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Evaluation of the Criminal Investigations Program: Section 2

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Evaluation findings: Relevance

Alignment of program priorities with those of the Government of Canada, the CBSA, and other government departments

Finding 1: The program's mandate is generally aligned with the priorities of the Government of Canada, the CBSA and other government departments (OGDs). Emerging investigation areas, such as trade-based money laundering (TBML), will require continued coordination and collaboration with partners.

The Program supports the Government of Canada's priority to "protect the health and security of Canada through the safe and responsible management of ports of entry into Canada ⁸." More specifically, since 2021, the Program has aimed to focus investigation resources on cases that align with the CBSA enforcement priorities, which are based on the Minister of Public Safety mandate letter, the CBSA mandate, Treasury Board of

Canada Secretariat (TBS) commitments, and intelligence developed on border threats. These priorities apply to all CBSA regions and branches, and the Program adopted them in 2021 to guide case selection.

Prior to that, from 2017 to 2020, the Program selected cases based on the CBSA Integrated Enforcement and Intelligence Priorities, a tier-based set of priorities which were also aligned with Government of Canada priorities, TBS commitments, and federal intelligence priorities, including emerging areas of threat ⁹.

When selecting cases to investigate, the Program also considers the legislative authorities of other government departments, in particular the Royal Canadian Mounted Police (RCMP), with whom the CBSA has a shared responsibility for border-related enforcement. The CBSA is responsible for investigating most border-related offences, but the RCMP is responsible for investigating crimes committed between ports of entry, as well as those involving national security, major organized crime, customs violations, human trafficking, and drug-smuggling offences under the *Controlled Drugs and Substances Act* ¹⁰. The Investigations and Referrals Annex ¹¹ of the Memorandum of Understanding (MoU) between the CBSA and the RCMP outlines the division of responsibilities between the two organizations regarding criminal investigations.

Despite the overlapping jurisdictions in investigating border-related offences, evidence from interviews indicate that the CBSA and the RCMP are able to use existing mechanisms to collaborate on criminal investigations and de-conflict when it is unclear under whose area of responsibility the offence falls. For example, evidence from interviews indicated that TBML is an emerging priority at the CBSA that often requires collaboration with the RCMP. The CBSA is responsible for the trade fraud aspect of TBML, such as the intentional misrepresentation of goods on commercial customs declarations. Meanwhile, the RCMP is responsible for investigating the money laundering that occurs through trade fraud techniques that enable TBML to happen. ¹² As it is an emerging enforcement priority at the CBSA, the Program has limited training and expertise to guide staff on conducting this type of criminal investigation. While the division of responsibilities regarding TBML is outlined in the MoU between the CBSA and the RCMP ¹³, interviewees indicate the need to clarify the roles and responsibilities between the two organizations when investigating TBML cases.

Trade-based money laundering

This is an enforcement priority under the responsibility of the CBSA and the RCMP, requiring continued collaboration between the two organizations to fill CBSA's knowledge gaps and de-conflict between agencies when needed.

Overall, evidence suggested that the continued collaboration with the RCMP can support the Program in achieving expected results in this and other emerging fields of investigation, and de-conflict when necessary.

Evaluation findings: Performance and achievement of results

Alignment of cases selected for investigation with CBSA enforcement priorities

According to the immediate outcome in the Program logic model, criminal investigations are expected to be initiated against persons or entities suspected of committing offences against border-related legislation, in alignment with CBSA priorities.

Since the number of leads received every year is high (over 2000) and the number of investigators is limited (an average of 207 per year), the Program provides guidance to managers to select cases that represent the most efficient use of investigative resources in alignment with:

- the CBSA Prosecution Policy (such as by selecting cases that are in the public interest to investigate)
- the CBSA enforcement priorities¹⁴

Per the criminal investigations doctrine, managers are also required to focus the "vast majority of their activities" on major and complex cases (that is, category 1 and 2 investigations)¹⁵ which deal with multiple fraud/crime schemes, multiple entities, or that go beyond a single incident), rather than port prosecution cases, which are single or isolated incidents or cases that arise at a port of entry. Regions are provided a certain

degree of flexibility to select cases based on regional considerations, as well as other considerations such as the gravity of the offence, level of risk to individuals or to national security, likelihood of conviction, and availability of evidence.

Table 1: Number of leads received annually and number of investigators, by region (average from 2016 to 2017 through 2020 to 2021)

Region	Leads received per year (highest to lowest)	Number of investigators*
Prairie	526	24
Greater Toronto Area	428	48
Pacific	353	39
Southern Ontario	283	23
Quebec	267	46
Atlantic	159	14
Northern Ontario	146	12
Total	2,162	207

Source: Leads data from the Criminal Investigations Information Management System (CIIMS) provided by the Program. Number of investigators is from the Corporate Administrative System (CAS) minus the count of Digital forensic investigators (DFIs) provided by the program.

***Note:** In this report, "investigators" refers to investigators who are responsible for investigating cases, also referred to by the Program as "file investigators". In the CAS, the job title "Investigator" includes both file investigators and digital forensic investigators (DFI).

Table 1 shows the number of leads received each year by the Program by region. Given the high number of leads received relative to the number of investigators available to conduct investigations, the Program is only able to open a limited number of cases at a given time. This emphasizes the need to ensure case selection is based on established Program guidelines.

Finding 2: During the period examined, cases selected for investigation were not always aligned to the CBSA enforcement priorities. Regions applied Program guidance to case selection differently due to their differing operational, prosecutorial, judicial and jurisprudential realities, resulting in varying levels of alignment across regions for different types and categories of investigations.

An analysis of cases selected for investigation over the last 5 years showed that certain types and categories of cases selected for investigation were more aligned to CBSA enforcement priorities than others. For instance, cases related to the *Immigration and Refugee Protection Act* (IRPA) contraventions were better aligned to priorities, in comparison to cases related to the *Customs Act* contraventions (refer to table 3). Major and complex cases were also better aligned to priorities in comparison to port prosecution cases.

Examples of:

- a *Customs Act* contravention:
 - Firearms smuggling (often charged as Non-report/smuggling)
 - Trade fraud (often charged as Misrepresentation)
- of an IRPA contravention:
 - Immigration consultant fraud (often charged as Counselling Misrepresentation)
 - Human Smuggling (often charged as Organizing Entry into Canada)
- a non-priority contravention:
 - [redacted]

Alignment also varied widely by region. Table 2 shows that the proportion of cases linked to priorities was as low as 15% in the Greater Toronto Area Region for port prosecutions related to the *Customs Act* and table 3 shows a proportion as high as 100% for major and complex cases related to IRPA in the Quebec region.

Table 2: Proportion of *Customs Act* offenses cases aligned to CBSA enforcement priorities, by region (average from 2016 to 2017 through 2020 to 2021)

Region	Major and complex (%)	Port prosecutions (%)
Atlantic	58	37
Greater Toronto Area	50	15
Northern Ontario	48	33
Pacific	82	53
Prairie	58	51
Quebec	47	39
Southern Ontario	72	40
Source: CIIMS data provided by the Program.		

Table 3: Proportion of IRPA offenses cases aligned to CBSA enforcement priorities, by region (average from 2016 to 2017 through 2020 to 2021)

Region	Major and complex (%)	Port prosecutions (%)
Atlantic	94	62
Greater Toronto Area	90	49
Northern Ontario	88	44
Pacific	99	53
Prairie	89	67
Quebec	100	81
Southern Ontario	87	40
Source: CIIMS data provided by the Program.		

In interviews, regional managers stated that they did not consider the misalignment of cases selected for investigation with the CBSA enforcement priorities to be a concern, as they appreciated the flexibility afforded to them to select cases based on their unique operational realities. Regional managers indicated that the port prosecution cases they

select, while not aligned with enforcement priorities, are still in the public interest to prosecute. They also noted these cases provide opportunities for new investigators to gain experience on more straightforward files.

However, all regional managers interviewed also stated that they do not have sufficient investigators to handle the volume of work. As such, improved alignment of case selection to priorities is important for overall Program success, as it would help narrow down the number of cases to investigate, assist in managing workload, and most importantly, ensure that available resources are assigned to cases that pose the greatest threat to the safety, security, and prosperity of Canada.

Acceptance and success rates of referrals for prosecution

As per the expected outcomes in the Program logic model, criminal investigations should "result in referrals for prosecution that are supported by lawfully obtained evidence that meets the highest evidentiary standard in Canadian courts." To measure the achievement of this intermediate outcome, the Program uses the following two performance measures:

- acceptance rate of referrals for prosecution by the Public Prosecution Services Canada (PPSC)
- the percentage of prosecutions concluded that result in a conviction (also referred to as the "success rate" of prosecutions)

Finding 3: The acceptance rate of cases referred to PPSC for prosecution is very high. When charges are laid, there is also a high success rate (rate of conviction) across all case categories, but especially with major cases. A key factor to the high acceptance rate is that cases are not referred by the CBSA to the PPSC unless they have been assessed as having a high likelihood of successful prosecution.

Data analysis showed that the overall acceptance rate of cases referred to the PPSC for prosecution was above 94% in all regions over the period of 2016 to 2017 through 2020 to 2021 (refer to table 4). Regional manager and PPSC interviewees explained that cases are not referred by the CBSA to the PPSC unless there is a high likelihood of successful prosecution, which explains the high acceptance rate. This high acceptance

rate is seen as an indication of quality by the Program, demonstrating that criminal investigators ultimately collect the evidence necessary to lay charges and seek prosecution.

Table 4: PPSC acceptance rate of investigation files from 2016 to 2017 through 2020 to 2021

Region	Referrals	Referrals accepted	Acceptance rate (highest to lowest)
Southern Ontario	166	165	99.6%
Northern Ontario	117	116	99.1%
Prairie	133	131	98.5%
Greater Toronto Area	59	56	95.2%
Quebec	147	140	95.2%
Atlantic	85	81	95.1%
Pacific	233	218	93.7%
All regions	940	908	96.6%
Source: Provided by the Program. Manually reported by regions to Program Headquarters (HQ).			

When charges are laid and prosecution is sought, there is also a high success rate (rate of conviction) across all case categories. Table 5 shows that, nationally, 94% of cases resulted in a conviction, when charges were laid and the evidence was presented in court by prosecutors. The analysis of this data set also showed that the success rate of cases is above 90% for all categories, with the exception of Category 4, port prosecutions. Notably, major cases (Category 1) were always successfully prosecuted.

While prosecution in court is ultimately the responsibility of the PPSC, the high success rate with these cases indicates that the CBSA criminal investigators have positively contributed by collecting sufficient evidence to lay charges and obtain a conviction, ultimately holding these individuals and entities criminally accountable for contraventions to border legislation.

Table 5: Cases successfully prosecuted (conviction obtained) as a percentage of all finished cases when charges were laid, 5-year total from 2016 to 2017 through 2020 to 2021

Region	Atlantic	Greater Toronto Area	Northern Ontario	Pacific	Prairie	Québec	Southern Ontario	Total
All cases total (%)	97	94	90	94	95	97	93	94
Major and complex cases								
Category 1 (%)	100	100	100	100	100	100	100	100
Category 2 (%)	97	99	96	99	100	97	100	99
Port prosecution cases								
Category 3 (%)	100	94	96	97	100	98	100	98
Category 4 (%)	94	86	86	89	82	95	87	89
All cases by type								
Customs (%)	96	92	88	90	89	93	93	92
IRPA (%)	98	96	95	98	99	99	96	98

Source: CIIMS data provided by the Program.

Note: CIIMS data for cases marked successful is considered to be unreliable by the Program, while cases marked not successful is slightly more accurate. For this reason, the evaluation used cases marked not successful to calculate the success rate. The numbers presented in this table are the inverse of the cases marked not successful to comment on the success rate (refer to [Appendix D](#) for an explanation of the current data limitations associated with this approach). Finished cases includes both cases concluded and cases marked not successful.

Overall, the above evidence speaks to the success of the Program in achieving its intermediate outcome for cases that were investigated and resulted in charges being laid.

The following section will examine the cases that were selected for investigation but were subsequently dropped before charges could be laid, which could provide insights on the quality of investigations conducted or the types of cases selected for investigation.

Quality of investigations

Finding 4: Current performance indicators used by the Program do not sufficiently capture the quality of investigations conducted, and do not account for the investigations that were closed and not referred to PPSC, nor the amount of PPSC assistance required to bring some cases up to the evidentiary standard required for prosecution.

To measure the quality of investigations (i.e. if evidence collected meets the highest evidentiary standards), the Program currently uses two key performance indicators:

1. percentage of referrals to PPSC accepted
2. percentage of prosecutions that result in conviction

Some PPSC interviewees suggested that these performance indicators do not sufficiently measure the quality of investigations conducted. They explained that the high rate of referrals accepted by PPSC does not capture the amount of support that is provided by PPSC prosecutors to CBSA investigators in certain cases to ensure that the evidence collected meets the evidentiary standard required in Canadian courts. In addition, there are no indicators in place to capture the outcome of cases that were not referred by the CBSA to the PPSC to lay charges. Performance information on these cases could provide valuable insights into the quality of investigations, particularly if the data identifies the reasons why these cases were not referred to PPSC. This could also inform future decisions on leads selected for investigation.

"You can't use the number of referrals being accepted by PPSC as a measure of quality. There may be a lot of referrals but there was a lot of work done [to support laying charges]."

— PPSC interviewee

The evaluation, therefore, included some additional indicators into the analysis and found some limited evidence in case data pulled from the CIIMS ¹⁶ and through stakeholder feedback to suggest that the quality of investigations could be improved.

First, the analysis of cases in CIIMS indicated that, nationally from 2016 to 2017 through 2020 to 2021, approximately 50% of investigations were closed without the case being referred to the PPSC to consider pursuing a prosecution (refer to table 6). A case closed without charges laid or a prosecution being pursued may not automatically indicate that challenges exist with the collection of evidence or with case selection; it is a standard practice that a preliminary investigation first needs to be completed in order to determine if a full investigation is warranted. However, the number of cases closed without charges laid or a prosecution being pursued confirms that resources were spent investigating cases that did not lead to a criminal enforcement result (referral for prosecution and conviction). Additional data would be needed to draw definitive conclusions from this analysis. In particular, the reasons for closing a case without making a referral to PPSC would be important to know in order to identify potential challenges with case selection or evidence collection.

Secondly, key stakeholder feedback on the quality of investigations was also sought by the evaluation. PPSC interviewees indicated that the quality of evidence collected could be improved. Sometimes significant support is provided by prosecutors to CBSA criminal investigators to improve the quality of evidence collected, sometimes beyond what is expected from prosecutors. For example, prosecutors provided support to assess the feasibility of continuing to pursue an investigation based on the available evidence, identify what evidence is required for specific charges, determine which charges are appropriate for each case, identify the best point in an investigation for conducting a search warrant, scope the required amount of evidence for an investigation, utilize the correct translation tools to avoid compromising the evidence, and apply the correct interviewing techniques. PPSC interviewees suggested that without support in some of these areas, some cases might not have been successfully prosecuted.

Table 6: Cases closed without referral to PPSC as a percentage of all finished cases, from 2016 to 2017 through 2020 to 2021

Region	Percentage (%) of cases closed before charges laid
Atlantic	61
Greater Toronto Area	66
Northern Ontario	34
Pacific	40
Prairie	54
Quebec	49
Southern Ontario	49
Total	50
Source: CIIMS data provided by the Program.	
Note: Finished cases include both cases concluded and cases marked unsuccessful.	

Improvements to the data in CIIMS or the addition of key performance indicators could assist the Program in measuring investigation quality. [Appendix D](#) provides an explanation of the current data limitations in CIIMS and makes some recommendations on how this data can be analyzed and used by the Program to measure the quality of investigations conducted.

Challenges to achievement of results

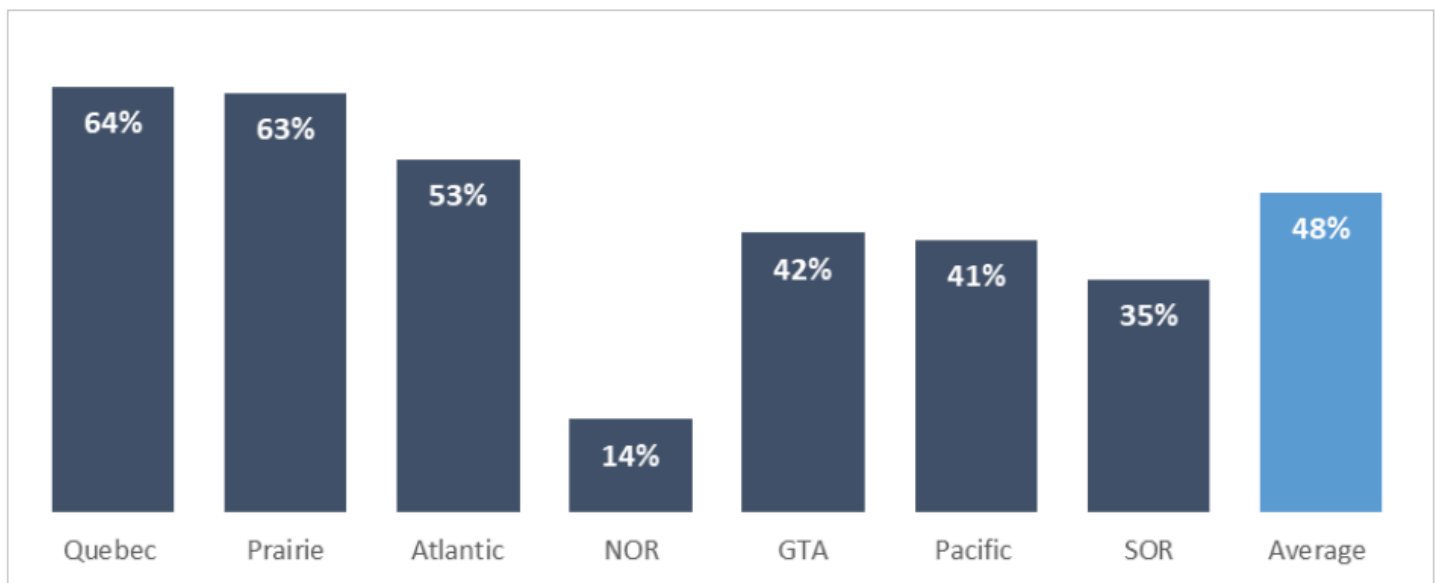
Training completion

One of the challenges identified by stakeholders through interviews and the survey was training completion. These perceptions were confirmed by an analysis of the completion rate of courses in the National Training Standard (NTS) (which lists all mandatory, core and function-specific training for criminal and digital forensic investigators).¹⁷ Having the right knowledge and competencies is critical for investigators to understand how to plan investigations and lawfully obtain evidence that meets the highest evidentiary standard in court.

Finding 5: Low completion rates of core training for criminal investigators and digital forensic investigators could be negatively impacting the quality of investigations.

The analysis of training completion data indicated that no Investigator working in the Program as of 31 March 2021 had completed the full set of Investigator courses as outlined in the NTS, and only 48% of all investigators have completed the CBSA's introductory in-class course, Foundations of Criminal Investigations (S4013-N). The completion rate for this course was as low as 14% for one region. Figure 3 illustrates the breakdown of training completion for this foundational course by region, as well as the overall national average.

Figure 3: Completion rate of the introductory Foundations of Criminal Investigations course (S4013-N) for those occupying an investigator position as of March 31 2021, by region



Source: Provided by Human Resources Branch (HRB).

▼ Image description

Figure 3: Completion rate of the introductory Foundations of Criminal Investigations course (S4013-N) for those occupying an investigator position as of March 31 2021, by region

Region	Percentage (%) of training completed
Quebec	64%
Prairie	63%

Region	Percentage (%) of training completed
Atlantic	53%
NOR	14%
GTA	42%
Pacific	41%
SOR	35%
Average	48%

"I've been [an Investigator] for three years and I just started getting my basic training. It impacts our job."

— Regional interviewee

Although there were some data quality limitations, findings from the data were supported by interviewees and survey respondents who indicated that completing training, both in-class and online, has been a major challenge for most regions. While the low training completion rate could partially be explained by the inability to offer in-class courses during the COVID-19 pandemic, due to health and safety-related physical distancing requirements, training completion rates were also low for investigators who have held an investigative position for over five years. This data, supported by interview and survey responses, indicates this was also an issue prior to the pandemic.

A review of the schedule for the Foundations of Criminal Investigations course showed that since 2016, the course was offered an average of twice per year, but participation at sessions was low and declined over time.

Some regions (Greater Toronto Area and Pacific) have been contracting courses outside the CBSA to close the training gap. For example, Pacific Region has been sending criminal investigators to complete an interviewing course with the Vancouver Police Department. Completion rates for this external training are not captured in CBSA's data systems, and are not reflected in the NTS.

Stakeholders could not agree on the reasons for low training completion rates.

Interviewees from the HRB, responsible for training delivery, explained that the lack of available trainers impacted their ability to offer training sessions, as did COVID-19 pandemic-related protocols that prevented the delivery of in-class courses, leading to an increased backlog of investigators who need training.

As well, from HRB's perspective, managers were reluctant to release investigators from their duties in order to complete training, which meant that there were not enough participants available to run course sessions. In contrast, regional managers interviewed explained that training sessions have not been made available. This lack of agreement on the root cause of low training completion rates could indicate a need to improve the planning and communication between the HRB and the Program on course offerings.

Program stakeholders also suggested that additional training delivery coordination may be required. They explained that since the implementation of the Functional Management Model (FMM), the Program HQ has had limited involvement in the planning and delivery of training, potentially due to HRB coordinating directly with the regions.

Evidence from document review and interviews with stakeholders suggests that the lack of sufficient training delivered to Program staff impacts the quality of investigations in terms of the planning of complex cases, the preparation of evidence for disclosure, drafting Information to Obtain (ITOs) ¹⁸, and the quality of interviewing. For instance, lack of training may be preventing investigators from knowing when to best engage with PPSC prosecutors for advice and guidance on complex cases. PPSC stakeholders stated that not all investigators reach out to them for guidance early in the scoping and planning phases of the process, when it is most critical for complex investigations. Stakeholders indicated that on some occasions, complex cases were closed without being referred to PPSC for prosecution due to inadequate case planning by criminal investigators ¹⁹. Early engagement with PPSC could help in this regard, but not all investigators know they can engage prosecutors in the planning phase.

In addition, PPSC stated that they have limited time and resources to provide the level of support that is sometimes required by untrained investigators, so they also stressed the need for adequate investigator training.

Insufficient training may also be impacting the preparation of evidence for disclosure. Evidence from interviews and the document review indicated that investigators may be collecting a volume of evidence beyond what is required for charges to be pursued. In other instances, PPSC observed evidence gaps in disclosure due to the inadmissibility of statements collected, which could also be due to lack of training in this area. PPSC interviewees added that, in the past, they have also provided tools and guidance to CBSA criminal investigators to help them prepare for disclosure – something criminal investigators should already be trained to do. They suggested that in some instances, PPSC assistance improved the products received when the case was referred for prosecution; however, due to limited resources, PPSC is not always available to provide this level of support.

"The impact of no training is significant because you're not supposed to enforce legislation without training."

— Regional interviewee

Another area that was identified by interviewees as requiring further training was drafting ITOs. Such training could improve the timeliness and the quality of the ITOs drafted to seek authorization for search warrants. In a symposium between the CBSA and PPSC that took place in February 2022, stakeholders suggested that engaging the Crown early on in the process and using correct and specific terminology on ITOs was needed ²⁰. In that symposium, PPSC stakeholders also suggested that the Program could benefit from ensuring investigators have access to adequate training on interviewing techniques for different circumstances, such as interviewing witnesses, suspects, and victims. PPSC interviewees in multiple regions mentioned the quality of evidence collected via interviews conducted by CBSA Criminal investigators was limited in some cases due to the use of leading questions, not building rapport with vulnerable individuals, or use of inappropriate translation resources.

The Program could benefit from continuing to review and update the content and availability of current training delivered to criminal investigators, in particular for training related to the management of complex investigations and investigation

techniques. Revising the training delivered to address key issues, and ensuring that the courses are available and completed by investigators, could improve Program outcomes and the engagement with partners such as the PPSC.

While outside the scope of this evaluation, it is relevant to note that as of fiscal year 2022 to 2023, HRB has launched the Force Generation Modernization 3-year strategy, which aims "to ensure a flexible, agile and mobile frontline workforce capable of delivering the CBSA's mandate ²¹." The strategy includes pillars related to workforce planning and training, and will include action items such as "strategic recruitment for the future" and a "strategic learning evaluation." The action items related to training are still under development, but could support the improvement of training completion for criminal and digital forensic investigators.

Recent course additions and updates to the NTS could help reduce the existing training gap, but ensuring training is completed by investigators is also needed to ensure they benefit from these changes.

New and planned additions to the NTS:

- the newly designed "Search, Seizure and Warrant Drafting" course, which was launched in October 2022, and replaces the Canadian Police College course, "Drafting Information to Obtain"
- a planned course on major case management, which in August 2022 was still in the design phase
- a planned course on trade-based money laundering, which the Program intends to prioritize
- a planned update to the online portion of the Foundations of Criminal Investigations course, due to take place in fiscal years 2022 to 2023 and 2023 to 2024

Major Case Management system

Currently, the CIIMS is used as the primary tool to record and track information about cases throughout their life-cycle, from initial receipt of a lead to case conclusion/closure. Amongst the existing functionality, CIIMS allows investigators to record information

about the suspect, the rationale at important case decision points, upload PDF documents and photographs, link cases together to create projects, etc.; however, it does not currently allow for evidence tracking, disclosure management, major case management, and linking to other databases ²².

Finding 6: CBSA and PPSC stakeholders agreed that the inadequacy of the current information management system has had direct impacts on the quality of investigations and on the efficient use of resources.

All the regional and Program HQ managers interviewed, as well as many survey respondents and PPSC interviewees, described the absence of a Major Case Management (MCM) system as a challenge facing the Program. CBSA and PPSC stakeholders agreed that the inadequacy of the current information management system directly impacts the quality and efficiency of investigations. Interviewees explained that this issue has been raised for many years as a priority. The CBSA's 2010 Evaluation of the Criminal Investigations Program also recommended the enhancement or replacement of the Program's information management system (CIIMS) to better support the collection and reporting of Program performance information.

"We need a major case management system. As a program we've been screaming about it for years. It's been a topic of discussion for 7-8 years."

— Regional interviewee

The MCM software and principles were noted as tools that would reduce the time spent preparing evidence for disclosure, improve the quality of investigations, and improve the relationship with PPSC.

"The difficult thing is everything has to be done manually. It took me three months to build disclosure."

— Regional interviewee

Complex cases, which are a priority for the Program, typically involve collecting a significant amount of evidence which must be prepared by investigators for disclosure. CBSA interviewees described spending a significant amount of time preparing evidence for disclosure manually, without the use of an evidence management system. PPSC emphasized the need and importance of having a MCM system that contains the entire investigative file, particularly since Complex cases are a priority for the Program. The MCM software would provide investigators consistency throughout the life-cycle of the investigation and in the preparation of evidence for disclosure ²⁰.

Interviewees stated that the CIIMS does not provide the regions with the tools they need to implement the principles of MCM, nor to efficiently prepare their material to meet rigorous disclosure requirements. According to interviewees, the system is also inadequate for HQ and the regions to use for program oversight, as extracting data from the current system also requires significant data normalization and manual calculations, and it is "nearly impossible" to run a report with useable data ²³. An MCM system would also benefit the triage units within the Regional Enforcement and Intelligence Operations Divisions ²⁴ by allowing them to better meet performance reporting requirements, track the complete life-cycle of a referral, and enhance management oversight. Currently, triage units use Microsoft Access and Excel to track referrals, depending on the Region ²⁵.

The use of MCM software and principles is encouraged as best practice in the general field of investigations. For example, the 1996 Campbell Report and the 2012 Forsaken – the Report of the Missing Women Commission of Inquiry both recommended provincial police agencies use MCM principles and software in conducting investigations. Ontario considers MCM software to be "critical" as it "provides investigators with the necessary tools to organize, manage, retrieve and analyze the potentially large volumes of investigative data collected during major case investigations." ²⁶

CBSA interviewees suggested the agency's adopting MCM software would improve the ability for investigators to work with other police agencies in joint operations. MCM software would also allow investigators to make links between pieces of evidence, which could improve the efficiency and outcomes of investigations ²⁶, especially for Major and Complex cases. Some regions have stated that they have felt reluctant to undertake

Major and Complex cases because they do not feel they have the right tools to be successful. The adoption of MCM software could encourage investigators to select more Major and Complex cases, in line with the Program's guidance.

Although discussion around the provision of this software is gaining momentum within the agency, concerns around timely delivery were raised by interviewees. The Intelligence and Enforcement Branch's (IEB) 2022 to 2025 Integrated Business Plan ²⁷ includes a priority for acquiring and implementing a new MCM system by fiscal year 2023 to 2024; however, Program stakeholders stated they believe it may take longer, particularly since no funding has been secured and no decision has been made on designing a new system or purchasing an available, commercial ("off-the-shelf") option. Program staff expressed a strong preference for a commercial solution already in use by other Canadian law enforcement/investigative agencies, which could be delivered much sooner and has already been tried, tested, and proven to meet the needs for managing investigation cases. At the time the evaluation was completed, the Information, Science and Technology Branch (ISTB), responsible for system delivery, had consulted the Program and completed a needs assessment; however, the options analysis phase had not been completed and no solution had been proposed.

Understanding of, and engagement with, the Public Prosecution Services Canada

To ensure a fair and impartial criminal justice system, in Canada, criminal investigators, prosecutors, and judges are required to make their decisions independently of each other and all outside influence. As such, the principle of **Independence for Crown Counsel** (the principle) exists to allow PPSC prosecutors to **independently** determine the strength of a particular case and the public interest in seeking prosecution. The PPSC prosecutors retain a degree of **discretion in making decisions about individual cases**, but are able to **consult** investigators. The principle means that prosecutors do not take instructions as to how to exercise discretion in prosecution matters ²⁸.

Finding 7: Additional program guidance could improve the investigators' understanding of PPSC's roles and responsibilities within the investigation process and the potential benefits of early engagement with prosecutors.

There appears to be a lack of understanding on the part of some CBSA Program stakeholders of the principle that defines the PPSC's role and potential involvement in the criminal investigations process. For example, in interviews and through the survey, regional Program managers, investigators and DFIs expressed a desire for more consistency between PPSC prosecutors and between PPSC regions on referral procedures and the preparation of disclosure processes. However, these views contradict the independence and discretion afforded to prosecutors (through the principle) with respect to their decision-making on individual cases.

In addition, one of the regions indicated that the Memorandum of Understanding signed with PPSC gives too much authority to PPSC over the CBSA investigation; however, this also appears to contradict the principle, which allows PPSC prosecutors to independently determine the strength of a particular case and the public interest in seeking prosecution. Ultimately, it will be the PPSC who will accept the case for prosecution (or not), and thus, it is in the best interest of the CBSA investigators to seek advice on whether to continue to pursue a case for investigation, or on the type of evidence to be collected.

Understanding PPSC roles and responsibilities within the investigative process could allow investigators to better identify how and when PPSC expertise could be leveraged to improve the quality of CBSA investigations and ultimately lead to a conviction (an intended goal of the Program).

The evaluation found that some CBSA regions have more positive working relationships with PPSC and thus are able to better leverage their expertise. Regional managers and PPSC prosecutors in these regions identified the following **best practices**:

- early engagement of PPSC in the investigation of cases, particularly for major and complex investigations, to help focus the investigation scope and the type of evidence that is needed
- continuous communication with PPSC throughout the course of the investigation

The ability to implement these best practices is dependent on the availability of PPSC staff. At a symposium between the CBSA and PPSC that took place in February 2022, PPSC acknowledged there is also room for improvement on their part, including to ensure more timely responses to CBSA's requests for advice, while recognizing that standards for timeliness may vary depending on the complexity of a case or question ²⁰.

Operationalizing the Functional Management Model: Program HQ oversight

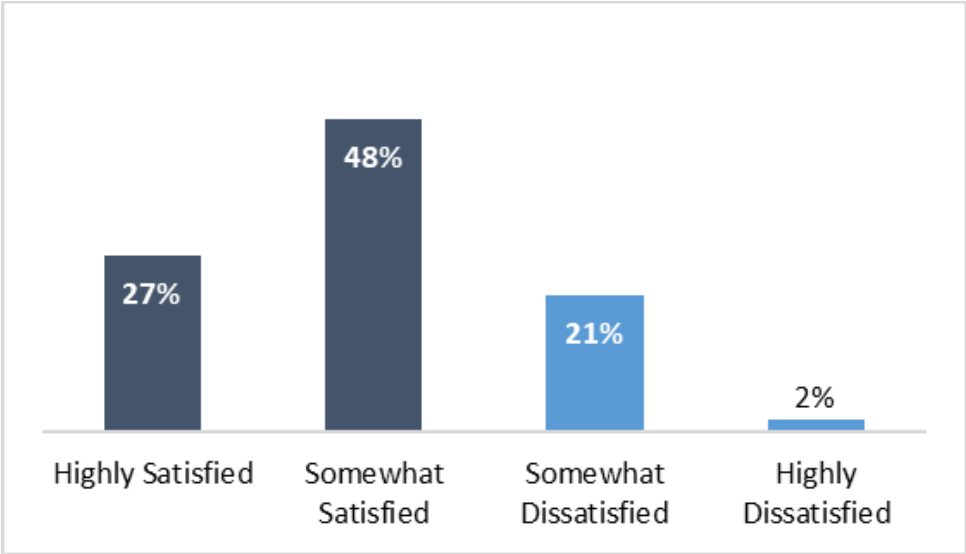
As part of FMM implementation, the CBSA reorganized its structure and created new national-level functional Branches to improve accountability, program consistency, and alignment of program expenditures to results. The IEB became the functional authority for the Criminal Investigations Program in April 2019 ²⁹.

Finding 8: The FMM is operating as expected and contributing to Program delivery. Increased program HQ oversight and support to regions could be beneficial to Program performance.

The evaluation found that the Program is benefiting from FMM implementation. Feedback provided by stakeholders through interviews and the survey indicated an overall positive perception of the quality and extent of collaboration and communication between Program HQ stakeholders and regions. Program management-level stakeholders at HQ feel they are kept well informed of Regional operations through governance body meetings ³⁰ and through the CI Operations Unit, (the HQ unit responsible for managing the flow of information from regions to Program HQ senior management and liaising with regions regarding emerging operational issues).

Collaboration was also seen as positive between DFIs working in the regions and the Digital forensics unit (DFU) at HQ. In the regions, most criminal investigators and DFIs (75%) who completed the survey expressed satisfaction with the overall level and quality of engagement with Program HQ (refer to figure 4). Satisfaction levels were especially high with respect to the "timeliness of responses" and their "ability to reach the right point of contact in HQ" – in both cases, 84% of respondents were at least "somewhat satisfied."

Figure 4: Criminal investigator and DFI satisfaction with overall Program HQ engagement



Source: Criminal Investigations Program Evaluation Survey of criminal investigators and digital forensic investigators, 2022 (N=126).

▼ Image description

Figure 4: Criminal investigator and DFI satisfaction with overall Program HQ engagement

Category	Percentage (%) of satisfaction
Highly satisfied	27%
Somewhat satisfied	48%
Somewhat dissatisfied	21%
Highly dissatisfied	2%

With respect to potential areas for improvement related to FMM and the relationship between regions and HQ, evidence indicates that Program HQ still lacks some oversight **over regional operations**. One key aspect raised in interviews is that Program HQ expects to be able to advise regions on resource allocation and funding strategies, particularly since the implementation of FMM ³¹. Stakeholders at HQ stated that they still have limited visibility of Regional expenditures and insufficient understanding of reasons why budgets fluctuate each year for each Region.

"We're not there yet in terms of functional management. (...) We don't have the capacity to report on how money is spent. We don't have eyes on how money is spent in our regions. There is the exception of our digital forensics unit."

— Program HQ staff

Additional areas for improvement are related to the support that regions require from Program HQ. The Program HQ stakeholders develop national **operational guidance** to support the regions in conducting criminal investigations. Due to particular Regional characteristics and needs, such guidance is not perceived to be consistently applied. For example, regions may interpret and apply guidance on how to select cases for investigation differently. The inconsistency in guidance application could be dependent on the nature of cases in each Region, as well as different practices between PPSC prosecutors, among other factors. Regional stakeholders expressed a desire for more guidance on when to exercise discretion to deal with these unique regional aspects.

How can collaboration be improved between regions?

Survey respondents suggested that Program HQ develop and maintain a national list of all CBSA Criminal investigators and DFIs, including areas of expertise of each staff.

Stakeholders in the regions also expressed a need for additional support from Program HQ in terms of **accessing training, tools and equipment** to aid in the conduct of criminal investigations, as well as proactive and timely sharing of information by Program HQ on jurisprudence arising from border-related criminal prosecutions. Evidence from interviews and the survey indicate that staff in the regions are not consistently aware of best practices or challenges experienced by their peers in other regions, and would benefit from being better informed of operations across the country. Regional interviewees suggested that they could benefit from national meetings or conferences for regions to engage and share information with one another, including on **challenges and best practices**. Program HQ, as the functional authority, was identified as being in the best position to coordinate this type of national engagement.

Footnotes

- 8 Minister of Public Safety Mandate Letter. December 16, 2021.
- 9 CBSA, Integrated Enforcement and Intelligence Priorities (2017 to 2018 until 2019 to 2020).
- 10 CBSA, Criminal Investigations Division (January 2020). Criminal Investigations Doctrine, Section 8. Division of Responsibilities between the CBSA and the RCMP, p. 11.
- 11 Memorandum of Understanding between the CBSA and the RCMP – Investigations and Referrals Annex. March 18, 2019. [Redacted].
- 12 CBSA, IEB, Trade Fraud and Trade-Based Money Laundering Centre of Expertise.
- 13 Memorandum of Understanding between the CBSA and the RCMP – Investigations and Referrals Annex, Appendix A-10, p. 46-49. March 18, 2019. [Redacted].
- 14 Criminal Investigations Manual: Chapter 3: Case File Management and Finalization, p. 8.
- 15 Criminal Investigations Doctrine, p. 8.
- 16 The CIIMS is the primary record keeping and tracking tool used by the Program. (Source: Criminal Investigations Manual: Chapter 3: Case File Management and Finalization, p. 12.
- 17 National Training Standard for the criminal investigator (FB-05).
- 18 An ITO is a document submitted to a judge to obtain a search warrant, general warrant, production order, or a preservation order. Criminal Investigations Manual: Chapter 5: Full Investigations, p. 19.

- 19 The chapter 3 of the Criminal Investigations Manual suggests that effective case planning is imperative for each criminal investigation. This includes deciding in advance what evidence to collect, in what order, and when, then setting down a course of action to attain investigation objectives. Criminal Investigations Manual: Chapter 3: Case File Management and Finalization, p. 5.
- 20 CBSA-PPSC Joint Symposium, Record of Meeting. February 2022.
- 21 Force Generation Modernization 3-year Strategy: presentation for Executive Committee Human Resources (ECHR). June 2022.
- 22 Criminal Investigations Manual: Chapter 3: Case File Management and Finalization, p. 12.
- 23 Criminal Investigation Annual Report (2016 to 2017 until 2019 to 2020). March 31, 2020.
- 24 Regional Triage Units receive and review information relevant to both Intelligence and Enforcement, triage this information, and refer to the relevant business line (including the Criminal Investigations Program, which then becomes a lead) or to external stakeholders.
- 25 Regional Triage Units Analysis. Criminal Investigation Program Unit. July 2019.
- 26 The Ontario Major Case Management System (Details). Public Safety Canada.
- 27 Integrated Business Plan (2022 to 2025), p. 24-25.
- 28 Public Prosecution Service of Canada Deskbook: 2.1 Independence and Accountability in Decision Making. March 2014.
- 29 CBSA, Office of the Chief Transformation Officer. Functional Management Model: The Way Forward. September 2020.

- 30 The agency created two main governance bodies to improve the communication and coordination between regions and ~~HQ (Headquarters)~~: the Intelligence and Enforcement Business Line Management Board and the Agency Operations Committee.
- 31 CBSA, Office of the Chief Transformation Officer. Functional Management Model: The Way Forward. September 2020, p. 11.
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