources was approved by TB for fiscal years 1998/99, 1999/00 and 2000/01. For this table, the reduction was distributed evenly (\$48,000) between IPOC Counsel and Case Diversion and Management activities.

*** Funding includes salary, O&M and Employee Benefit Plans (EBP).

Due to the complicated nature of funding, regional differences in budget allocation and tracking processes and capacities, resource allocation and utilization monitoring were not done in a uniform manner to allow for appropriate program reporting. For example, directly related proceeds of crime FTE's and funding available from the ASI and CDS initiatives were not separated from their respective initiatives as part of the overall budget allocation (Table 7).

Table 7			
Department of Justice Canada Annual FTE Allocation of IPOC/ASI/CDS Funds			
DOJ Activities for IPOC	1997/98	1998/99	1999/00
Prosecution Resources	39	39	39
IPOC Counsel	23	23	23
Case Diversion and Management	22	22	22
Sub Total	84	84	84
Canada Drug Strategy (CDS)/IPOC	11	11	11
Anti-Smuggling Initiative (ASI)/IPOC	46	41	41
TOTAL	141.1	136.1	136.1
(\$)*	(\$10,825,220)	(\$10,190,311)	(\$10,190,311)

* Resource totals include salary and O&M costs. Employee Benefit Plans (EBP) are not included.

Source: Federal Prosecution Services

In addition, initiative resource cost and utilization results were not systematically available. This has been an on-going problem within FPS that needs to be addressed. It has affected the department's ability to account for program funds and the Review's capacity to accurately report program costs or assess cost effectiveness. More importantly, the lack of cost information could seriously impede management's ability to effectively plan.

3. PROCEEDS OF CRIME FINDINGS

3.1 Nature and Volume of POC Prosecutions

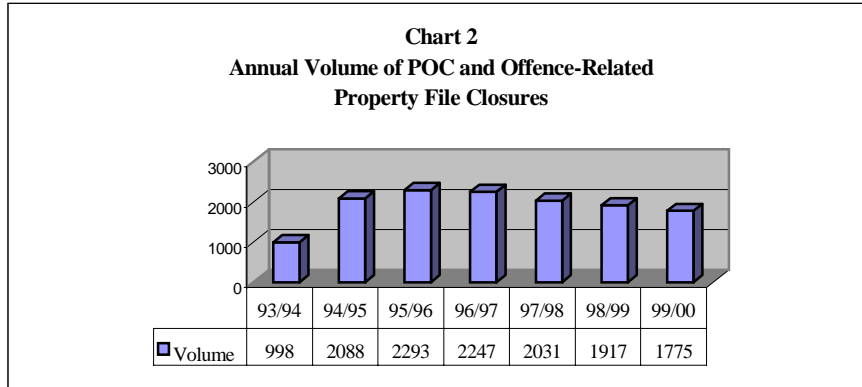
The 1998 Complexity Study provided indications of the overall volume and type of POC work being done within the department at a particular moment in time. The results showed that the numbers of 'active' POC files were estimated to be as many as 2000; 1,040 could be classified as proceeds of crime prosecutions and 960 involved offense related property seizures. The majority (57%) of POC files included substantive drug offences (Table 8), with the remainder involving drug and Criminal Code offences (16%) or other smuggling charges (12%). Individual proceeds of crime prosecutions that did not include information on their substantive charges accounted for 15% of the cases.

Table 8 Categorization of POC and Offence Related Property Seizure Cases in DOJ Inventory (June 1998)			
		Offence -Related	
POC Cases	%	Property Cases	%
Drugs	57%	Drugs	76%
Drugs & Criminal Code	16%	Drugs & Criminal Code	15%
ASI	12%	Drugs & Other	5%
POC only	15%	Non Drugs	4%

The value of assets seized or subject to forfeiture varied by category, with proceeds of crime cases worth more (Table 9).

Table 9 Value of Assets Seized or Subject to Forfeiture		
\$ Value	% POC Cases	% Offence Related Property
\$ 1,000 or less	--	100%
\$ 1,001 - \$10,000	34%	--
\$10,001 - \$100,000	30%	--
\$100,001 - \$1,000,000	22%	--
Greater than \$1M	13%	--

Because the complexity study focused on active cases, information from SPMD on the volume of closed cases, provided more insight into prosecution performance over time. According to these records, the number of proceeds of crime and offence-related property file closures rose throughout the mid 1990's and has more recently decreased (Chart 2).



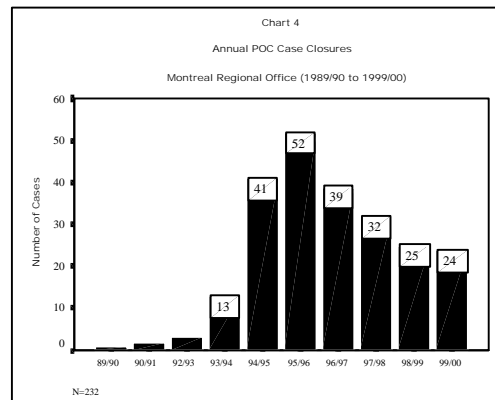
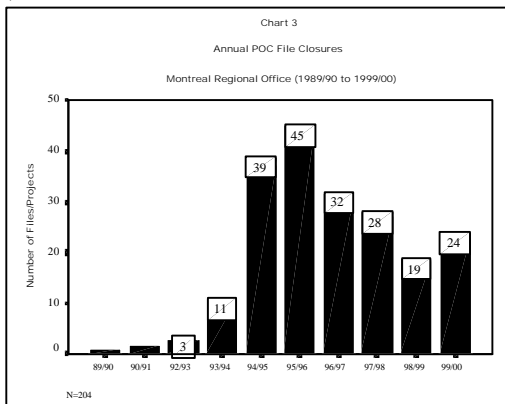
Source: Seized Property Management Directorate, PWGSC.

File closures at regional levels revealed that while fluctuations had taken place, declines generally occurred in New Brunswick, Quebec, Ontario, and Saskatchewan (Table 10).

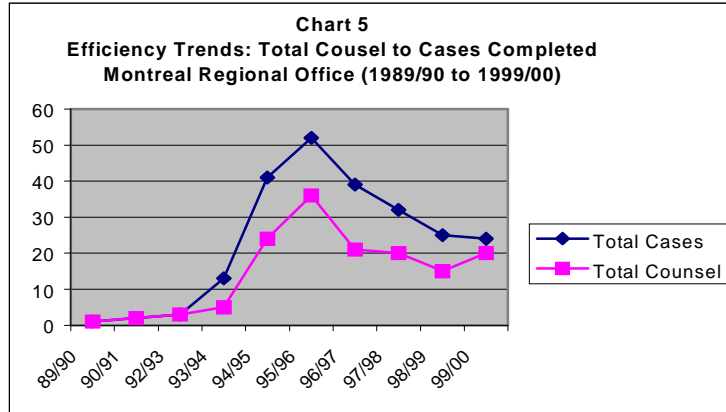
Table 10
Annual Volume of POC and Offence-Related Property File Closures by Location

Location	93/94	94/95	95/96	96/97	97/98	98/99
Nfld	4	28	13	87	28	44
P.E.I.	0	3	2	0	3	3
N.S.	22	79	81	50	76	76
N.B.	3	34	13	61	40	37
P.Q.	34	171	42	179	111	67
Ont	482	954	1301	1015	798	613
Man	92	87	81	90	47	131
Sask	41	25	45	35	93	86
Alta	141	272	258	227	277	291
B.C.	179	424	440	471	538	531
Yukon	0	9	4	19	13	23
NWT	0	2	4	8	7	12
Foreign	0	0	9	5	0	3
TOTAL	998	2088	2293	2247	2031	1917

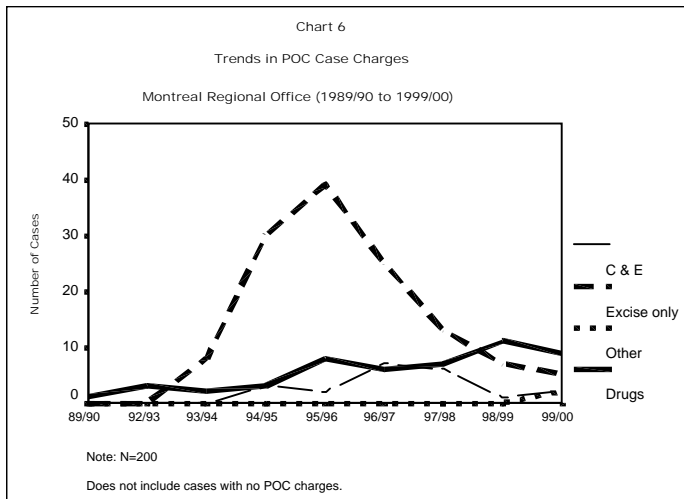
Montreal case study results reflected national trends as well. Since 1994/96, there was a gradual decline in both POC file closures as well as their associated casework (Charts 3 and 4).



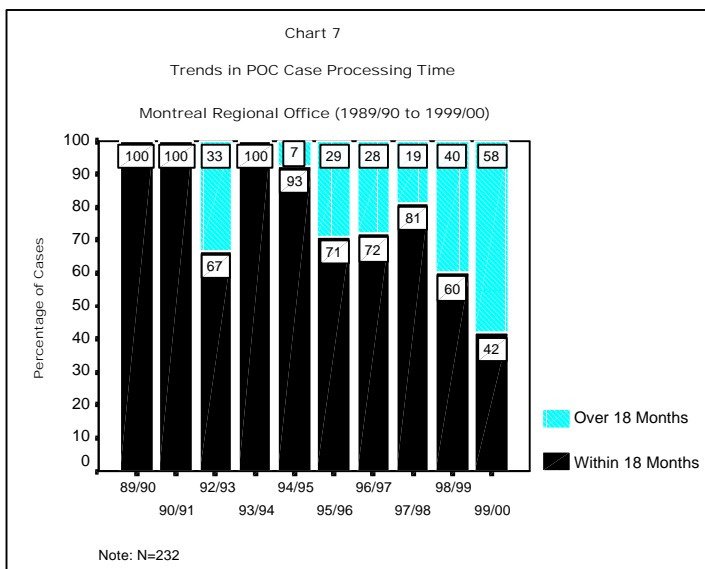
At the same time, there was evidence that resource efficiency had been affected. Trends showed (Chart 5) that the Montreal Office was completing fewer cases with their resources. As of 99/00, Counsel on average completed 1.2 cases per year.



One possible explanation for these declines is associated with Government tax reductions on tobacco. While national information was not available, Montreal regional office case study figures revealed that there had been significant declines in Excise cases (Chart 6), lending support to this hypothesis. While there had been a gradual increase in drug cases over the same time period, overall volume had not recovered, leading to the second possible contributing factor -- case complexity.

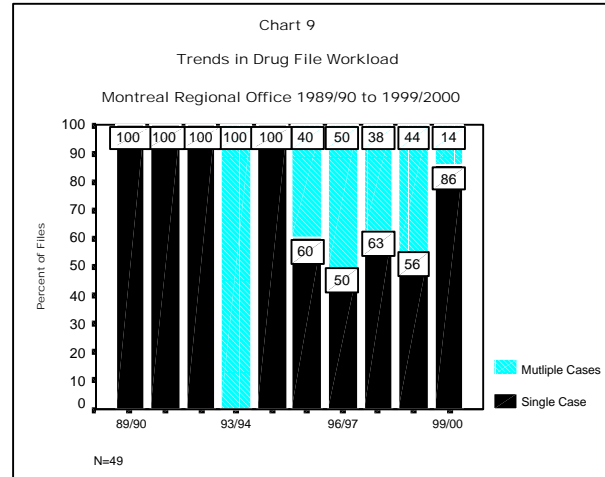
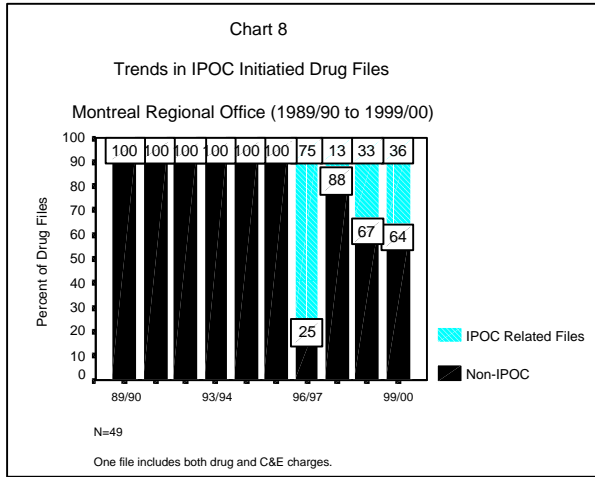


The 1998 Departmental snapshot survey results revealed that POC cases were generally complex and took longer to complete. Again, the Montreal data supports this argument. Over the last nine years, Montreal POC cases have gradually been taking longer to conclude to the point that as of this year 58% of completed cases took more than 18 months to close (Chart 7).



It also appears that the nature of work has changed. From an historical perspective, the majority of Montreal POC files had been associated with Customs and Excise charges (75%). The casework stemming from these files was completed within 18 months (78%), involved one or two accused (88%) and were led by one lawyer (96%). In many ways, drug cases shared similar historical characteristics. They too had mostly been assigned one counsel (83%), involved one or two accused (74%) and were completed within 18 months (65%).

However, with the reduction in Excise charges, the introduction of more IPOC units, and the focus on drug cases, not only have more drug files been appearing from IPOC units (Chart 8), these files have become more challenging. It appears that progressively more drug files have translated into multiple court cases (Chart 9).



As well, the percentage of POC drug files with more than two accused or POC charges has more than doubled since 1996/97 (Table 11).

Category	Percentage of Drug Files (N=49)	
	1989/90 - 1995/96	1996/97 - 1999/00
More than 2 Accused	14%	32%
More than 2 POC Charges	14%	37%

In response, the Montreal Regional Office has used a team approach to larger files. For example, 35% of the larger drug files were led by two or more prosecutors. It appears that C&E files were less burdensome. Only 8% of the multi-case C&E files were led by more than one prosecutor.

The change in the nature of files has several implications. One is related to volume, the second workload and the third resources. With the continued emphasis on larger scale organized crime operations, one would expect that over time, even fewer files would be completed, but that these files would involve larger amounts of work. By knowing the number and types of files, the amount of casework these files produce, the length of time such cases take, and the resources used, we get a clearer picture of workload and the resources required. This information is critical if the department is to adequately plan and resource its future POC activities.

DOJ's file management system Caseview, has the capacity to track files by initiative, identify various casework linkages, case complexity, charges, accused, resources, costs and prosecution results. One challenge will be to ensure information is consistently input in a reliable manner. A second will be the development of performance reports that reflect the various initiative activities, outputs and results given the multi-layered, inter-connected nature of files. This includes files that contain substantive drug, Criminal Code or other customs or excise charges along with POC charges.

3.2 Prosecution Results

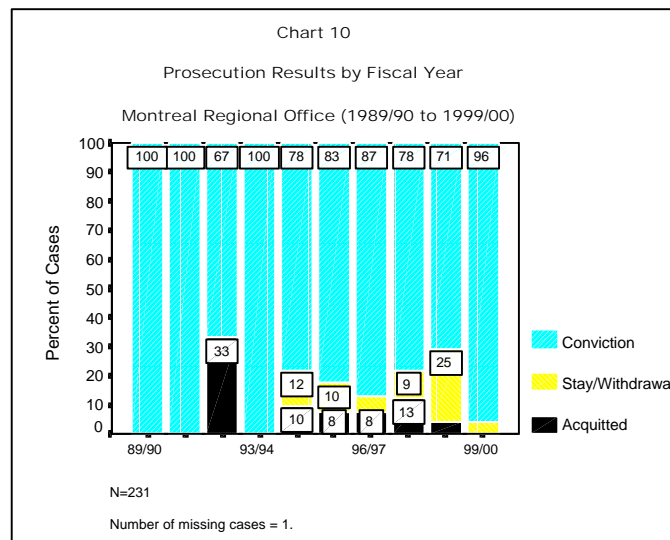
For the Montreal Regional Office, prosecution results were positive. Over the last nine years, there have been 711 POC related charges processed through the Montreal Regional Office. These charges were prosecuted by way of 232 separate court cases. Based on the "most serious"¹² outcome of the prosecution process/decision, the overall percentage of convictions was 69% (Table 12). The majority of these convictions were obtained through guilty pleas, thereby saving both court and legal time and costs.

Table 12				
Results of Prosecution Process/Decision by Case Type				
Montreal Regional Office 1989/90 to 1999/00				
Result (Most Serious)	Case Type			Total (N=231*)
	C&E (n=165) Column %	Drug (n=64) Column %	Other (n=2) Column %	
Charges Dropped/Withdrawn/ Decision not to Prosecute	18%	31%		22%
Stay of Proceedings	3%	2%		3%
Found Not Guilty/Acquitted	9%	3%		7%
Pled Guilty	63%	59%		62%
Found Guilty/Forfeiture	7%	5%	100%	7%
Total	100%	100%	100%	100%

*One Drug case missing information.

¹²Most serious outcome was used because many cases involved multiple prosecution results, i.e., some charges were dropped while for others, the accused either pled or was found guilty. This method of analysis leads to an over-representation of guilt in relation to the percentage of charges laid, but may more accurately reflect the overall outcome of a case from a prosecution perspective, e.g., was there a conviction or not.

As would be expected, there were some fluctuations across years (Chart 10).



Caution should be used in interpreting the percentages of cases where charges were withdrawn or a decision not to proceed was made. Upon reviewing the 50 incidences, it was found that in half these cases there were indications that some or all the seized goods were forfeited either through substantive charges or through some other mechanism (e.g., plea bargaining, abandonment). More research would be required to determine the nature as well as any implications of these results. However, if it were assumed that substantive charge convictions occurred, Montreal’s overall conviction performance would climb to 79%. For benchmark comparison purposes, most adult jurisdictions have a 33% charge stay/withdrawal rate¹³. This puts Montreal's prosecution efforts in perspective.

With respect to sentencing, there were clear differences in the “most serious”¹⁴ sentences imposed depending on the type of charge. Those convicted under the C&E Acts or other Criminal Code infractions generally received fines or suspended sentences (Table 13). On the other hand, 69% of POC drug cases involved a prison sentence demonstrating the seriousness of drug-related activities.

¹³ Adult Criminal Court Survey, Canadian Centre for Justice Statistics, 1998-99.

¹⁴ Because of the multiple natures of case sentences, the "most serious" sentence was documented. Therefore, if an offender received a fine and prison sentence, the case would be coded as 'prison'. Again, this method of analysis leads to an over-representation of more serious sentences.

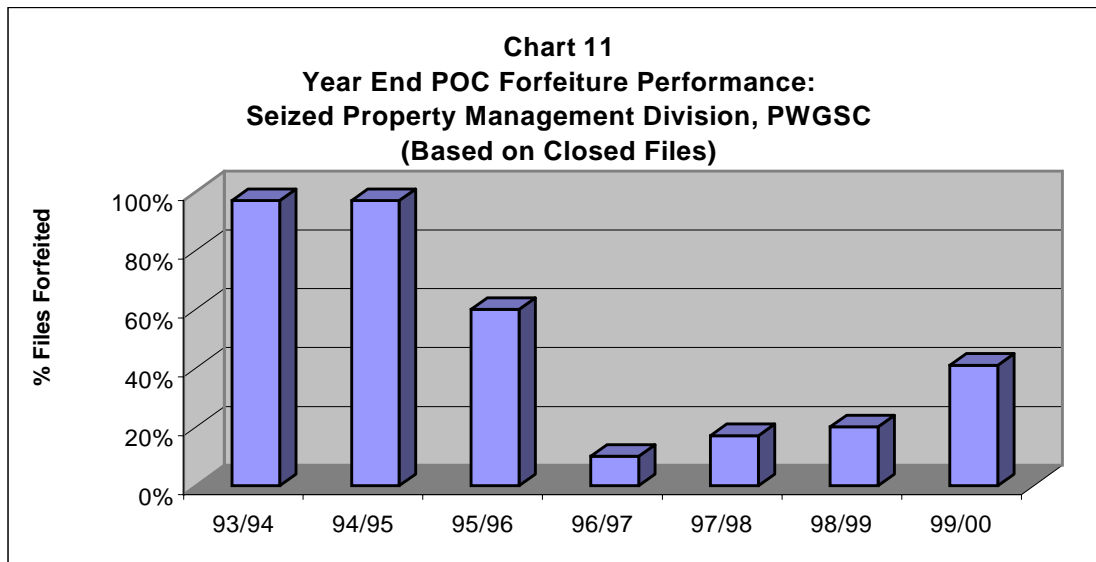
Table 13
Distribution of 'Most Serious' Sentence Received by Case Type (N=170*)
Montreal Regional Office 1989/90 to 1999/00

Prosecution Result	Case Type			Total
	C&E	Drug	Other	
	Column % (n=130)	Column % (n=42)	Column % (n=2)	Column % (n=169)
Stay of Proceedings	4%	2%		4%
Discharge (w/wo conditions)	8%	5%		7%
Suspended Sentence (w/wo probation)	24%	5%		19%
Forfeiture only	1%	0%	100%	2%
Fine (w/wo probation)	58%	19%		47%
Prison (w/wo fines)	6%	69%		21%
Total	100%	100%	100%	100%

*Does not include the 62 files where the accused was acquitted or charges were either not laid or withdrawn and no sentence was given (e.g., discharge).

From a national perspective, prosecution performance was assessed using indicators supplied by SPMD. In talks with SPMD, the percentage of files forfeited was identified as a possible indicator. Since 1993/94, there have been two distinct methods applied in the calculation of the performance indicator because of legislative changes made in regards to the forfeiture of offence-related property. In accordance with the NCA and FDA, goods seized by the police under these Acts (e.g., drug buy money) would only be returned to the accused if a successful application for restoration was advanced by the accused. If he or she failed to file or successfully advance a restoration application, the property in question was automatically delivered to the Minister of Public Works and Government Services to be disposed of, in accordance with the law. Based on this, SPMD used conviction information as the basis for case forfeiture performance.

With the proclamation of the CDSA in May 1996, the seizure of property was now governed by a different regime. All new offence-related property cases required an application for forfeiture by the Crown. Therefore, as with proceeds of crime offences, the onus was now on the Crown to prove the case for forfeiture and make the appropriate application. Henceforth, forfeiture performance was based on whether a forfeiture order was issued independent of conviction. Review findings revealed that with the introduction of the CDSA, forfeiture performance severely declined, but gradually has improved (Chart 11).



Source: Seized Property Management Division, PWGSC

Notes 1. Forfeitures reflect both POC as well as offence-related property cases.

2. Prior to May 1996, forfeiture performance was based on conviction information. Since then, forfeiture performance has been based on the number of cases for which forfeiture orders were issued.

This trend applied across all provinces, with some jurisdictions recovering more rapidly (Table 14).

Province	Percentage of Files Forfeited						
	93/94	94/95	95/96**	96/97	97/98	98/99	99/00
Newfoundland	100	96	92	2	18	41	43
P.E.I.	-	100	50	-	0	67	0
Nova Scotia	100	96	51	10	24	17	37
New Brunswick	100	97	62	11	23	32	64
Quebec	100	100	81	13	41	43	74
Ontario	95	96	67	11	17	19	49
Manitoba	99	98	58	8	28	31	37
Saskatchewan	100	96	80	29	5	22	47
Alberta	95	96	63	5	13	18	35
British Columbia	100	99	36	9	14	13	28
NWT		100	75	21	31	26	29
Yukon		100	50	13	43	67	60

Source: Seized Property Management Division (PWGSC).

* Includes both POC and offence-related property cases.

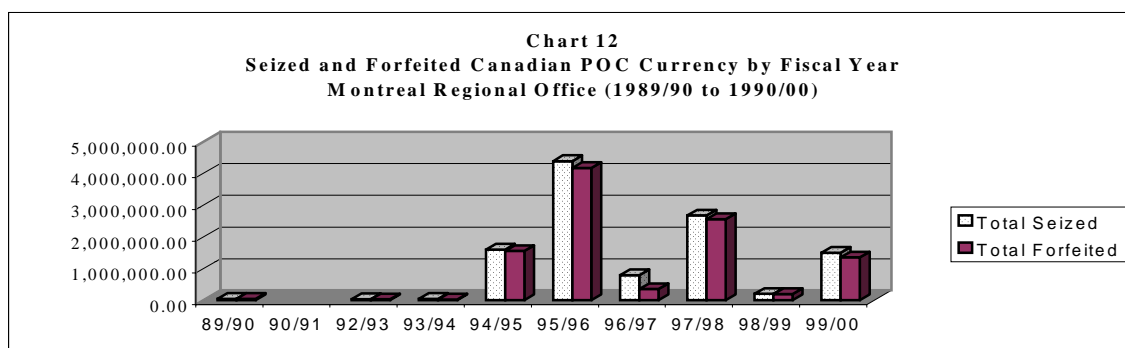
** Prior to the May 1996, forfeiture performance was based on conviction information. After May 1996, forfeiture performance is based on the number of cases for which forfeiture orders were issued.

Again, there are several possible explanations for this decline. No longer were prosecutors able to assume that seized offence-related property would be remitted to the Crown because of accused failure to institute their restoration applications. The new legislation made it a requirement for the Crown to both make an application and prove the case for forfeiture, thereby adding to and complicating prosecution work. Therefore, reduced forfeiture performance could be the result of prosecutors:

- failure to prove the case for offence-related property forfeiture as part of the drug conviction;
- lack of experience in conducting forfeiture hearings;
- lack of awareness of the application requirements;
- or failure to make the appropriate application for forfeiture.

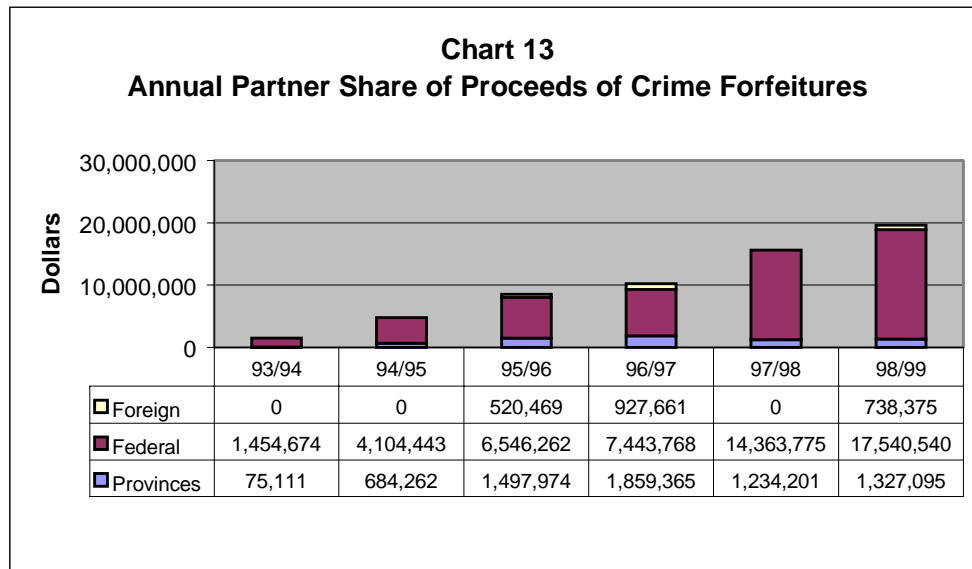
Alternatively, the results may indicate a problem with respect to the transmittal of forfeiture information to SPMD. Historically, under the NCA and FDA, the Courts made orders on applications for restoration and forfeiture orally. The police were the agency responsible for communicating this information to SPMD. If the Courts still follow the practice of oral orders under the new CDSA regime, the police may not be providing this information to SPMD. In discussions with SPMD, initial indications were that forfeiture application procedures were not fully practiced. A thorough examination of the reasons for changes in forfeiture performance would be needed to determine the most appropriate corrective action.

There was at least some indication that actual proceeds of crime prosecutions may not have been seriously affected. The Montreal case study findings showed that forfeiture performance did not drastically change over the same time frame. For example, the amount of Canadian proceeds of crime monies forfeitures to seizures remained consistently high with the exception of the 1996/97 fiscal year (Chart 12).



3.3 Forfeiture Performance

From a national perspective, results were positive. The annual amounts of POC and offence-related property forfeitures, less SPMD operational costs, has steadily increased (Chart 13), culminating in a total of \$60,317,974.93 as of March 31, 1999. This demonstrates the collective efforts of all partners, and in particular DOJ's prosecution and forfeiture application role, in contributing to the achievement of program objectives.



Sources: 1. Yearly Sharing Report. Seized Property Management Directorate, PWGSC.

2. Deloitte & Touche, Statement of Proceeds and Disbursements of SPMD, 31/03/99.

Notes: 1. Annual totals do not include SPMD operating expenses.

2. Annual totals include both proceeds of crime and offence-related property forfeitures.

Regional distributions were not provided in time for this review. However, available documentation showed that from 1993/94 through 1997/98 Quebec's share totaled \$8,827,448.65. Noteworthy is the fact that these totals do not include SPMD operational costs. Therefore, total revenues were even larger - as much as 25% for the 1998/99 fiscal year.

While not entirely comparable¹⁵, case study findings also revealed that Montreal's POC forfeiture total was similar. Over the last 9 years, total forfeitures have reached \$10,279,448.37 Canadian, \$1,480,995.60 U.S., and \$1,531,827.31 in Canadian dollar equivalent foreign funds (Tables 15 through 17). The majority of forfeitures came from the more serious drug-related cases

¹⁵ As is the case with SPMD, Montreal totals do not include all property-related offence forfeitures but rather, reflect POC charge related results. As well, Montreal forfeiture totals do not include the added revenues associated with the sales of properties and goods as well as any interest accrued on bank accounts or GIC's.

demonstrating the focused efforts of all stakeholders. While there were fluctuations in annual amounts, the overall trends were positive. Fluctuations most likely reflect the number and types of cases concluding in any given year. Information on the amount of active files and their caseload, along with their seized values would help clarify this point. This would need to be investigated in the future.

Table 15
Total Canadian Currency* Seized and Forfeited By Fiscal Year
Montreal Regional Office (1989/90 to 1999/00)

Case Type	89/90	92/93	93/94	94/95	95/96	96/97	97/98	98/99	99/00	TOTAL
Drug Seized**	39,755.25	30,171.99		1,393,335.00	3,687,855.53	213,933.00	2,792,629.00	177,736.25	1,414,380.00	9,749,796.02
Drug Forfeited	39,755.25	26,000.00		1,393,335.00	3,661,275.53	193,790.00	2,618,844.00	174,236.25	1,271,380.00	9,378,616.03
C&E Seized**			44,002.00	212,574.70	596,195.27	582,831.83	68,873.54	24,763.20	86,844.10	1,616,084.64
C&E Forfeited			22,240.00	165,709.68	406,610.81	157,282.32	46,418.23	17,807.20	84,764.10	900,832.34
Total Seized	39,755.25	30,171.99	44,002.00	1,605,909.70	4,284,050.80	796,764.83	2,861,502.54	202,499.45	1,501,224.10	11,365,880.66
Total Forfeited***	39,755.25	26,000.00	22,240.00	1,559,044.68	4,067,886.34	351,072.32	2,665,262.23	192,043.45	1,356,144.10	10,279,448.37

Notes:

* Canadian currency includes cash, bank account totals, GIC's, cheques and loans to fellow accused.

** For ten C&E and six drug cases, the value of seized currency was not known. Where forfeited amounts were documented, these were added to their respective seized totals (\$88,067.50 drugs and \$27,502.00 C&E).

*** Includes \$71,694.09 in drug and \$155,304.00 in C&E monies applied to fines or defence fees as directed by the court.

Table 16
Total U.S. Currency Seized and Forfeited By Fiscal Year
Montreal Regional Office (1989/90 to 1999/00)

Case Type	89/90	90/91	94/95	95/96	96/97	97/98	98/99	99/00	TOTAL
Drug Seized	20.00	100,000.00	8,627.00	994,311.60	7,190.00	177,877.00	4,790.00	117,884.00	1,410,699.60
Drug Forfeited	20.00	100,000.00	8,627.00	994,311.60	00	111,060.00	00	00	1,214,018.60
C&E Seized			1,305.00	3,872.00			4,672.00		9,849.00
C&E Forfeited			00	2,647.00			2,000.00		4,647.00
Other Seized								281,347.00	281,347.00
Other Forfeited								262,330.00	262,330.00
Total Seized	20.00	100,000.00	9,932.00	998,183.60	7,190.00	177,877.00	9,462.00	399,231.00	1,701,895.60
Total Forfeited	20.00	100,000.00	8,627.00	996,958.60	00	111,060.00	2,000.00	262,330.00	1,480,995.60

Table 17
Total Other Foreign Currencies* Seized and Forfeited By Fiscal Year
Montreal Regional Office (1989/90 to 1999/00)

Case Type	94/95	95/96	96/97	97/98	98/99	99/00	TOTAL
Drug Seized	2,308.10	1,529,519.21	4,432.28				1,536,259.59
Drug Forfeited	2,308.10	1,529,519.21	0				1,531,827.31
C&E Seized		1.45					1.45
C&E Forfeited		0					0
Total Seized	2,308.10	1,529,520.66	4,432.28				1,536,261.04
Total Forfeited	2,308.10	1,529,519.21	0				1,531,827.31

* Represents Canadian dollar equivalents applying March 31, 2000 exchange rates.

In addition to forfeitures, a total of \$552,582.00 in fines had been imposed. As would be expected, the majority of fines (84%) were the result of C&E convictions.

In terms of seizure to forfeiture performance, again the results were mostly strong, particularly for drug related seizures. (Table 18). While improvements could be made in C&E prosecutions, it is important to point out that vehicle forfeitures do not generally fall within the purview of POC prosecutions. Rather, these are civil matters. In addition, the percentage of jewelry items forfeited represented only one case.

Table 18
Percentage of Seized* Monies/Goods Forfeited by Category and Case Type**
Montreal Regional Office 1989/90 to 1999/00

Monies/Goods Category	Case Type			Total % Forfeited
	C&E % Forfeited	Drug % Forfeited	Other % Forfeited	
Canadian Currency*** (including \$ applied to fines/defence fees****)	56%	96%	--	90%
U.S. currency	51%	86%	93%	87%
Foreign Currency	0%	99%	--	99%
Number of Boats	0%	97%	--	91%
Number of Planes	--	100%	--	100%
Number of Jewellery Items	--	43%	--	43%
Number of Vehicles	16%	66%	--	30%
Number of Properties	86%	92%	--	91%
Number of Other Goods	83%	91%	--	91%

Notes:

* For ten C&E and six drug cases, the value of seized currency was not known. Because forfeited amounts were documented, these were added to their respective seized totals.

** The number of valid cases for each category varies.

*** Canadian currency includes cash, bank account totals, GIC's, cheques and loans to fellow accused.

**** In several cases, seized monies were applied to fines or defence fees as directed by the Court.

3.4 Added Value of Integrated Proceeds of Crime Units (IPOC)

The added value of IPOC units was quite evident for the Montreal Regional Office. While IPOC units initiated only 9% of the total completed POC prosecution files, 44% of all Canadian monies, 81% of U.S funds and almost 100% of other foreign assets forfeited were associated with these files and their casework. Since 1994/95, IPOC unit involvement has been linked to the forfeiture of over \$4 million Canadian, \$1 million U.S. and \$1.5 million in other foreign funds (Table 19). Given the large amounts of forfeitures emanating from so few files, this provides evidence that IPOC units have focused their activities on larger criminal operations.

Table 19			
Total Forfeitures for IPOC and Non-IPOC Initiated Work			
Montreal Regional Office (1994/95 to 1999/00)			
Currency	Forfeited Amount		
	IPOC Initiated	Non-IPOC	Total
Canadian Currency	4,482,642.35	5,708,810.77	10,191,453.12
U.S. Currency	1,115,998.60	264,977.00	1,380,975.60
Other Foreign Currency*	1,531,825.86	1.45	1,531,827.31

* Represents Canadian dollar equivalents applying March 31, 2000 exchange rates.

3.5 Effectiveness

The long-term objective of the IPOC initiative is to reduce the ability of individuals or groups involved in organized crime to mount large scale criminal enterprises by taking away their economic power and influence. Information on the extent to which those convicted of POC charges have continued involvement in criminal activities would be needed to determine program effectiveness. Reports on program recidivism were not available for review as part of this assessment.

3.6 Summary Findings

In summary, the review analysis has revealed several key findings.

- Systematic information on POC activities, results and costs was not available.
- There was evidence to suggest that the nature of POC prosecutions has changed, thereby affecting not only work volume and efficiency but also the way in which work has been resourced.

- There were mixed results in terms of prosecution performance. While there were indications that specific POC prosecutions resulted in high conviction and forfeiture percentages, evidence also suggested that the introduction of the CDSA may have affected property-related offence results. More research is required in this area.
- National forfeiture trends were generally positive indicating that DOJ's prosecution role has contributed to overall program objectives.
- Case study results revealed that IPOC involvement had increased and added value to program results, specifically for drug-related POC offences.

4. CASE MANAGEMENT AND DIVERSION FINDINGS

4.1 Management of Criminal Litigation Policy

The Department's draft Management of Criminal Litigation policy, also known as the Litigation Strategy, was initiated in October 1997. The policy responded in part to the Ontario Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions¹⁶. This Committee was formed to address the consequences of the *Askov*¹⁷ decision. The report published 80 recommendations for the efficient screening, processing and early resolution of charges in Ontario.

More importantly, the policy allowed offenders with less serious offences to be considered for alternative sentences in lieu of further prosecution. Through such screening, less serious or low risk cases that need not go to trial could be settled at the earliest point in time, thereby reducing court backlogs and allowing greater resources to be devoted to significant¹⁸ cases.

A previous review of the funded activity, conducted by the Evaluation Division (1998), found that no systematic performance information was available on charge screening practices. The results, based on various focus group sessions, indicated that:

- it was widely viewed that the policy was in draft form and did not have a definite implementation date;
- the policy was difficult to implement due to a lack of cooperation among all the players, i.e., investigative agencies, judiciary, defence, and provinces;
- save for Ontario, diversion had not been practiced within many jurisdictions. This was mainly attributed to the lack of adequate provincial or federal programs to implement sentence alternatives.

Based on interviews and documentation, current review findings have established that:

- The Management of Criminal Litigation policy has more recently been finalized and will be included in the revised Prosecutors Deskbook.

¹⁶ The Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions. The Honourable G.Arthur, O.C., O.Ont., Q.C., LL.D. 1993, Ontario Queen's Printer.

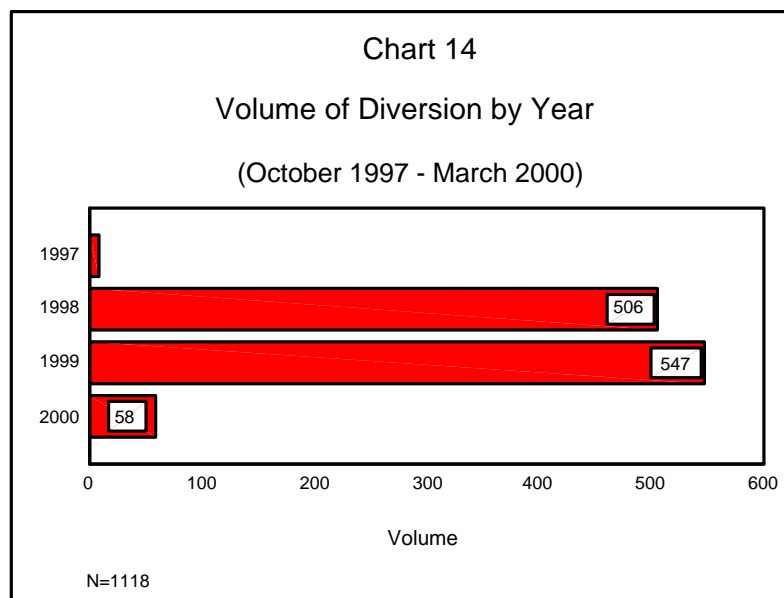
¹⁷ *R. v. Askov* October 20, 1990 File No.: 20560

¹⁸ Within the current context, less serious offences would be those that would be prosecuted summarily such as possession of marihuana. Cases that are more serious would involve indictable offenses such as importing or exporting controlled drugs.

- The availability of diversion programs for federal charged offenders continued to be an issue. For example, in Halifax, attempts were being made to link up with provincial programs while in Alberta, the onus for finding an alternative measures program lay with the defendant or their counsel.
- There was no systematic performance information on the amount, type and results of charge screening being completed across the Department. As well, the total amount and type of diversion activity conducted by or for the Department was not clear. This included alternative sentencing conducted for the Department through Provincial programs or by DOJ agents. However, information from Diversion Checklists and other performance summaries was available for input and analysis.

4.2 Nature and Volume of Diversion Activity

The analysis revealed that considerable numbers of diversion cases had been approved and completed. Based on documentation sent to HQ as of March 2000, 1151 federal cases had been assessed for diversion. Of these, 32 cases were refused, one was referred to provincial court for further processing and the remaining 1118 were approved and completed their alternative sentence (Chart 14).



While the majority of diversion activities continued to occur in Ontario, and in particular the Toronto area (76%), alternative sentencing practices had expanded across the country (Table 20). In Quebec, the Province conducts both federal and provincial diversion activities.

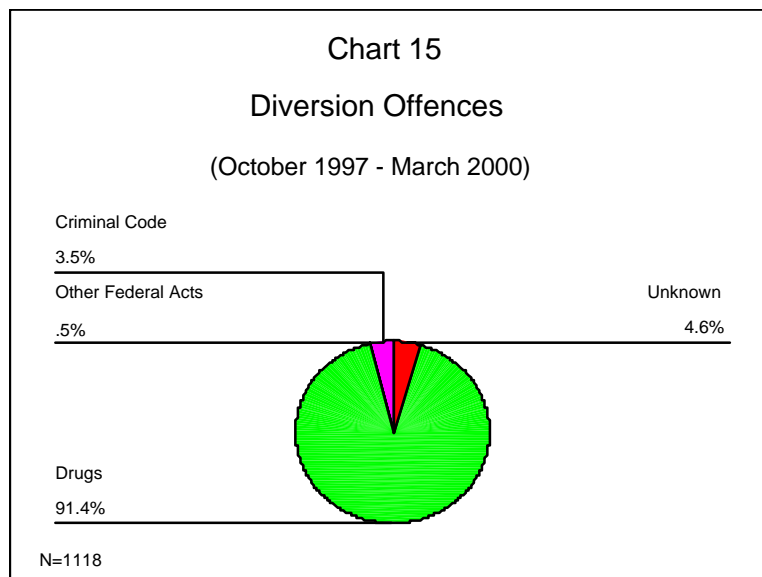
Table 20					
Approved Diversion Activity by Region and Year					
(October 1997 - March 2000)					
Region	Annual Percentages				Total
	1997	1998	1999	2000	1997-2000
	(n=7)	(n=506)	(n=547)	(n=58)	(N=1118)
Alberta		0.4%	2.0%	17.2%	2.1%
BC*		6.5%	15.9%	32.8%	12.4%
NS		3.0%	4.4%	13.8%	4.2%
NWT	42.9%	1.8%	0.7%		1.4%
Nunavut			0.7%		0.4%
Yukon		4.2%			1.9%
Ontario	57.1%	84.2%	76.2%	36.2%	77.6%

* Reflects diversion work performed by departmental Crown agents.

For those 32 cases that were refused alternative sentencing, the reasons given were associated with seriousness of the offence or risk to the community. These included:

- the nature of the offence (more serious drug offences);
- the type or amount of drugs in their possession;
- circumstances of the offence (driving a vehicle while under the influence);
- indication of a prior criminal record; or
- outstanding charges.

Therefore, program participants were considered low risk and good candidates for alternative sentencing. That is, they generally committed less serious, non-violent offences, had no prior criminal record, no indication of outstanding charges, and were not considered to be a danger to the community. This was substantiated by the fact that the vast majority of offences (91.4%) involved possession of various controlled drugs such as marijuana or hashish (Chart 15).



These drug offences did not include sufficient aggravating factors that would exclude the offender from the program. As well, there were no indications that:

- a weapon was involved;
- violence occurred;
- the community was endangered, or
- that the acquisition of proceeds of crime was a motivating factor.

Criminal Code violations mostly occurred in the northern territories where the Department is responsible for the provision of all federal and Criminal Code prosecutions. These violations generally included less serious offences such as theft, taking a motor vehicle without consent, possession of stolen property, break and enter, mischief and trespassing. Five higher risk cases, individuals charged with assault or carrying, using or threatening to use a weapon, were also considered eligible for the program. Discretion was used in these cases based on the circumstances of the offence, relationship to the victim, lack of danger to the community or other exceptional circumstances.

4.3 Diversion Results

There were clear indications that alternative sentences were successfully completed. At a minimum, the results showed that 71% of participants fully completed their alternative sentence conditions while 1.6% did not. Given that almost 27% of files did not have specific

documentation on successful completion, further analysis revealed that a majority of these individuals' charges were subsequently stayed, withdrawn or dismissed. This implies successful program completion rates could even be stronger if it is assumed that prosecutors would not stay/withdraw charges if there was no indication of successful program completion. According to the Toronto (City Hall) office, where a large percentage (87%) of the files with missing outcome information occurred, this was the case. Adjusting specifically for this office, the percentage of fully completed alternative sentences increased to over 93% (Table 21). Documentation that is more systematic would paint a truer picture of diversion results.

Table 21 Diversion Results (October 1997 – March 2000)		
Results Categories	Documented Outcome (N=1118)	Adjusted Outcome* (N=1118)
Full Completion of Alternative Sentence	71.1%	93.6%
Partial Completion of Alternative Sentence	0.6%	0.6%
Not Completed	1.6%	1.6%
Unknown	26.7%	4.2%

*Adjustment based on information from the Toronto (City Hall) District office.

Information on final disposition showed that the majority (93.1%) of diversion cases were stayed or withdrawn (Table 22).

Table 22 Diversion Disposition (October 1997 – March 2000)	
Disposition Categories	Percent (N=1118)
Stayed	48.3%
Withdrawn	44.8%
Adjourned	0.1%
No charges laid*	2.7%
Prosecuted/Reinstated proceedings	0.6%
Unknown Disposition	3.5%

*In B.C., it appears that Crown Agents are involved in pre-charge diversion activities.

In fact, charges were generally not reinstated even if the accused failed to fully complete their alternative sentence (Table 23). This is in line with diversion policy direction.

Table 23 Disposition by Documented Diversion Results (October 1997 – March 2000)		
Disposition	Diversion	Diversion
	Partially Completed (n=7) %	Not Completed (n=18) %
Stayed	28.6%	27.8%
Withdrawn	0.0%	11.1%
Adjourned	0.0%	5.6%
No charges laid	57.1%	11.1%
Prosecuted/Reinstated proceedings	0.0%	38.9%
Unknown Disposition	14.3%	5.6%

Reasons for unsuccessful completion included the failure to fulfill all alternative sentencing conditions and/or new charges had been laid.

4.4 Added Value of Diversion Activities

The use of diversion has several added benefits. From an offender' perspective, he or she has avoided criminal prosecution, possible conviction and a documented criminal record.

From an economic perspective, the diversion of less serious offenders from prosecution can lead to reductions in prosecution, court and police time and costs. This results from the elimination of pretrial, trial / settlement stages, police officer testimony time, court appearances, possible appeals, fine recovery, and other administrative time associated with relatively uncomplicated and low risk cases. At present, reliable documentation on these benefits was not available. However, at a minimum, 1,111 cases that would have been prosecuted had been diverted allowing greater attention to be paid to more serious files.

The current review also suggests that the diversion process was timely (Table 24). Based on cases with sufficient information, the average process from application to final disposition takes 76 days. In fact, almost 90% of these cases were completed within 4 months.

Table 24 Diversion Processing Completion Time (October 1997 – March 2000)	
Time Frame	Percentage of Cases*
Within 1 month	8.5%
Within 2 months	22.3%
Within 3 months	43.1%
Within 4 months	15.0%
Within 5-6 months	8.7%
6 – 8 months	2.4%
Over 8 months	0%

*Based on 413 cases with sufficient information.

These processing times generally fell well within the “reasonable administrative delay guidelines” of 6 to 8 months for trial dates put forth by Provincial Courts in response to the Askov decision.

Finally, not only had most offenders fulfilled their alternative sentences, society has reaped both economic and social benefits from these diversions. Most (84.7%) alternative sentences included community service orders. Cumulatively this represented 25,234 hours of service to the community of which 16,662 to as many as 24,292 hours were successfully completed (Table 25). Applying provincial minimum wage standards, this translates into \$114,026.50 to as much as \$166,299.50 worth of wages¹⁹. In addition, between \$5,715 and \$6,390 in charitable donations and \$300 in fines were collected.

Table 25			
Documented Diversion Sentence Performance			
(1997 – March 2000)			
Diversion Sentence	Performance		
	Hours	Hours	% Completed
Community Service Order (N=947)	Sentenced 25,234	Completed 16,590 - 24,292*	66% - 96%*
Fine (N=3)	\$ Sentenced \$300	\$ Paid \$300	% Paid 100%
Charitable Donation (N=60)	\$ Sentenced \$ 7,390	\$ Paid \$5,715 - \$6,390*	% Paid 77% - 87%*

* Adjusting for Toronto (City Hall) Regional office information.

4.5 Effectiveness

The rationale for Diversion funds was to help reduce the backlog of proceeds of crime and other federal cases. This would also lead to reductions in overall court and prosecution costs. The results showed that considerable numbers of cases have been diverted from the courts early, thereby increasing the opportunity for more proceeds of crime and other cases to be pursued. However, the extent program success has led to reductions in prosecution and court costs has yet to be determined. Information on such costs would assist.

¹⁹ Applying Provincial minimum wage standards for the appropriate year: N.S: \$5.50 to \$5.60; Ontario: \$6.85; Alberta: \$5.00 to \$5.90; NWT: \$6.50; Nunavut: \$7.00; B.C.: \$7.15; Yukon: \$7.06.

Another measure of long-term program effectiveness is recidivism. The extent to which participants do not re-offend provides assurance that program activities have not been in vain. There was no information available on participants' post program behaviour.

4.6 Summary Findings

In summary, the Review has established some key case management and diversion findings.

- The Management of Criminal Litigation policy has been finalized.
- The availability of diversion programs continued to be an issue.
- Systematic performance information was lacking.
- Based on the review and analysis of available Diversion Checklist forms and other performance reports, it appeared that diversion results were generally positive. That is, diversion volume was increasing, alternative sentences were successfully completed, the process was completed in a timely manner, and added economic and social benefits had been realized.

5. CONCLUSIONS AND NEXT STEPS

The Review has attempted to assess quantitatively departmental results, including the efficiency and effectiveness of POC and case diversion and management resources as part of the IPOC initiative. Given departmental performance monitoring and reporting weaknesses, multiple sources of information were used to provide a comparative analysis of FPS results across numerous years. While the lack of reliable and consistent national program information has limited the generalizability of results, these results have provided a useful picture and assessment of national as well as Montreal Regional performance.

There was evidence to suggest that the nature of POC prosecutions has changed, thereby affecting not only work volume and efficiency but also the way in which work has been resourced. While there were mixed results in terms of prosecution performance, forfeiture trends were generally positive indicating that DOJ's prosecution role has contributed to overall program objectives. Case study results revealed that IPOC involvement increased and added value to program results, specifically for drug related POC offences.

In addition, the review established that the Management of Criminal Litigation Policy has been finalized and that overall diversion activity had increased with mostly positive results. However, the availability of diversion programs was still an issue. As well, performance and information monitoring gaps were noted. These included:

- information on resource utilization and costs;
- sufficient and reliable reports on all departmental POC, diversion and case management activities and results;
- forfeiture performance issues associated with the introduction of the CDSA;
- impacts of POC convictions and forfeitures on future criminal behaviour; and
- diversion impacts on court backlogs, court costs and recidivism.

It is important to point out that tracking recidivism on an on-going basis is an expensive and arduous process. An alternative measurement strategy would be to plan for and conduct periodic studies that document long-term program impacts.

The review also established a model for tracking and reporting on POC as well as diversion performance. This included information on the changing nature and volume of POC and diversion activities, resource implications, prosecution efficiency and results.

By systematically implementing the performance model applied in this review, along with information on costs, managers would be better able to operationally and strategically plan, make adjustments and report. Operationally, managers could use this information to plan for work volumes and needed resources, investigate inefficiencies, set targets and report on performance.

Strategically, the model allows management to assess various programming options in light of the FPS Review. Depending on the results of the Review, prosecution priorities could shift to national and international level work, with a continued emphasis on organized crime. This could mean that portions of FPS workload (for example, drug or C&E prosecutions) would need to be managed in a different way to allow more focussed attention on priority work. Diversion results revealed that the majority of accused successfully completed their alternative sentences. Perhaps all low risk drug or C&E offences should be processed through alternative means such as diversion programming. Perhaps the processing and prosecution of less serious offences should be implemented through some other legal mechanism (ticketing). By having performance information on the results and costs of various options, management can more easily decide on the best course of action.

Presently, there is no systematic process in place that ensures that all of the above performance information is available. To implement such a process would involve making decisions about:

- the key performance indicators that will be tracked;
- the types and frequency of performance reports to be produced;
- roles and responsibilities (both regional and Headquarters) for input, analysis and reporting;
- the system(s) to be used for tracking, analysis and reporting (e.g., Caseview alone or in combination with other management information systems); and
- any resource implications.

Until such decisions are made and implementation is assured, FPS will continue to have performance monitoring and reporting problems in relation to its litigation activities.