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# Evaluation of the Criminal Investigations Program: Section 1

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## Acronyms and abbreviations

### **CAS**

Corporate Administrative System

### **CAM**

Costing Analytical Model

### **CBSA**

Canada Border Services Agency

### **CI**

Criminal investigations

### **CID**

Criminal Investigations Division

### **CIIMS**

Criminal Investigations Information Management System

### **CIP**

Criminal Investigations Program

### **DFI**

Digital forensic investigator

### **DRR**

Departmental Results Report

### **FMM**

Functional Management Model

**GBA Plus**

Gender-based analysis plus

**HQ**

Headquarters

**HR**

Human Resources

**HRB**

Human Resources Branch

**IEB**

Intelligence and Enforcement Branch

**IRCC**

Immigration, Refugees and Citizenship Canada

**IRPA**

*Immigration and Refugee Protection Act*

**ISTB**

Information, Science and Technology Branch

**ITO**

Information to obtain

**KPI**

Key performance indicator

**MCM**

Major case management

**MOU**

Memorandum of Understanding

**NTS**

National training standard

**OGD**

Other government department

**OPI**

Office of primary interest

**OSI**

Office of secondary interest

**PPSC**

Public Prosecution Service of Canada

**RCMP**

Royal Canadian Mounted Police

**SIT**

Supplementary information table

**TBML**

Trade based money laundering

**TBS**

Treasury Board of Canada Secretariat

**VP**

Vice president

## Executive summary

The evaluation examined the relevance and performance (effectiveness and efficiency) of the **Criminal Investigations Program** (CIP or "the Program") from fiscal years 2016 to 2017 through 2020 to 2021; in accordance with the 2016 Treasury Board Policy on Results. The scope of

the evaluation was tabled at the Performance Measurement and Evaluation Committee (PMEC) in December 2021. The Program was previously evaluated in 2015.

## Program description

The Program's mandate is to support the Canada Border Services Agency's (CBSA or "the agency") public safety and economic prosperity objectives to keep inadmissible people and goods out of Canada. The Program achieves this mandate by investigating and pursuing the prosecution of persons including travellers, importers, exporters and others who commit criminal offences in contravention of Canada's border-related legislation, in collaboration with the **Public Prosecution Service of Canada (PPSC)**. The criminal investigations process follows several key phases, including: receiving leads (referrals for investigation) from a variety of sources; selecting cases for investigation based on Program guidance and priorities; collecting evidence; referring cases to the PPSC to lay charges and pursue prosecution; and assisting PPSC throughout the prosecution process.

Annual Program expenditures increased from \$27.5 million in 2016 to 2017 to \$35.6 million in 2020 to 2021.

## Evaluation methodology

The logic model (included in [Appendix B](#)) was developed by the Program and used by the evaluation team to assess program progress against expected outcomes.

Data collection and analysis for this evaluation were conducted between April and August 2022; both qualitative and quantitative research methods were used. The evaluation team conducted interviews with key stakeholders within the agency and with other government departments

(OGDs); conducted a survey of criminal investigators and digital forensic investigators; reviewed key documentation; reviewed administrative, human resources, and financial data; and conducted a gender-based analysis (GBA) plus.

## Evaluation findings

[Expand](#)[Collapse](#)

### ▼ Relevance

The Program's mandate is generally aligned with the priorities of the Government of Canada, the CBSA and OGDs. Since 2021, the Program is using the CBSA enforcement priorities to make decisions on case selection. The priorities apply to all CBSA regions and branches, and are aligned with Public Safety and federal budget priorities.

Some overlap with the Royal Canadian Mounted Police (RCMP)'s mandate was noted, but this was not considered a major challenge for the program, as the CBSA is able to de-conflict and collaborate when necessary. For instance, trade-based money laundering is an emerging investigation area that will require continued collaboration with the RCMP to reduce overlap. The Program will need to continue collaborating and de-conflicting on this and other emerging fields of investigation.

### ▼ Effectiveness

The evaluation assessed performance against the Program's expected immediate and intermediate outcomes. In assessing the immediate outcome, the evaluation determined that cases selected for investigation were not always aligned to CBSA enforcement priorities.

Regions applied the Program guidance to case selection differently due to their differing operational realities, prosecutorial, judicial and jurisprudential realities, resulting in varying levels of alignment across regions for different types and categories of investigations.

In assessing the Program's intermediate outcome, it was found that 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, meaning that this is only a partial measure of Program success in achieving the intermediate outcome.

The evaluation found that the current performance indicators used by the Program do not sufficiently capture the quality of investigations conducted. Performance indicators do not account for the investigations that were closed and not referred to PPSC to lay charges, nor the amount of PPSC assistance required to bring some cases up to the evidentiary standard required for prosecution. A recommendation was made by the evaluation to update the Performance Measurement Framework (PMF) in order to improve Program oversight and regional accountability on case selection and investigation quality.

The evaluation assessed the root causes impacting the achievement of the expected outcomes and found that low completion rates of core training for criminal investigators and digital forensic investigators could be negatively impacting the quality of investigations. In addition, 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. Finally, 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. A recommendation was made to address the reasons for low training completion in order to improve criminal investigator knowledge and the quality of investigations.

### ▼ Efficiency

The Functional Management Model (FMM) is operating as expected and contributing to Program delivery. Increased program headquarters oversight and support to regions could be beneficial to Program performance. The evaluation examined the number cases opened per Investigator and found that this varies by region and is dependent on the types of cases selected for investigations. The evaluation also found that the lack of Major Case Management (MCM) software and use of MCM principles, low training completion rates, and lack of administrative support for investigators have impacted the efficiency of case management and resource utilization. Improved program oversight on resource utilization and expenditures was recommended in order to support the Program to fully implement FMM. The recommendation also supports the Program in increasing collaboration between regions in support of FMM.

### ▼ GBA Plus

Due to limited data availability, it was not possible to perform an in-depth gender-based analysis plus (GBA Plus) or fully assess how different identity factors impact how diverse groups are impacted by the Program's activities. The limited availability of data impacts the ability of the Program to report on its impact in terms of gender and diversity, in alignment with the *Canadian Gender Budgeting Act* (2018). The evaluation recommended that the Program review opportunities to gather information to measure the impacts of the Program on diverse groups of people based on relevant GBA Plus factors.

#### ▼ Implementation of 2015 evaluation recommendations

The evaluation assessed the impact of the recommendations made in the 2015 evaluation and found that the recommendations were implemented as planned; however, more work could be done for the Program to fully benefit. The recommendations to update the PMF and improve training completion should assist realizing the benefits of the previous evaluation recommendations.

## Recommendations

The findings of the evaluation led to the following three recommendations which will be addressed by the specific actions included in the management response and action plan ([Appendix A](#)):

### **Recommendation 1: Addressing the root causes of low training completion rates**

The Vice President of Intelligence and Enforcement Branch should work with the Vice President of Human Resources Branch to assess issues

related to the low completion rate of criminal investigator training and develop a work plan to address the gap.

### **Recommendation 2: Performance measurement, including related to case selection and gender-based analysis plus factors**

The Vice President of Intelligence and Enforcement Branch should update the Criminal Investigations Program's PMF to improve oversight and reporting on case selection, quality of all investigations, program resource utilization and expenditures, and review opportunities for the Program to gather reliable information on its potential impacts on diverse groups of people based on relevant GBA Plus identity factors.

### **Recommendation 3: Program HQ oversight of resource allocation and coordination of regional information sharing**

With a view to improve efficiency and mature its functional management role, over and above its ongoing work towards securing an appropriate major case management tool, the Vice President of Intelligence and Enforcement Branch should seek to better understand regional resource allocation and associated Program performance and provide a forum for regions to exchange on approaches for regional case selection, expertise, best practices and challenges.

## **Introduction**

### **Evaluation purpose and scope**

This report presents the findings of the evaluation of the CBSA's Criminal Investigations Program ("the program"). This evaluation was identified in the CBSA's 2021 to 2022 Risk-Based Audit and Evaluation Plan<sup>1</sup>.

In accordance with the 2016 Treasury Board of Canada Secretariat's (TBS) Policy on Results, the main objective of the evaluation was to examine the relevance and performance (effectiveness and efficiency) of the Program

for the 5-year period of fiscal years 2016 to 2017 through 2020 to 2021. The Program was previously evaluated in 2015 <sup>2</sup>.

The evaluation scope was approved by the PMEC in December 2021 and included an assessment of:

- The implementation of the 2015 Criminal Investigations (CI) Program evaluation recommendations
- **(Relevance)** The alignment of the Program's priorities with the priorities of the Government of Canada, the CBSA, and other federal organizations
- **(Effectiveness)** The extent to which the immediate and intermediate outcomes in the existing Program Logic Model have been achieved, and the identification of the main challenges to achieving results
- **(Efficiency/Economy)** Resource utilization and process efficiency

A GBA Plus approach was also included as part of the approved scope.

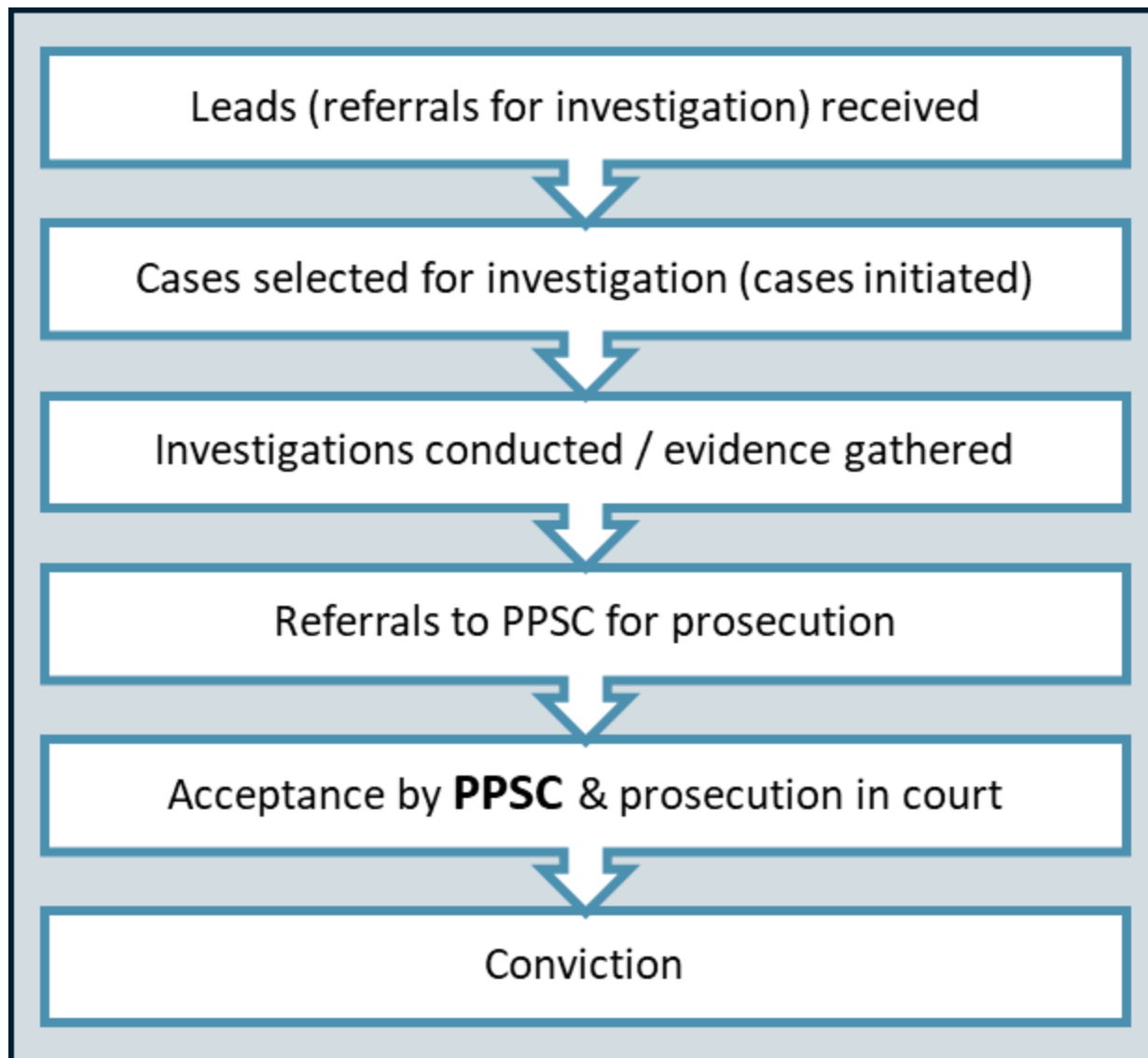
## Program description

The Program's mandate is to support the CBSA's public safety and economic prosperity objectives to keep inadmissible people and goods out of Canada. The Program achieves this mandate by investigating and pursuing the prosecution of persons including travellers, importers, exporters and others who commit criminal offences in contravention of Canada's border-related legislation, in collaboration with the PPSC. All investigations and prosecutions are carried out in accordance with established criminal law standards and in compliance with the *Canadian Charter of Rights and Freedoms*.

## Criminal investigations process

Figure 1 summarizes the key phases in the criminal investigations process.

**Figure 1: Criminal investigation process**



▼ Image description

Top-down flow chart showing the criminal investigations process:

1. CBSA leads, or referrals for investigation, are received
2. Cases to be investigated are selected
3. CBSA conducts investigations and evidence is gathered
4. CBSA refers cases to PPSC for prosecution
5. PPSC accepts the cases and prosecutes them in court

## 6. Conviction

A criminal investigation may be launched by the CBSA as a result of a lead received from the following sources:

- within the CBSA (for example, ports of entry, intelligence, immigration enforcement, trade programs)
- other law enforcement agencies
- other government departments
- from the public

From these leads, cases are selected for investigation by regional staff based on guidance set by the Program, such as alignment with the CBSA enforcement priorities and the CBSA Prosecution Policy, gravity of the offence, level of risk to individuals or to national security, likelihood of conviction, availability of evidence, etc.<sup>3</sup> Criminal investigators then gather evidence using a variety of investigative techniques, including search warrants, production orders, digital forensic analysis and surveillance. The goal of the investigation is to discover evidence, whether it supports the guilt or the innocence of the suspects.

When sufficient evidence is found to indicate that an individual or business entity has violated border-related legislation and regulations, Criminal investigators and regional managers make a recommendation (or "referral") to the PPSC. This takes the form of a letter called the Referral to Crown Counsel/Crown Brief (RTTC/CB) which presents the analysis and theory of the case supported by the relevant evidence.<sup>4</sup> If the PPSC accepts the case, CBSA Criminal investigators will work with the PPSC prosecutors through the laying of charges and prosecution in a court of law.

The violations may include criminal offences under the following:

- the *Customs Act*
- the *Immigration and Refugee Protection Act* (IRPA)
- various food, plant and animal legislation
- other border-related legislation (for example, imports and exports of goods)

Prosecution may result in criminal records, court imposed fines, probation periods and incarceration. Civil penalties <sup>5</sup> may also be issued if it is determined to be the more appropriate enforcement option.

It is important to note that while the Program investigates violations under IRPA, it does not seek to identify persons who are inadmissible to Canada. Inadmissibility and removal decisions are the responsibility of other CBSA programs under the Enforcement Directorate.

## **Program management structures and key stakeholders**

### **CBSA stakeholders**

The Criminal Investigations Program is delivered by the CBSA regions and managed centrally by HQ under the CBSA's FMM implemented in April 2019.

At HQ, the Criminal Investigations Division (CID), within the Intelligence and Investigations Directorate (IID) of the Intelligence and Enforcement Branch (IEB) is the functional authority responsible for providing guidance and oversight over regional operations. Three units under the CID provide program support to the regions: the CI Operations Unit; the CI Support Unit (which includes the Digital Forensic Unit); and the CI Program Management Unit.

In the regions, criminal investigation sections (one per region) are responsible for conducting the investigations. They report to regional IEB directors and are staffed by assistant directors, criminal investigations managers, criminal investigators, and digital forensic investigators (DFIs). CI sections may have staff based in multiple locations across the region.

Details of the roles and responsibilities of regional staff and program HQ units are included in Appendix C.

### **Other key stakeholders**

The Program works closely with stakeholders within the agency, including Intelligence Program staff, as well as border services officers, inland enforcement officers and senior officers trade compliance, who are a source of leads for investigation.

Externally, the PPSC is a key partner in the delivery of the Program. The PPSC is a national, independent and accountable prosecuting authority whose main mandate is to prosecute federal offences. Within the CBSA's criminal investigations process, the PPSC takes responsibility of a case and undertakes a prosecution when there is a reasonable prospect of conviction and the prosecution is in the public interest. Prosecutors also provide legal advice and assistance to CBSA criminal investigators throughout all phases of the investigation process.

The Program also works closely with the RCMP, Immigration, Refugees and Citizenship Canada (IRCC), the Canada Revenue Agency, and other law enforcement agencies, including provincial and municipal police services.

### **Legal authorities**

Investigators work under the authority of border-related acts, including those that are listed within the *CBSA Act*. The *Criminal Code of Canada* (the *Criminal Code*) designates CBSA Criminal investigators as peace officers in



the administration and enforcement of the *Customs Act* and the *Immigration and Refugee Protection Act*. CBSA investigators also utilize procedural provisions in the *Criminal Code* <sup>6</sup>, such as search warrant and arrest authorities, to investigate offences under those and other border-related acts.

## Logic model

The logic model (included in [Appendix B](#)) was developed by the Program and used by the evaluation team to assess program progress against outcomes. It shows how inputs, activities, and outputs are expected to lead to the following expected outcomes:

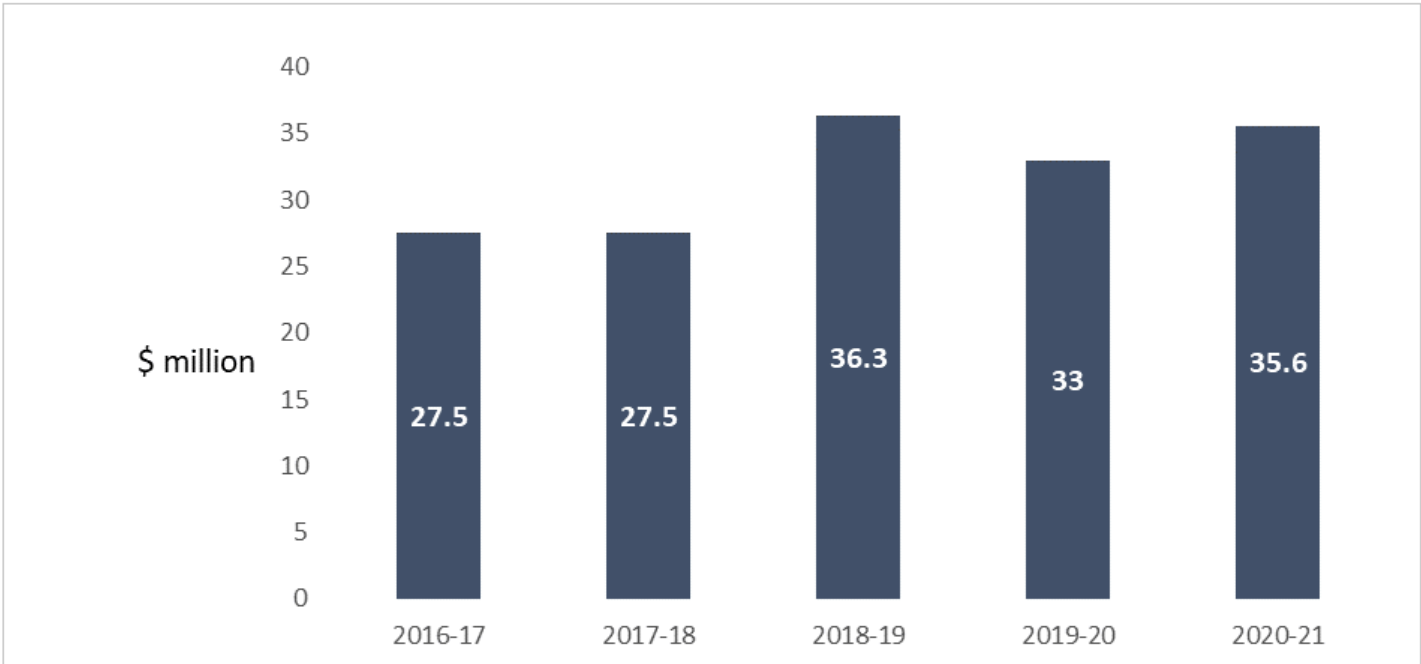
- **Immediate:** Criminal investigations are initiated against persons or entities suspected of committing offences against border-related legislation, in alignment with CBSA priorities
- **Intermediate:** Criminal investigations result in referrals for prosecution that are supported by lawfully obtained evidence that meets the highest evidentiary standard in Canadian courts
- **Ultimate:** Individuals and entities who willfully contravene border legislation and threaten the safety, security and prosperity of Canadians and Canada are held criminally accountable

The Program also contributes to upholding Canada's border legislation through deterrence, when criminal proceedings (from charge to sentencing) are publicized. <sup>7</sup> However, this unintended impact was not included in the Program's logic model, and thus, not measured by the evaluation.

## Program expenditures

Program expenditures have fluctuated over the years, as illustrated in figure 2. Overall, annual expenditures increased from \$27.5 million in 2016 to 2017 to \$35.6 million in 2020 to 2021. Over the 5 years from 2016 to 2017 through 2020 to 2021, the Program spent a total of about \$159.9 million, including on salary, operations and maintenance, and capital expenditures at HQ and in the regions.

Figure 2: Total annual Program expenditures (All regions and HQ)



Source: CAS

▼ Image description

Total program expenditures have fluctuated over the years, ranging from 27.5 million dollars in 2016 to 2017, to 35.6 million dollars in 2020 to 2021.

Year	Total annual program expenditures (in millions of dollars)
2016 to 2017	27.5

<b>Year</b>	<b>Total annual program expenditures (in millions of dollars)</b>
<b>2017 to 2018</b>	27.5
<b>2018 to 2019</b>	36.3
<b>2019 to 2020</b>	33
<b>2020 to 2021</b>	35.6

## **Evaluation methodology**

The evaluation questions that follow were selected based on document review, analysis of preliminary program and financial data, consultations with Program staff, and in consideration with topics assessed in past or ongoing evaluations, audits or reviews. The questions also align with the TBS Policy on Results' core evaluation issues.

## **Evaluation core issues and questions**

### **Issue: Relevance (need/alignment)**

Evaluation question 1: To what extent are the Program's risks and threat priorities aligned with the emerging priorities of the federal government and OGDs?

Evaluation question 2: To what extent are criminal investigations aligned with the CBSA priorities?

### **Issue: Effectiveness: Implementation of the 2015 evaluation recommendations**

Evaluation question 3: Has the implementation of recommendations from the 2015 evaluation improved program performance? If so, how? If not, what impacts has it had on the program? The recommendations were <sup>2</sup>:

- a. develop a performance measurement framework that links key indicators (for each case) across each stage of the process
- b. implement regular monitoring of program performance
- c. identify and mitigate barriers to, and monitor progress in, obtaining evidence from OGDs using the investigative body designation
- d. develop options to support the evolving requirements for delivery of the Digital Forensic Investigations service

### **Issue: Effectiveness: Achievement of expected outcomes**

Evaluation question 4: To what extent has the program achieved its expected outcomes (assessment of progress against the program's **immediate** and **intermediate** outcomes)?

Evaluation question 5: Has the program considered GBA Plus concerns when defining priorities and initiating investigations?

Evaluation question 6: What aspects of the program's design and delivery have enabled and/or hindered the program from achieving its expected results?

- a. What are the main challenges experienced by the program?
- b. Does the program have a sufficiently diverse skill set and the right number of employees within its workforce to enable effective program delivery? If not, why not and what are the impacts on the program's ability to achieve results?
- c. Has the FMM improved the operation and governance of the program? What challenges remain with fully operationalizing the FMM in the program?

### **Issue: Efficiency and economy: Resource utilization and process efficiencies**

Evaluation question 7: What resources (money and people) were utilized by the program and how were they used to achieve results?

Evaluation question 8: To what extent were the processes used by the program efficient?

## Methods

The evaluation team used qualitative and quantitative research methods to collect data and information from primary and secondary sources. The following methods were used:

1. key stakeholder interviews
2. a survey of Criminal investigators and DFIs
3. document review
4. administrative data review
5. GBA Plus
6. financial and HR data review

Details of the data collection methods used are included in [Appendix D](#). The evidence collected from all sources was analyzed and triangulated.

The common themes that emerged from multiple lines of evidence contributed to the development of preliminary evaluation findings. These findings, alongside the evidence that informed them, were presented to a working-level group representing the offices of primary and secondary interest, and the Director General-level Consultative Committee for review and input. The feedback from these consultations was incorporated, where relevant, into the final evaluation report and recommendations.

## Methodological limitations

There were some limitations in the availability of data which impacted certain aspects of the evaluation. These limitations are described in Appendix D.

The evaluation team employed appropriate mitigation strategies, where possible, to minimize the impact of these limitations, such as by using multiple lines of evidence to cross-validate data.

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## Footnotes

- 1 The 2021 to 2022 Risk-Based Audit and Evaluation Plan.
- 2 Evaluation of the Criminal Investigations Program 2015 (archived).
- 3 The complete set of criteria to be considered when making a decision to open an investigation is included in the Criminal Investigations Manual: Chapter 3 Case File Management and Finalization, p. 18-19.
- 4 Criminal Investigation Manual, Chapter 6: Enforcement.
- 5 Civil penalties such as: Ascertained Forfeitures or Administrative Monetary Penalties.

- 6 These provisions include (but are not limited to) the ability to swear an Information to Obtain, a search warrant, or a production order; the ability to arrest with and without warrant, seize without warrant, and compel an accused to court.
- 7 It is a constitutionally protected principle of fundamental justice in Canada that criminal proceedings, from charge to sentencing, are matter of public record. Criminal enforcement outcomes are public and often receive significant media attention, possibly leading to a deterrence effect.
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