



***CONTRAVENTIONS ACT FUND FOR IMPLEMENTATION OF
LANGUAGE OBLIGATIONS
EVALUATION
Final Report***

March 2012

**Evaluation Division
Office of Strategic Planning and Performance Management**



TABLE OF CONTENTS

SUMMARY	i
1. INTRODUCTION.....	1
1.1. Context for the Evaluation.....	1
1.2. Scope and Objectives of the Evaluation.....	2
1.3. Structure of the Report	2
2. SUBJECT OF THE EVALUATION	3
2.1. The <i>Contraventions Act</i>	3
2.2. Relevant Language Obligations.....	4
2.3. Implementation Fund Logic.....	6
2.4. Financial Resources	8
3. METHODOLOGY	11
3.1. Literature Review	11
3.2. Interviews with Key Stakeholders.....	11
3.3. Methodological Challenges	12
4. MAIN EVALUATION FINDINGS.....	13
4.1. Relevance	13
4.2. Effectiveness	15
4.3. Efficiency and Economy	25
5. CONCLUSIONS AND LESSONS LEARNED	29
5.1. Relevance	29
5.2. Effectiveness	30
5.3. Efficiency and Economy	32
6. RECOMMENDATION AND MANAGEMENT RESPONSE.....	33

Appendix A: <i>Contraventions Act</i> Fund for Implementation of Language Obligations Evaluation Framework	37
Appendix B: Interview Guides	43

EXECUTIVE SUMMARY

1. Introduction

This document is the final report from the evaluation of the *Contraventions Act* Fund for Implementation of the Language Obligations. The Department of Justice Canada established the Implementation Fund in 2003, further to a Federal Court decision on the language obligations connected with the implementation of the *Contraventions Act*. The Implementation Fund was first included in the Action Plan for Official Languages announced in 2003 and was subsequently included in the Roadmap for Linguistic Duality 2008-2013. In accordance with the accountability requirements associated with the Implementation Fund, the Department of Justice conducted this evaluation.

2. Description of the Implementation Fund

The purpose of the Implementation Fund is to enable the federal government, and the provinces on its behalf, to fulfill its language-related obligations as part of implementing the *Contraventions Act*.

The activities in the context of the Implementation Fund are conducted both federally and provincially.

- At the federal level, the Department of Justice concludes agreements with the provinces for the administration of the *Contraventions Act*, which contain clauses specifically setting out the language rights requirements established by the *Criminal Code* and the *Official Languages Act* that fall to the federal government, but which the provinces fulfill on the latter's behalf. To ensure that these language rights are respected, the federal government is also required to amend, based on the jurisdictions concerned, the *Application of Provincial Laws Regulations* (SOR/96-312);
- At the provincial level, the Implementation Fund provides funding for a range of activities considered necessary for fulfilling the language obligations that the provincial governments and their courts discharge on behalf of the federal government.

3. Methodology

The evaluation of the Implementation Fund is based on two main research methods:

- A review of all the documentation pertaining to the Implementation Fund;
- Interviews with various federal and provincial stakeholders who took part in implementing the activities funded by the Implementation Fund.

4. Relevance of the Implementation Fund

The 2001 ruling from the Federal Court confirmed the range of language rights applicable to federal contraventions. Essentially, provinces that enforce federal contraventions are acting on behalf of the federal government and, as such, must uphold all language rights applicable to a federal institution or to the prosecution of a federal offence. The Implementation Fund was created to support the federal government's efforts to implement the *Contraventions Act* throughout Canada in a manner that is consistent with all constitutional and quasi-constitutional rights applicable to federal contraventions.

To date, the Implementation Fund has been exclusively dedicated to the adoption by the provinces, on behalf of the federal government, of measures intended to the respect of linguistic rights. Since its sole object is the language obligations connected with implementing the *Contraventions Act*, its reason therefore is, first and foremost, to enable the federal government to implement its prosecution scheme provided for in the *Contraventions Act* in partnership with the provinces. As such, the Implementation Fund is intrinsically linked with the *Contraventions Act*.

It would therefore be prudent for the Department of Justice to merge the accountability process for the Implementation Fund with that of the *Contraventions Act*. Thus, instead of evaluating the Implementation Fund and the *Contraventions Act* separately, as has been the case to date, the Department could develop a strategy pertaining to the *Contraventions Act* that would include a component involving the associated language obligations. In this vein, the intermediate and long-term outcomes of the Implementation Fund must necessarily be connected with the *Contraventions Act*.

The parameters around the Implementation Fund have proven to be flexible enough to accommodate institutional and language-related realities that vary considerably across all the provinces and territories. Moreover, the Implementation Fund focused on well-identified needs

to ensure the capacity of the provinces to offer, on behalf of the federal government, services in both official languages, as required by the *Criminal Code* and the *Official Languages Act*.

Overall, the Implementation Fund is a suitable tool for fulfilling the language obligations associated with implementing the *Contraventions Act*. The experience acquired to date shows that the Fund has enabled the funding recipients to have the bilingual institutional capacity to fulfill the language obligations associated with implementing the *Contraventions Act*.

5. Effectiveness

At the time of the evaluation, seven provinces (Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba and British Columbia) were prosecuting and processing federal contraventions under their respective justice systems and in compliance with the language obligations arising from the *Contraventions Act*. Although all seven meet these language obligations, New Brunswick and Quebec do not make use of the resources of the Implementation Fund. In the other jurisdictions (Newfoundland and Labrador, Saskatchewan, Alberta, Yukon, the Northwest Territories and Nunavut), the summary conviction procedure remains the only method of prosecuting federal contraventions. The funding recipients must present annual activity reports. Overall, the funding recipients submit complete activity reports. However, some delays are noted in delivery of those reports. As such, at the time of the evaluation, one province had still not submitted its activity report for the 2010-11 fiscal year.

The information included in these activity reports confirms how the Implementation Fund resources are used and documents the quantity of tickets issued, the federal laws and regulations they are connected with, as well as the quantity of tickets contested in court, including the number of trials in either official language.

All funding recipients of the Implementation Fund conducted needs analyses to determine the type of activities enabling them to fulfill the language obligations associated with the *Contraventions Act*. The terms and conditions of the Implementation Fund allow for funding the activities identified as being required in view of those various requirement studies.

The range of activities implemented in the provinces and funded by the Implementation Fund includes the hiring of bilingual staff covering judicial activities and extra-judicial services, language training, bilingual communication tools, signage and information management activities required for the administration of federal contraventions.

The activities implemented ensured the provision to funding recipients of services in both official languages in connection with each step in processing a federal contravention, ranging from the issuing of the ticket to the trial when a person pleads not guilty. Ontario is the only province that held bilingual trials connected with federal contraventions. Even though the need did not arise in the three other provinces supported by the Implementation Fund, their organizational capacity for providing judicial services that fulfill the *Contraventions Act* language obligations was sufficient for responding to such requests.

Each recipient entity of the Implementation Fund is called upon for bilingual extra-judicial services. Since the number of requests for this matter is not recorded, the evaluation was unable to measure the request rate this type of service. However, at the time of the evaluation, no litigant complaints pertaining to the *Contraventions Act* language obligations, either with judicial or extra-judicial services, had been conveyed to the Department of Justice.

Overall, the activities funded by the Implementation Fund allowed ensuring the bilingual capacity of provincial governments with regard to judicial and extra-judicial services, and maintaining this capacity.

6. Efficiency and Economy

To date, the Implementation Fund has been efficiently administered. The Department established terms and conditions defining eligible expenses for the purpose of the Fund. These reflect generally recognized practices for the delivery of bilingual services in a judicial and extra-judicial context: the hiring and language training of judicial staff, the hiring and language training of judicial support staff, and the development of bilingual tools to support judicial and extra-judicial services. The Department also reviews each project application in order to ensure that resources will be used for purposes specifically associated with the *Contraventions Act*.

The current evaluation noted that activities funded through the Implementation Fund are closely aligned with the terms and conditions and are thus representative of generally recognized practices for the delivery of bilingual services in a judicial and extra-judicial context. In addition, funding recipients have been able to conduct their activities within the annual budget allocated by the Implementation Fund. Naturally, a provincial government's capacity to provide bilingual services in the context of a federal contravention may, by extension, make it possible to further provide bilingual services in the context of a penal or criminal offence. This, then, is an unanticipated, yet positive, outcome arising from the Implementation Fund.

As for resources allocated in compliance with the funding agreements, the Department of Justice has invested to date only a portion of the amounts allocated under the *Roadmap for Linguistic Duality*. Thus, during the first two fiscal years covered by this evaluation (2008-09 and 2009-10), the provinces' actual spending represented 33% of the total amount allocated for this purpose by the *Roadmap for Linguistic Duality*. Two main factors explain this percentage. First, all funding recipients have spent less than the maximum amount set in their agreement with the Department. Second, not all jurisdictions have signed an agreement with the Department which means that resources are being set aside for future negotiation of agreements. However, the investment made to date has allowed the funding recipients to ensure that their capacity to provide bilingual services is specifically connected with the *Contraventions Act* requirements.

Fully implementing the *Contraventions Act* across the country will require additional funding within the existing budget. Three provinces and three territories have still yet to reach an agreement with the Department of Justice to authorize the implementation of the *Contraventions Act* in keeping with the associated language obligations. The specific level of resources required by those agreements will only be known once the latter have been negotiated and concluded. In the meantime, the Department must continue the efforts it started, acknowledging that the timeframe required for signing those agreements will be largely determined by the provinces and territories.

Although there is another way to achieve the Implementation Fund objectives, it would result in considerably higher costs. In fact, it involves introducing an independent federal prosecution scheme as set out in the *Contraventions Act*. Since that option could not be justified financially, the Implementation Fund is still by far the most effective and efficient way to ensure the enforcement of the *Contraventions Act*.

1. INTRODUCTION

This document is the final report from the evaluation of the *Contraventions Act* Fund for Implementation of the Language Obligations (hereinafter referred to as the “Implementation Fund”). The Department of Justice Canada established the Implementation Fund in 2003, further to a Federal Court decision on the language obligations connected with implementing the *Contraventions Act*. The Implementation Fund was first included in the *Action Plan for Official Languages* announced in 2003 and was subsequently included in the *Roadmap for Linguistic Duality 2008-2013*. In accordance with the accountability requirements associated with the Implementation Fund, the Department conducted this evaluation.

1.1. Context for the Evaluation

Since its creation in 2003, the Implementation Fund has been the subject of two evaluations. In 2006, the Department completed its formative evaluation, which more specifically targeted the activities funded in Ontario and Manitoba.¹ In 2007, Justice conducted the summative evaluation of the Implementation Fund, which more specifically targeted the activities funded in Nova Scotia and British Columbia.²

In addition, in 2010, the Department conducted the evaluation of the *Contraventions Act*, which better documented the broader context in which the Implementation Fund must be operationalized.³

This current evaluation has purposes that are largely complementary with the other evaluation exercises mentioned in this subsection and, as such, refers to those documents as needed.

¹ Department of Justice Canada (2006). *Formative Evaluation of the Contraventions Act Fund*. Ottawa.

² Department of Justice Canada (2007). *Summative Evaluation of the Contraventions Act Fund*. Ottawa.

³ Department of Justice Canada (2010). *Contraventions Act Evaluation*. Ottawa.

1.2. Scope and Objectives of the Evaluation

This evaluation covers all the activities carried out over the five-year funding period of the *Roadmap for Linguistic Duality* from 2008 to 2013. It is intended to provide information on the relevance, effectiveness, and efficiency and economy of the Implementation Fund.

The evaluation is also intended to provide information that may support the broader evaluation of the *Roadmap for Linguistic Duality*.

1.3. Structure of the Report

This evaluation report contains six sections, including this introduction. Section 2 describes the Implementation Fund, and Section 3 describes the methodology used to complete this evaluation. Section 4 summarizes the findings from the evaluation, Section 5 presents the conclusions and lessons learned, and Section 6 presents the recommendations and management response.

2. SUBJECT OF THE EVALUATION

The Implementation Fund is the subject of the evaluation. It is closely tied with the *Contraventions Act*. This section first includes a short profile of this legislation and then describes the logic underlying the Implementation Fund.

2.1. The *Contraventions Act*

In 1992, Parliament passed the *Contraventions Act* (hereinafter referred to as the Act) to recognize the distinction between criminal offences and regulatory offences and to establish a more effective framework to process those regulatory offences. The Act benefits Canadians and their justice system by authorizing voluntary payment and exempting guilty pleas from appearing in court. The court system can thereby invest resources in just holding trials. The Act also limits the legal consequences further to convictions pertaining to regulatory offences designated as contraventions. As section 4 of the Act states:

“4. The purposes of this Act are:

(a) to provide a procedure for the prosecution of contraventions that reflects the distinction between criminal offences and regulatory offences and that is in addition to the procedures set out in the Criminal Code for the prosecution of contraventions and other offences; and

(b) to alter or abolish the consequences in law of being convicted of a contravention, in light of that distinction.”

The federal government looked at two options for making prosecution of regulatory offences more effective: implement the procedure set out by the *Contraventions Act* and develop an administrative system to support its new scheme or use the provinces' offence scheme, both the offence conviction procedure and their administrative system. It is the latter option that the federal government selected and that is reflected in the amendment to the Act in 1996. As a result, a federal regulatory offence designated as a contravention, such as using a pleasure craft

with an insufficient number of life jackets, is prosecuted the same way as a provincial offence, such as driving a car without wearing a seatbelt. In both cases, the individual receives a ticket stating the options available: plead guilty and pay the fine or request a trial. Offenders who do not act on the ticket are subject to a default judgment.

The *Contraventions Act* provides for the following procedures:

- The Governor in Council sets out in the *Contraventions Regulations* which federal regulatory offences are designated as “contraventions”;
- The Act establishes a simpler prosecution scheme for regulatory offences designated as contraventions than the one provided for by the summary scheme included in the *Criminal Code*.

One of the central objectives of the *Contraventions Act* is to remove the impact of having a criminal record for individuals who are found guilty of certain regulatory offences designated as contraventions. The Act recognizes the distinction between regulatory offences and criminal offences and provides “to alter or abolish the consequences in law of being convicted of a contravention, in light of that distinction”. It is on this basis that the *Contraventions Act* states that, apart from exceptional circumstances, “a person who has been convicted of a contravention has not been convicted of a criminal offence” and that “a contravention does not constitute an offence for the purpose of the *Criminal Records Act*”⁴ except in convictions by indictment. This is a significant change, given the impact that a criminal record can have on an individual’s ability to practice certain professions, find a job or even travel.

2.2. Relevant Language Obligations

In 2001, the Federal Court was asked to clarify the extent of language rights applicable to federal contraventions.⁵ That case involved Ontario, the first province to implement the *Contraventions Act*. To date, that decision is still the only one dealing with this issue.

According to the Court, the federal government may use provincial offence schemes to prosecute federal contraventions, but in doing so, it must ensure that all judicial activities and extra-judicial services relating to federal contraventions are provided in accordance with the language rights of

⁴ Section 63 of the *Contraventions Act*.

⁵ *Commissioner of Official Languages and Her Majesty*, 2001 FCT 239.

Canadians contained in the *Canadian Charter of Rights and Freedoms*, the *Criminal Code* and the *Official Languages Act*.

After reviewing the existing structure in Ontario in 1997 for implementing the *Contraventions Act*, the Federal Court concluded that “in the measures that they have taken in enacting and applying the CA [*Contraventions Act*], the respondents [the federal government] violated the statutory language rights in the OLA [*Official Languages Act*], and the provisions of the Charter, with respect to the status and use of the two official languages in the province of Ontario”.⁶

The Court concluded that the federal government “must ensure that the quasi-constitutional language rights of all Canadian citizens are guaranteed by any measure taken to arrange for the implementation of the CA [*Contraventions Act*].”.⁷ More specifically, the Federal Court ordered the following:

- that the federal government “take the necessary measures, whether legislative, regulatory or otherwise, to ensure that the quasi-constitutional language rights provided by sections 530 and 530.1 of the *Criminal Code* and Part IV of the OLA [*Official Languages Act*], for persons who are prosecuted for contraventions of federal statutes or regulations, are respected in any present or future regulations or agreements with other parties that relate to responsibility for administering the prosecution of federal contraventions”;⁸
- that any agreements signed between the federal government and the Ontario government include “a clear reference to the quasi-constitutional language rights provided in sections 530 and 530.1 of the *Criminal Code* and part IV of the OLA [*Official Languages Act*].”.⁹

Further to the Federal Court ruling, the Department of Justice initiated the process of modifying its *Contraventions Act* agreements to include new provisions addressing language rights requirements identified in the decision. To support this process, the Department received funding to establish the Implementation Fund, which is the subject of this evaluation.

⁶ Ibid. par. 191.

⁷ Ibid. par. 196.

⁸ Ibid. par. 191.

⁹ Ibid. par. 196.

2.3. Implementation Fund Logic

The logic of the Implementation Fund is shown in figure 1. A detailed description of it is as follows.

2.3.1. Objectives of the Implementation Fund

The purpose of the Implementation Fund is essentially to enable the federal government, and the provinces on its behalf, to fulfill its language obligations in implementing the *Contraventions Act*. More specifically, the main goal of the Implementation Fund is “to implement, in cooperation with the provinces, territories and municipalities, measures to permit the use of French and English within the scope of proceedings instituted under the *Contraventions Act*.”¹⁰

Concretely, this refers to the obligation to ensure compliance with:

- in the case of judicial services, the language rights set out in section 530 and 530.1 of the *Criminal Code*, which pertain to the language of the accused;
- in the case of extra-judicial services, the language obligations set out under Part IV of the *Official Languages Act*, which deal with communications with and services to the public, including the active offer.

2.3.2. Implementation Fund Activities and Outputs

The activities in the context of the Implementation Fund are undertaken both federally and provincially.¹¹

At the federal level, the Department of Justice concludes agreements for the administration of the *Contraventions Act*, which contain clauses specifically setting out the language rights requirements established by the *Criminal Code* and the *Official Languages Act* that fall to the federal government, but which the provinces fulfill on the latter’s behalf. To ensure that these language rights are respected, the federal government is also required to amend, based on the jurisdictions concerned, the *Application of Provincial Laws Regulations* (SOR/96-312).

¹⁰ Department of Justice Canada (2003). *Department of Justice Funding Program for the Implementation of the Contraventions Act: Terms and Conditions*, 2010.

¹¹ For the purpose of this report, reference to the provincial governments includes, as required, municipal authorities when they are involved in handling federal contraventions.

At the provincial level, the Implementation Fund provides funding for a range of activities considered necessary for fulfilling the language obligations that the provincial governments and their courts discharge on behalf of the federal government. It is expected that the list of activities funded in each jurisdiction will vary based on identified needs, but it should, in general, contain some of the following aspects:

- the hiring and allocation of bilingual judicial (such as Justices of the Peace and Provincial Court Judges) and extra-judicial (such as court clerks) personnel;
- the delivery of language training for judicial and extra-judicial personnel;
- the installation and/or modification of equipment and systems in the courts or registries to provide access to bilingual judicial and extra-judicial personnel;
- the supply of legal documentation (such as tickets) and related information (such as brochures) in both official languages;
- the installation of bilingual signage in the court and registry.

2.3.3. Anticipated Outcomes

It is expected that the measures adopted by the provinces contribute to the achievement of a series of immediate, intermediate and long-term outcomes:

- The activities funded must enable recipients to provide judicial and extra-judicial services in both official languages;
- The Implementation Fund must ensure that the languages rights set out in the *Criminal Code* and the *Official Languages Act* are respected, which, in turn, assures the Department of Justice that the court order issued by the Federal Court has been adequately addressed;
- The Implementation Fund must allow the federal government to enforce the *Contraventions Act* in partnerships with the provinces;
- Finally, the Implementation Fund must give effect to the Department's strategic objective of making the justice system relevant, accessible and responsive to the needs of Canadians, and to provide effective stewardship of that system.

2.3.4. Management Structure

The Office of Francophonie, Justice in Official Languages and Legal Dualism and the Innovations, Analysis and Integration Directorate of the Programs Branch jointly manage the Implementation Fund. These two entities handle the negotiation of agreements with the provinces, territories and municipal jurisdictions, as applicable. They review all funding requests to ensure that they comply with the terms and conditions of the Implementation Fund. Lastly, they handle the process for establishing the relevant regulatory framework to incorporate the provincial and territorial prosecution schemes into the federal scheme.

The provincial and territorial jurisdictions (typically the Attorney General) work closely with court managers to implement the activities funded by the Implementation Fund, including:

- the printing and distributing of tickets in both official languages;
- the provision of trials and other related activities in the official language chosen by the offender, in accordance with the *Criminal Code* and the *Official Languages Act*;
- the monitoring and following up on any complaint concerning non-compliance with official languages requirements.

Provincial and territorial jurisdictions are also responsible for submitting performance reports to the Department of Justice. These reports include, among other things:

- actual expenses incurred for implementing the activities relating to language obligations;
- the number of tickets issued for contraventions for each statute and regulations covered by the *Contraventions Regulations*;
- the amount of fines imposed;
- the total amount of fines outstanding;
- the number of trials held, including the number of trials held in French.

2.4. Financial Resources

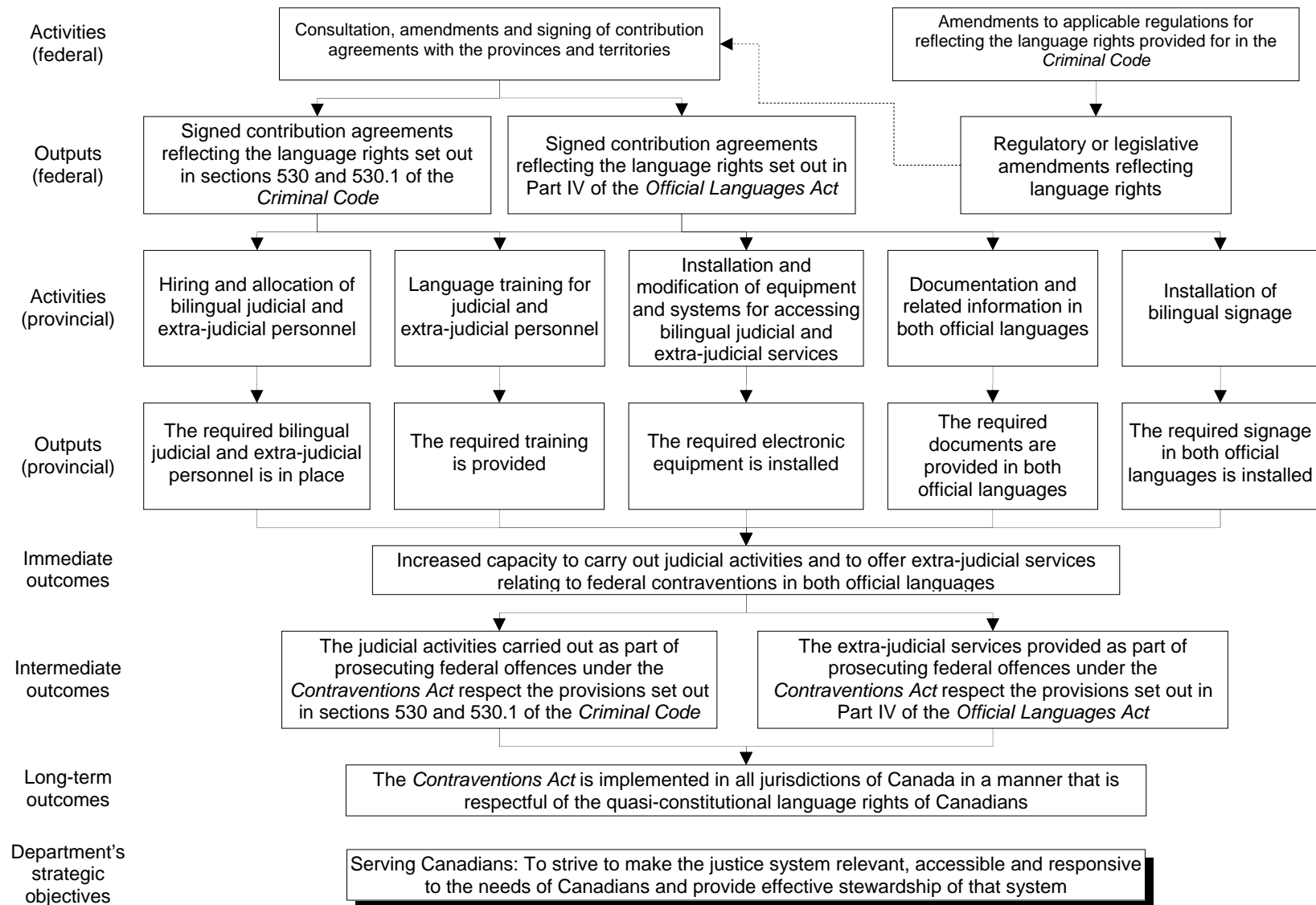
The federal government allocated a total of \$49.4 million to the Implementation Fund, covering the five fiscal years set out in the *Roadmap for Linguistic Duality*. Table 1 shows the distribution of those funds.

Table 1: Financial resources allocated to the Implementation Fund

Type of Vote	Annual Amount	Amount over 5 years (2008-09 to 2012-13)
Vote 5 (agreements)	\$9,094,900	\$45,474,500
Vote 1 (operating expenditures)	\$780,860	\$3,904,300
Total	\$9,875,760	\$49,378,800

Source: administrative documents.

Figure 1: The Logic Model of the Implementation Fund



3. METHODOLOGY

The methodology used for this evaluation was based on two main sources of information: a literature review and a series of interviews.

3.1. Literature Review

The literature review provided information on the activities conducted in the context of the Implementation Fund, specifically since 2008. This work also helped build a solid information base for preparing the interviews with key stakeholders. All the documentation pertaining to the Implementation Fund was therefore analyzed for this purpose. The list of documents consulted includes:

- *Contraventions Act* agreements and other documents related to implementation of the Implementation Fund;
- the official Implementation Fund documentation;
- the reports submitted by the five jurisdictions that received financial assistance through the Implementation Fund;
- information pertaining to the *Contraventions Act*, Part XXVII of the *Criminal Code* (sections 530 and 530.1) and Part IV of the *Official Languages Act*;
- the Results-based Management and Accountability Framework for the Implementation Fund;
- the legislative and regulatory frameworks applicable for the prosecution of provincial offences.

3.2. Interviews with Key Stakeholders

The main goal of the interviews with key stakeholders was to obtain informed opinions and perceptions on the relevance, effectiveness, and efficiency and economy of the Implementation Fund. Therefore, a series of interviews were conducted with stakeholders involved in

administration of the Implementation Fund. Thirteen individuals from the following groups were consulted:

- the Office of Francophonie, Justice in Official Languages and Legal Dualism (Department of Justice Canada);
- the Innovations, Analysis and Integration Directorate (Department of Justice Canada);
- the *Contraventions Act* Implementation Management Group (Department of Justice Canada);
- the provincial governments of Ontario, Manitoba, British Columbia and Nova Scotia.

The interviews were conducted in person or by phone, in the official language chosen by the respondents. Before each interview, the respondents received the interview guide including the list of issues that were to be addressed. The data derived from these interviews are incorporated into this report in aggregate form.

3.3. Methodological Challenges

Two main methodological challenges arose in connection with this evaluation: the incomplete data submitted to the Department by the funding recipients and a limited pool of key stakeholders.

- Incomplete data submitted to the Department: the funding recipients of the Implementation Fund are required to submit an annual activity report that covers a set of indicators set out in the funding agreements. Although the submitted reports are complete, incomplete data were submitted to the Department regarding the 2010-11 report. In addition, since the year 2011-12 is not over, the reports for this year were not available. To minimize the impact of this situation on this evaluation, the interview guides were designed to cover the activities undertaken during those fiscal years;
- Limited pool of key stakeholders: the number of stakeholders with sufficient knowledge of the *Contraventions Act* and the Implementation Fund is very limited because this is a highly specialized field. However, it was possible to identify about 15 various stakeholders working in this field who were able to make a significant contribution to this evaluation.

4. MAIN EVALUATION FINDINGS

This section describes the main findings from the evaluation. The information is grouped by the topics of the relevance, effectiveness, and efficiency and economy of the Implementation Fund.

4.1. Relevance

The relevance of the Implementation Fund is inseparably linked to the more general relevance of implementing the *Contraventions Act* in the provinces. In fact, the only reason why the Implementation Fund exists is to support the implementation of the *Contraventions Act* across Canada, in partnership with the provinces.

4.1.1. Supporting an Accessible, Efficient and Fair System of Justice

Ensuring that the Canadian justice system is accessible is an objective requiring the active involvement of several institutions in Canada, including the courts, the provincial and territorial governments and, obviously, the Department of Justice. In fact, one component of the Department's mission is to "support the Minister of Justice in working to ensure that Canada is a just and law-abiding society with an accessible, efficient and fair system of justice".¹² The Department also actively promotes rights under the Canadian constitution, which is based on the fundamental principle of the rule of law.

These objectives appear in the Department's Program Activity Architecture (PAA). As such, the first strategic outcome of the PAA is to maintain "a fair, relevant, and accessible justice system that reflects Canadian values", from which stems the activity covering "justice policies, laws and programs", including those specifically dealing with access to justice. The Department's planning for the current fiscal year regarding access to justice also includes a commitment to

¹² Department of Justice Canada (2011). *2011-2012 Report on Plans and Priorities*. Ottawa.

“continue to work with provincial/territorial governments to ensure successful implementation of the *Contraventions Act*”.¹³

The Department of Justice has been working at implementing the *Contraventions Act* for a number of years now. The experience acquired and documented to date, especially through the evaluation of this legislation which the Department completed in 2010 (Department of Justice Canada, 2010), deepens the understanding of the importance of the procedure associated with federal contraventions to ensure that the Canadian justice system is fair and efficient:

- Being unable to issue tickets, many law enforcement officers are hesitant to proceed with a prosecution through the summary conviction process, since the latter appears out of proportion to the nature of the offence. The enforcement officer may then issue the offender a warning, which has no legal value, or simply disregard the offence. However, it is important, for the sake of the rule of law, that the statutes and regulations passed by Canadian Parliament be systematically implemented;
- For the offender, ending up with a criminal record for committing a regulatory offence again seems out of proportion. The *Contraventions Act* removes all doubt in this connection by eliminating this consequence;
- For the justice system, only having to try cases where a contravention is contested enables it to make better use of these limited resources.

4.1.2. Why Use the Provincial Schemes?

In order to implement a system of transcripts for the application of federal contraventions, the Act provides for two possibilities: the establishment of a new federal structure, or the use of existing provincial prosecution schemes. Parliament chose the second of these, and amended the Act in 1996 to empower the federal government to use provincial structures.

Using the provinces’ prosecution schemes is a much more efficient approach for implementing the *Contraventions Act* than the other option provided for by the Act, which assumes that an independent federal scheme is established in parallel with the one in place for provincial offences. As stated in the *Contraventions Act* evaluation, establishing a separate system for

¹³ Ibid.

federal contraventions would result in considerable costs, in addition to creating confusion, especially among offenders and enforcement officers.¹⁴

The reason why the federal government had to promote the Implementation Fund stems from its decision to exercise the option set out in the *Contraventions Act* to use the provincial governments' prosecution schemes. Thus, the fact that the provincial governments act on behalf of the federal government obliges them to respect the language rights that apply in this context.

4.1.3. Fulfilling the Language Obligations Associated with the Ticketing Scheme

In its 2001 decision, the Federal Court left no room for doubt: if unable to fulfill the language obligations set out in the *Criminal Code* and the *Official Languages Act*, the government should end its existing strategy for implementing the *Contraventions Act*. Should it fail to follow these instructions, the federal government would no longer be able to use the provincial schemes and would have to set up a new federal structure, which would not be an efficient way of processing federal tickets. It is therefore in the government's interest to do what is necessary for the provincial governments to be able to process tickets in a way that fulfills the language obligations applicable to a federal prosecution scheme. It is to this end that the Department provides provisions in the agreements that it signs with the provincial governments describing those obligations and financially supporting measures for fulfilling those obligations.

Since its sole object is the language obligations connected with implementing the *Contraventions Act*, its reason therefore is, first and foremost, to enable the federal government to implement its prosecution scheme provided for in the *Contraventions Act* in partnership with the provinces. As such, the Implementation Fund is intrinsically linked with the *Contraventions Act*. From a practical perspective, the Department of Justice has little choice but to keep the Implementation Fund for as long as it intends to keep the Act in its current implementation framework in the provinces. Thus, by extension, if the *Contraventions Act* were to be repealed, then there would no longer be a rationale for the Implementation Fund.

4.2. Effectiveness

Overall, the Implementation Fund has proven to be an effective tool for respecting the *Contraventions Act* language rights. The Implementation Fund's financial resources were

¹⁴ Department of Justice Canada (2010). *Contraventions Act: Evaluation*. Ottawa.

allocated to funding recipients based on the obligations identified by the federal government and the admissibility of the measures they identified. Those investments helped carry out activities for ensuring that language rights are respected in judicial and extra-judicial services relating to the *Contraventions Act*. This subsection outlines the results in more detail.

4.2.1. Implementation of the *Contraventions Act*

As mentioned in subsection 2.2, further to a Federal Court decision in 2001, the Department changed the *Contraventions Act* agreements with the provinces to include provisions on the language rights requirements stated in the decision. At the time of this evaluation, seven provinces (Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba and British Columbia) were prosecuting and processing federal contraventions through their respective prosecution schemes, while complying with the *Contraventions Act* language obligations. Although those provinces are fulfilling these language obligations, some of them are not using the resources provided for by the Implementation Fund. First, New Brunswick, being the only officially bilingual Canadian province, already respects the constitutional language rights that apply to federal contraventions. Quebec has a bilingual penal system which is applied to the language obligations under the *Contraventions Act* without drawing on the Implementation Fund. In the other jurisdictions (Newfoundland and Labrador, Saskatchewan, Alberta, Yukon, Northwest Territories and Nunavut), the summary conviction scheme is still the only way to prosecute federal contraventions. Table 2 summarizes this situation in Canada.

The challenge facing the Department is extending the implementation of the *Contraventions Act* prosecution scheme to these other jurisdictions. At the time of the evaluation, steps in this direction had been taken. Discussions are under way with the governments of Newfoundland and Labrador, Saskatchewan and the Northwest Territories, although no agreement in principle has been signed to date. The data gathered in the context of this evaluation indicate that some of these governments have still not been able to mobilize the resources required to negotiate an agreement under the *Contraventions Act*.

The implementation of the *Contraventions Act* itself is beyond the scope of this evaluation. This was covered in a separate evaluation in 2010. However, partial implementation of the *Contraventions Act* will not likely be permanently sustainable, since that it could be subject to legal risks associated with non-uniform application of federal law. This is why the Department is continuing actions with the other jurisdictions where the Act is still not enforced. As these negotiations progress, the Department of Justice will need to resort to the Implementation Fund

to finance the respect of linguistic rights. Indeed, it will be necessary to provide to provincial and territorial governments with which agreements still have to be signed, the opportunity to provide services in both official languages, on behalf of the federal government.

Table 2: Implementation of the *Contraventions Act* and support of the Implementation Fund

Components	NL	PEI ¹⁵	NS	NB	QC	ONT	MB	SK	AB	BC	YK	NT	NU
Activities supported by the Implementation Fund		X	X			X	X			X			
<i>Contraventions Act</i> applicable		X	X	X	X	X	X			X			
Summary conviction scheme is still the only way to prosecute federal contraventions	X							X	X		X	X	X

Source: administrative documents.

It should be noted that the Department of Justice also signed a contribution agreement with the municipality of Mississauga for activities implemented at Toronto Pearson International Airport. The provisions of the Implementation Fund agreements are intended to ensure that the *Contraventions Act* language rights are respected in the processing of parking infractions.

4.2.2. Measures Proposed by the Provinces

A province's capacity to provide, on behalf of the federal government, bilingual services specifically connected with the *Contraventions Act* requirements varies from one region to another. To determine which activities will be covered under a contribution agreement with the federal government, each provincial government conducts its own needs analysis.

Due to the type of judicial activities and extra-judicial services that are to be provided in implementing the *Contraventions Act*, needs normally fall into the following areas:

- Salary-related and travel expenses of Justices of the Peace or Provincial Court Judges, who are responsible for presiding over trials connected with federal contraventions;
- Salary-related and travel expenses of court support staff, such as clerks or stenographers;¹⁶

¹⁵ In December 2011, the government of Prince Edward Island signed an agreement allowing it to receive funding from the Implementation Fund. However, since this new partner is still implementing this agreement, the findings from this evaluation do not reflect this province's activities.

¹⁶ The titles and duties of court support positions vary somewhat from one jurisdiction to another.

- Language training for justice professionals (judges, clerks, etc.) and extra-judicial personnel (court registries, etc.) called upon to serve individuals who have received a ticket for a federal contravention;
- The technological equipment or services supporting the judicial activities and extra-judicial services offered for the purpose of the *Contraventions Act*. This may include changes to provincial data banks to be able to fully document the services provided in both official languages in connection with federal contraventions, such as the number of trials conducted in French;
- Bilingual signage and document translation.

These types of activities are directly reflected in the terms and conditions of the Implementation Fund, which specifically authorize recipients to submit expenses of this nature. The Department reviews all funding requests to ensure that they comply with the terms and conditions of the Implementation Fund and the spirit of implementing the ticketing scheme. In fact, the data gathered in the context of this evaluation confirm that the activities funded by the Implementation Fund do comply with these terms and conditions. Moreover, the provincial governments consulted as part of this evaluation indicated that the terms and conditions of the Implementation Fund enable them to adequately meet their needs.

4.2.3. Allocation of Resources

Allocation of the financial resources associated with the Implementation Fund has historically presented certain challenges for the Department of Justice:

- First, the *Contraventions Act* is an exceptional statutory regime in that there is no precedent for accurately estimating the costs connected with fulfilling the language obligations associated with it. In many respects, stakeholders have had to acquire some experience before being able to estimate, with some degree of accuracy, the resources that would prove necessary for achieving the intended outcomes of the Federal Court ruling.
- Also, the Implementation Fund has a base budget that needs to cover the activities connected with the language obligations of all provinces and territories. However, at the time of this evaluation, the Department of Justice was funding activities in five provinces. Assuming that Quebec and New Brunswick will not need financial support for fulfilling all the *Contraventions Act* language obligations, there are still three other provinces and three territories where the Act has still not been implemented. Financial resources will necessarily

be required to support these other jurisdictions so that they are able to respect, while acting on behalf of the federal government, the applicable language obligations.

As Table 3 shows, of the \$45.5 million allocated to Vote 5 for agreements with the provinces during the five years covered by the *Roadmap for Linguistic Duality*, the Department of Justice committed \$24.2 million through the six agreements in place, leaving \$21.2 million unallocated. It is through these surpluses that prospective agreements with the provinces and territories will be funded.

Table 3: Allocation of the Implementation Fund (vote 5 only)

Fiscal Year	Amounts Allocated (<i>Roadmap</i>)	Amounts Committed (6 agreements)*	Actual Spending
2008-09	\$9,094,900	\$4,768,480	\$2,892,455
2009-10	\$9,094,900	\$4,773,439	\$3,156,589
2010-11	\$9,094,900	\$4,795,055	not available
2011-12	\$9,094,900	\$4,929,750	not available
2012-13	\$9,094,900	\$5,015,434	not available
Total	\$45,474,500	\$24,282,158	
* The amounts include the recent agreement with Prince Edward Island			

Source: administrative data, signed agreements and activity reports.

As Table 4 shows, another challenge arising from the findings previously outlined is the fact that the actual spending of some provinces that signed an agreement is considerably less than what had been provided for in their agreement:

- Ontario, in particular, spent roughly 60% of the amount provided for in its agreement during the first two fiscal years covered by this evaluation (2008-09 and 2009-10);
- Nova Scotia's, Manitoba's and British Columbia's actual spending largely reflected the amounts provided for in their respective agreements.

Table 4: Anticipated and actual spending

	2008-09	2009-10
Ontario		
Amount provided for in the agreement	\$2,800,000	\$2,800,000
Actual spending	\$1,592,071	\$1,678,088
Difference	\$1,207,929	\$1,121,912
Nova Scotia		
Amount provided for in the agreement	\$912 900	\$915,100
Actual spending	\$753,300 ¹⁷	\$621,158
Difference	\$159,600	\$293,942
Manitoba		
Amount provided for in the agreement	\$300,000	\$300,000
Actual spending	\$235,047	\$273,086
Difference	\$64,953	\$26,914
British Columbia		
Amount provided for in the agreement	\$600,100	\$663,600
Actual spending	\$492,203	\$545,000 ¹⁸
Difference	\$107,897	\$118,600

Source: administrative data and signed agreements.

4.2.4. Activity Reports

The five jurisdictions that, at the time of the evaluation, had been Implementation Fund recipients essentially carried out the activities set out in their contribution agreements:

- At the time of the evaluation, Nova Scotia, Manitoba, British Columbia and the municipality of Mississauga had submitted their activity reports for the first three years of the Roadmap (2008-09, 2009-10 and 2010-11);

¹⁷ Forecast amount as of June 2008.

¹⁸ Forecast amount as of June 2009.

- At the time of the evaluation, Ontario submitted only the first two activity reports for the 2008-09 and 2009-10 fiscal years. The 2010-11 report was presented to the Department on March 5, 2012. However, the information report could not be taken into consideration for the present evaluation.

The activity reports presented to date are complete and include data on the quantity of tickets issued, the federal laws and regulations they are connected with, as well as the quantity of tickets contested in court, including the number of trials in either official language. These reports also confirm that the bilingual positions for the judicial activities and extra-judicial services connected with federal contraventions have been filled, that the language training has been given, and that the other supporting activities described in each enforcement agreement have been carried out. The consultations held with the provincial governments also revealed that they had no substantial hurdles to overcome in carrying out their activities.

4.2.5. Provision of Services in Both Official Languages

At the time of the evaluation, each of the recipient provincial governments of the Implementation Fund had established the framework required by the *Contraventions Act* language obligations:

- The *Application of Provincial Laws Regulations* includes, for each province, a direct reference to the language obligations set out in section 530 and paragraphs 530.1(a) to (h) of the *Criminal Code*;
- The signed agreements between the federal government and the provincial governments specifically define the language obligations pertaining to the judicial activities and extra-judicial services that must be provided in both official languages.

Based on the identified obligations, the provincial governments undertook, through the Implementation Fund, to implement some activities for ensuring that they have the capacity to provide bilingual services under the implementation of the *Contraventions Act*.

The activities funded to date by the Implementation Fund cover the two types of services presented earlier: judicial services and extra-judicial services. Judicial services involve the language of the accused during activities in Court; whereas extra-judicial services involve communication with and services offered to the public, including the active offer. The provinces are expected to have these two types of activity comply with the *Contraventions Act* language obligations.

In Nova Scotia, in the case of judicial services, the Implementation Fund helped keep a bilingual Provincial Court Judge, a Justice of the Peace and a stenographer in place. In the case of extra-judicial services, six bilingual provincial court client service positions were funded (Halifax, Dartmouth, Digby, Yarmouth, Port Hawkesbury and one service coordination position in French). Bilingual signs were also installed in five justice centres and in three satellite courts. The Implementation Fund also supported language training initiatives for bilingual court officials and judicial support staff.

In Ontario, the salary-related and travel expenses of judicial personnel and judicial support personnel were funded by the Implementation Fund. The latter also helped provide language training for those personnel. Specifically, these initiatives were implemented at the Central Office of the Attorney General of Ontario (Toronto) and in seven municipalities (Brampton, Burlington, Whitby, Newmarket, Orangeville, St. Thomas and Kitchener).

In Manitoba, the Implementation Fund also covered the salary-related and travel expenses of judicial personnel and judicial support personnel. In particular, one bilingual judicial services generalist position is in place at the St. Pierre-Jolys service centre. The Implementation Fund also helps maintain video links to the St. Pierre-Jolys service centre. This technology tool, specific to Manitoba, makes it possible to appear remotely before a Justice of the Peace to plead guilty and explain extenuating circumstances.

In British Columbia, judicial and extra-judicial service positions were maintained. Language training was also given. In addition to bilingual signage installation and Website management, the Implementation Fund helped maintain a toll-free phone line and produce bilingual forms.

In Mississauga, the Implementation Fund helps fund a bilingual position at the first attendance facility and another at the administrative offices responsible for enforcing parking regulations. These positions essentially prepare correspondence and answer phone calls regarding parking infractions at Toronto Pearson International Airport.

In addition, conducting the activities set out in the contribution agreements signed with the provinces under the *Contraventions Act* makes it possible to provide bilingual services during the key stages of ticket processing. In the provinces where agreements were signed and implemented, the following outcomes were identified:

- offenders receive a pre-printed ticket in both official languages;
- offenders who wish to do so can contact the relevant authorities in the language of their choice for receiving additional information about the ticket they received;
- offenders who wish to do so can choose to plead guilty to the offence and pay the required amount. Where this option exists provincially, litigants can also appear before a bilingual Justice of the Peace or a Provincial Court Judge to plead guilty and present extenuating circumstances to reduce the prescribed fine;
- Lastly, litigants who wish to do so can choose to plead not guilty to the ticketed infraction and appear in court, in the language of their choice.

On a more basic level, the outcomes achieved to date through the Implementation Fund have enabled the federal government to maintain a regulatory infraction prosecution scheme that provides enforcement officers with an effective instrument and that helps achieve the equity and effectiveness objectives contemplated when the *Contraventions Act* was passed.

4.2.6. Respecting Language Rights

The activities undertaken by the provinces aim to ensure that the *Contraventions Act* language rights are respected. This subsection highlighted the organizational capacity of the Implementation Fund's funding recipients to identify their language requirements and undertake activities for meeting those needs. However, to measure the impact of those initiatives, it is important to measure the usage rate of the judicial and extra-judicial services as well as the complaints submitted by the users of those services.

Judicial services involve activities conducted in Court. During the period covered by this evaluation, contravention tickets were issued in each province receiving funding from the Implementation Fund. Two main options are available to offenders: plead guilty and pay the fine indicated on the ticket or plead not guilty and ask that a trial be held. When an offender asks for a trial, he/she has the right to its being conducted in the official language of his/her choice. At the time of this evaluation, Ontario is the only province that held bilingual trials connected with federal contraventions. Even though the need did not arise in the three other funding recipients of the Implementation Fund, their organizational capacity for providing judicial services that fulfill the *Contraventions Act* language obligations was sufficient for responding to such requests.

Table 5 is a summary, by province and by fiscal year, of the number of tickets issued, the number of trials held in the majority official language (English), as well as the number of trials held in the minority official language (French).

Table 5: Number of tickets issued and number of trials held by province and by fiscal year

	Nova Scotia	Ontario	Manitoba	British Columbia
2008-09				
Contravention tickets issued	197	10,959	422	1,960
Trials held in the majority official language (English)	6	2,295	12	36
Trials held in the minority official language (French)	0	17	0	0
2009-10				
Contravention tickets issued	355	10,850	360	1,815
Trials held in the majority official language (English)	13	1,514	7	25
Trials held in the minority official language (French)	0	36	0	0
2010-11				
Contravention tickets issued	488	not available	282	2,068
Trials held in the majority official language (English)	29	not available	7	43
Trials held in the minority official language (French)	0	not available	0	0

Source: administrative data

Extra-judicial services involve all services provided out of court, such as requests for information, bilingual signage and contravention ticket payment. Given that the provincial jurisdictions do not exclusively handle federal contraventions, but also provincial offenses (the volume of which is much greater), it is difficult to predict the request for bilingual services related to federal contraventions. Although each recipient entity of the Implementation Fund is called upon for bilingual extra-judicial services, this evaluation was unable to measure the request rate for bilingual services where federal contraventions are involved.

Even so, at the time of the evaluation, no litigant complaints pertaining to the *Contraventions Act* language obligations, either with judicial or extra-judicial services, had been conveyed to the Department of Justice.

4.3. Efficiency and Economy

To date, the administration of the Implementation Fund has been efficient and economical. On the whole, the activities funded reflect generally recognized practices in the delivery of bilingual services in a judicial context. The terms and conditions of the Implementation Fund, the allocation of resources and the activities undertaken are consistent and aligned with generally recognized practices. These management practices have enabled the Department to invest resources in effective activities, while achieving its objectives in relation to language obligations under the *Contraventions Act*. Moreover, no more economical alternative was identified in the course of this evaluation. The relevant findings are presented in this subsection.

4.3.1. Generally Recognized Practices and Terms and Conditions of the Implementation Fund

Bilingual services in a judicial context operate at two levels: judicial services (in court) and extra-judicial services (outside the court). Without repeating the detailed discussion of these two aspects presented in subsection 2.3, the generally recognized practices for the delivery of bilingual services in a judicial context relate to the hiring and language training of judicial staff, the hiring and language training of judicial support staff, and the development of bilingual tools to support judicial and extra-judicial services (such as ticket printing, signage and communication tools).

The Department established terms and conditions defining eligible expenses for the purposes of the Fund. These reflect generally recognized practices for the delivery of bilingual services in a judicial context. The Department also reviews each project application in order to ensure that resources will be used for purposes specifically associated with the *Contraventions Act*.

The current evaluation noted that activities funded through the Implementation Fund are closely aligned with the terms and conditions and are thus representative of generally recognized practices for the delivery of bilingual services in a judicial context. In practical terms, as outlined in subsection 4.2, the Implementation Fund has contributed in partnership with the provinces to the hiring, retention and training of judicial staff and judicial support staff and to the development of bilingual tools to support judicial and extra-judicial services. Funding recipients have also been able to execute planned activities to strengthen their capacity to respect language rights in relation to the *Contraventions Act* within the budgets provided. Table 6 illustrates these findings.

Table 6: Percentage of the budget spent annually, generally recognized practices funded, and capacity to meet language obligations under the *Contraventions Act*

	NS	ON	MB	BC
Percentage of the annual budget spent				
2008-09	83% ¹⁹	57%	78%	82%
2009-10	68%	60%	91%	82% ²⁰
2010-11	71%	n/a	89%	76%
2011-12	n/a	n/a	n/a	n/a
2012-13	n/a	n/a	n/a	n/a
Generally recognized practices funded (as reflected in the terms and conditions of the Implementation Fund)				
Hiring and language training of judicial staff	X	X	X	X
Hiring and language training of judicial support staff	X	X	X	X
Bilingual tools to support judicial and extra-judicial services	X	X	X	X
Capacity to meet language obligations under the <i>Contraventions Act</i>				
Judicial services ²¹	X	X	X	X
Extra-judicial services ²²	X	X	X	X

Source: administrative documents

It should be noted that the Implementation Fund terms and conditions were changed in 2010-11 to clarify them, make them easier to understand, align them with the Treasury Board Secretariat's *Policy on Transfer Payments*²³ and address the various needs of recipients. The amended terms and conditions also aim to facilitate negotiations with the provincial, territorial and municipal jurisdictions.

¹⁹ Based on forecast amount as of June 2008.

²⁰ Based on forecast amount as of June 2009.

²¹ Ontario is the only province to have tried federal contravention cases in French. This evaluation determined, however, that the other recipient entities have the capacity to hold trials in French.

²² For lack of relevant data, this evaluation could not assess the magnitude of the demand for extra-judicial services in French. Demand for such services nevertheless exists, and no complaints were forwarded to the Department of Justice on that score.

²³ The purpose of the Treasury Board's Secretariat's *Policy on Transfer Payments* (2008) is to ensure that transfer payment programs are managed in an integrated, transparent, responsible and risk-informed manner, are citizen- and recipient-focused, and are designed and implemented in view of the government priorities for achieving the expected outcomes for Canadians.

Naturally, a provincial government's capacity to provide bilingual services in the context of a federal contravention may, by extension, make it possible to further provide bilingual services in the context of a penal or criminal offence. This, then, is an unintended, yet positive, outcome arising from the Implementation Fund.

4.3.2. Allocated Resources

In terms of the resources allocated to funding agreements, the Department of Justice has, to date, invested only a portion of the amounts allocated under the *Roadmap for Linguistic Duality*. Thus, during the first two fiscal years covered by this evaluation (2008-09 and 2009-10), the provinces' actual spending represented 33% of the total amount allocated for this purpose under the *Roadmap for Linguistic Duality*. This evaluation found that this investment addressed the needs of the funding recipients for ensuring their organizational capacity to provide bilingual services specifically connected with the *Contraventions Act* requirements.

Implementing the *Contraventions Act* across the country is going to require additional funding within the existing budget. Three provinces and three territories have yet to reach an agreement with the Department of Justice authorizing the implementation of the *Contraventions Act*. The specific level of resources required by those agreements will be known only when the latter have been negotiated. In the meantime, the Department must continue with the actions undertaken, bearing in mind that the timeframe required for signing those agreements will be largely determined by the provinces and territories.

4.3.3. Alternatives

There are no economical alternatives to the current scheme. The only plausible alternative is implementing the independent federal scheme set out in the *Contraventions Act*. That solution, which envisioned the development of a separate federal administrative function, would generate much greater costs than those currently connected with the Implementation Fund. It is important to remember that, apart from the Fund, the current system does not result in costs for either a provincial government or the federal government, since the revenues generated through the payment of ticket fines added to administrative fees collected by the province cover the costs incurred by the province for implementing the *Contraventions Act*, with the surpluses then being shared equally between the two levels of government.

5. CONCLUSIONS AND LESSONS LEARNED

This section of the report contains the conclusions of and lessons learned from the evaluation. The information is structured according to each of the evaluation questions.

5.1. Relevance

1. Do the objectives of the Implementation Fund align with the federal government's priorities, and those of the Department of Justice?

The Implementation Fund objectives directly align with the federal government's priorities. The Implementation Fund is an essential component of implementing the *Contraventions Act* in the provinces, in keeping with the federal government's language obligations.

To date, the Implementation Fund has been exclusively dedicated to the adoption by the provinces, on behalf of the federal government, of measures intended to the respect of linguistic rights. This is why it was included in the *Roadmap for Linguistic Duality*, along with, among other things, the Access to Justice in Both Official Languages Support Fund.

The Implementation Fund fits into the context of a procedural regime created by a legislative text, more so than an official languages initiative. Management of the Implementation Fund must be directly tied to management of the negotiation and conclusion of agreements authorizing administration of the Act across the country. In this vein, the intermediate and long-term outcomes of the Implementation Fund must necessarily be connected with the *Contraventions Act*.

It would therefore be prudent for the Department of Justice to merge the accountability process for the Implementation Fund with that of the *Contraventions Act*. Thus, instead of evaluating the Implementation Fund and the *Contraventions Act* separately, as has been the case to date, the Department could develop a strategy pertaining to the *Contraventions Act* that would include a component involving the associated language obligations.

2. Is the Implementation Fund a suitable tool for fulfilling the language obligations associated with the *Contraventions Act*?

The Implementation Fund is a suitable tool for fulfilling the language obligations associated with implementing the *Contraventions Act*. The experience acquired to date shows that the Fund has enabled the funding recipients to have the bilingual institutional capacity to fulfill the language obligations associated with the implementation of the *Contraventions Act*.

The parameters around the Implementation Fund have proven to be flexible enough to accommodate institutional and language-related realities that vary considerably across all the provinces and territories. Moreover, the Fund focused on well-identified needs to ensure the capacity of the provinces to offer, on behalf of the federal government, services in both official languages, as required by the *Criminal Code* and the *Official Languages Act*. Where such needs do not exist, as is the case in New Brunswick and Quebec, no financial resources from the Implementation Fund have been directed to those provinces.

5.2. Effectiveness

3. Are the activities funded by the Implementation Fund based on adequately expressed needs or gaps?

All funding recipients of the Implementation Fund conducted needs analyses to determine the type of activities enabling them to fulfill the language obligations associated with the *Contraventions Act*. The terms and conditions of the Fund allow for funding the activities identified as being required in view of those various requirement studies.

To date, the activities funded by the Implementation Fund reflect the type of activities normally funded in this area, namely language training for stakeholders, tools development and the hiring of bilingual staff.

4. Are the activities funded by the Implementation Fund carried out as planned?

The funding recipients did carry out their activities funded by the Implementation Fund. This evaluation identified no substantial problems in implementing those activities.

5. Are the reports provided by the provinces and territories sufficient for addressing the federal government's accountability requirements?

Overall, the funding recipients submit complete activity reports. However, some delays are noted in the delivery of those reports. As such, at the time of the evaluation, one jurisdiction still had not submitted its activity report for the 2010-11 fiscal year.

The information included in those activity reports confirms how the Implementation Fund resources are used and documents the quantity of tickets issued, the statutes they are connected with, and the quantity of tickets contested in court, including the number of trials in either official language.

6. Do the jurisdictions handling federal contraventions all have a regulatory framework and agreements that reflect the applicable language rights?

The recipient jurisdictions of the Implementation Fund have a regulatory framework and agreements that determine the applicable language rights.

7. What range of activities have been supported by the Implementation Fund to date? Are there any gaps preventing the federal government from meeting its obligations?

The range of activities funded by the Implementation Fund includes the hiring of bilingual staff covering judicial activities and extra-judicial services, language training, bilingual communication tools, signage, as well as the information management activities required by administering federal contraventions.

The evaluation identified no gaps that would prevent the federal government from meeting its language obligations.

8. To what extent has the provinces' capacity for providing bilingual services pertaining to federal contraventions increased?

The funding recipients are able to provide services in both official languages at each stage of processing a federal contravention, ranging from the issuing of a ticket to the trial when a person pleads not guilty to the infraction attributed to him/her.

The activities funded by the Implementation Fund enable the provincial governments to respect linguistic rights related to the implementation of the *Contraventions Act*.

5.3. Efficiency and Economy

9. Has the Implementation Fund been implemented in a cost-effective manner?

The Implementation Fund has been operated in a cost-effective manner. The activities funded to date reflect widely recognized practices for bilingual service delivery in judicial and extra-judicial environments.

The Department adopted terms and conditions that define expenditures that are eligible under the Implementation Fund. These terms and conditions do align with widely recognized practices. Moreover, the Department reviews each project application to ensure that the resources will be used for purposes specifically associated with the *Contraventions Act*. Obviously, a provincial government's capacity to provide bilingual services in the context of a federal contravention may, by extension, further help provide bilingual services in the context of a penal or criminal offence. This, then, is an unintended, yet positive, outcome stemming from the Implementation Fund.

The Department has invested a minimal amount of resources while sufficiently addressing the funding recipients' needs to ensure their capacity for providing bilingual services specifically connected with the *Contraventions Act* requirements.

Implementing the *Contraventions Act* across the country is going to require additional funding within the existing budget. Three provinces and three territories have yet to reach an agreement with the Department of Justice authorizing the implementation of the *Contraventions Act* in compliance with the associated language obligations. The specific level of resources required by those agreements will be known only when the latter have been negotiated. In the meantime, the Department must continue with the actions undertaken, yet bearing in mind that the timeframe required for signing those agreements will be largely determined by the provinces and territories.

10. Are there other ways to achieve the Implementation Fund's objectives?

Although there is another way to achieve the Implementation Fund objectives, it would result in considerably higher costs. In fact, it involves introducing independent separate federal scheme as set out in the *Contraventions Act*. Since that option could not be justified financially, the Implementation Fund is still by far the most effective, efficient way to proceed with implementing the *Contraventions Act*.

6. RECOMMENDATION AND MANAGEMENT RESPONSE

Recommendation no. 1: The Department of Justice Canada should consider merging the Implementation Fund's accountability process with that of the *Contraventions Act*, which would enable an integrated measure of the results achieved by both the *Contraventions Act* and the Implementation Fund.

Management response:

Management agrees with this recommendation. The evaluation of the *Contraventions Act* completed in 2010 indicated that the implementation of the Act was necessarily linked to the Implementation Fund. An integrated evaluation of the implementation of the Act and of the Fund would provide a better global view of the achievements.

Appendix A:
***Contraventions Act* Fund for Implementation of Language Obligations**
Evaluation Framework

<i>Contraventions Act</i> Fund for Implementation of Language Obligations Evaluation Framework		
Evaluation Questions	Indicators	Data sources
Relevance		
1. Do the objectives of the Implementation Fund reflect federal government priorities, and those of the Department of Justice Canada?	<ul style="list-style-type: none"> – Nature and extent of strategic objectives of the Department of Justice; – Nature and extent of government priorities; – Scope of language obligations under the <i>Contraventions Act</i>. 	<ul style="list-style-type: none"> – Administrative documents; – Case law and secondary sources; – Interviews with main participants
2. Does the Implementation Fund constitute an appropriate tool for meeting language obligations under the <i>Contraventions Act</i> ?	<ul style="list-style-type: none"> – Capacity of provincial governments to provide judicial services in both official languages; – Nature of challenges facing provincial governments in implementing the <i>Contraventions Act</i>. 	<ul style="list-style-type: none"> – Administrative documents; – Interviews with main participants.
Effectiveness		
3. Are the activities funded by the Implementation Fund based on suitably formulated requirements or shortcomings?	<ul style="list-style-type: none"> – Relevance of activities funded. 	<ul style="list-style-type: none"> – Administrative documents; – Interviews with main participants.
4. Are activities funded by the Implementation Fund carried out as planned?	<ul style="list-style-type: none"> – Extent to which activities are carried out. 	<ul style="list-style-type: none"> – Administrative documents; – Interviews with main participants; – Continuous performance measurement.

<i>Contraventions Act Fund for Implementation of Language Obligations Evaluation Framework</i>		
Evaluation Questions	Indicators	Data sources
5. Are the reports provided by the provinces and territories sufficient to meet the accountability requirements of the federal government?	– Extent and quality of reports.	– Administrative documents; – Interviews with main participants; – Continuous performance measurement.
6. Do all jurisdictions processing federal contraventions have a regulatory framework and agreements that reflect the applicable language rights?	– Relevance of regulatory frameworks and agreements.	– Administrative documents.
7. What is the range of activities supported to date by the Implementation Fund? Are there shortcomings that prevent the federal government from meeting its obligations?	– Range of activities funded; – Opinions of main participants.	– Administrative documents; – Interviews with main participants; – Continuous performance measurement.
8. To what extent has the capacity of the provinces to provide bilingual services in connection with federal contraventions been increased?	– Range of services provided; – Opinions of main participants; – Number of trials held in the minority official language.	– Administrative documents; – Interviews with main participants; – Continuous performance measurement.
Efficiency and Economy		
9. Has the administration of the Implementation Fund been cost effective?	– Degree of use or need for activities; – Opinions of main participants.	– Administrative documents; – Interviews with main participants; – Continuous performance measurement.

<i>Contraventions Act Fund for Implementation of Language Obligations Evaluation Framework</i>		
Evaluation Questions	Indicators	Data sources
10. Are there other ways of achieving the objectives of the Implementation Fund?	– Opinions of main participants.	– Interviews with main participants.

Appendix B: Interview Guides

INTERVIEW GUIDE - REPRESENTATIVES OF THE DEPARTMENT OF JUSTICE CANADA

Introduction

The Department of Justice Canada hired PRA Inc. to conduct the evaluation of the Fund for Implementation of the Language Obligations under the *Contraventions Act* (hereinafter the Implementation Fund). That evaluation will cover the relevance of the Implementation Fund, its design and the associated success factors. Our methodological approach includes a set of interviews with stakeholders who took part the activities supported through the Implementation Fund.

The information gathered will be used solely for this study and will be managed, stored and destroyed in accordance with the *Privacy Act*. No information gathered during the interviews will be associated with a stakeholder, and every participant enjoys the right of access to information and the right to protection of his/her personal information. Moreover, your involvement in this interview is voluntary, and you can withdraw from the study at any time.

Lastly, please note that the information gathered during the interviews will be fully shared with Justice Canada's Evaluation Division.

Relevance

The Implementation Fund is directly tied to implementation of the *Contraventions Act*. In that context, we will first address the significance of this legislation for your ministry.

1. Please describe how the implementation of the *Contraventions Act* fits into your ministry's activities and priorities?
2. Can you describe the reasons that led your ministry to include the Implementation Fund among the activities undertaken through the *Roadmap*?
3. How do you see the Implementation Fund changing in the future, especially during the post-*Roadmap* period?

Implementation of the initiative

4. Please describe your level of satisfaction with the process leading to the signing of agreements with the provincial governments for implementing the *Contraventions Act*.
5. Can you describe the process leading to identification of activities required by a province and funded through the Implementation Fund? In your opinion, how adequate is the list of currently funded activities?
6. Can you now describe the activities that your ministry has undertaken with jurisdictions where there are no agreements that include activities funded by the Implementation Fund? What are your projections with respect to the funding of activities funded by the Implementation Fund in those jurisdictions?
7. In particular, how do you foresee the implementation of the *Contraventions Act* in the three territorial jurisdictions?
8. As needed, can you describe what you consider to be the main challenges that your ministry faced in connection with the Implementation Fund? What is your strategy for dealing with those challenges?
9. In terms of the reports provided by the recipient provinces of the Implementation Fund, can you tell us to what extent they provide you with information pertaining to management of this Implementation Fund?

Outcomes

10. In your view, to what extent has the Implementation Fund enabled the federal government to meet the language obligations connected with the *Contraventions Act*?
11. If applicable, please describe strategies, other than those of the Implementation Fund, that would make it possible to achieve the same outcomes, but in a more effective manner?

Conclusion

12. Do you have any other comments?

Thank you for your participation.

INTERVIEW GUIDE - REPRESENTATIVES OF THE DEPARTMENT OF JUSTICE CANADA

Introduction

The Department of Justice Canada hired PRA Inc. to conduct the evaluation of the Fund for Implementation of the Language Obligations under the *Contraventions Act* (hereinafter the Implementation Fund). That evaluation will cover the relevance of the Implementation Fund, its design and the associated success factors. Our methodological approach includes a set of interviews with stakeholders who took part the activities supported through the Implementation Fund.

The information gathered will be used solely for this study and will be managed, stored and destroyed in accordance with the *Privacy Act*. No information gathered during the interviews will be associated with a stakeholder, and every participant enjoys the right of access to information and the right to protection of his/her personal information. Moreover, your involvement in this interview is voluntary, and you can withdraw from the study at any time.

Lastly, please note that the information gathered during the interviews will be fully shared with Justice Canada's Evaluation Division.

Implementation of the initiative

13. First, please describe how your government identifies its language requirements in connection with implementation of the *Contraventions Act*. What activities are you undertaking for it and who are the stakeholders consulted?
14. Please describe the implementation of your activities funded by the Implementation Fund over the past two or three years. What are your key accomplishments in this connection? And what are the main challenges that you have faced?
15. Now please describe your level of satisfaction with the process leading to the signing of your agreement with the federal government for implementing the *Contraventions Act*.

16. What was your experience with the reporting process relating to implementation of the *Contraventions Act*? Are you able to issue the reports required by your agreement? If not, what are the main challenges that you have faced? How do you plan to overcome those challenges?

Outcomes

17. Can you describe the extent to which the courts in your province are able to offer services in both official languages in the following circumstances:
- a. When an offender comes to the registry to pay a fine in connection with a federal contravention.
 - b. (To the extent that this scenario applies to your province) When an offender contacts a court in the province by phone to receive additional information about the ticket that he/she received.
 - c. (To the extent that this scenario applies to your province) When an offender appears before the court (usually a justice of the peace), to plead guilty in connection with the contravention entered on the ticket, with the intention of providing extenuating circumstances in order to reduce the fine imposed.
 - d. When an offender wishes to challenge the charge written up in the ticket for committing a contravention.
18. In your opinion, what are the most significant outcomes arising from the Implementation Fund? What are the most significant challenges that still exist in connection with that?
19. If applicable, please describe strategies, other than those of the Implementation Fund, that would make it possible to achieve the same outcomes, but in a more effective manner?

Conclusion

20. In closing, can you think of any other stakeholders who we could contact as part of this evaluation? If yes, would you be able to provide us with their contact information?
21. Do you have any other comments?

Thank you for your participation.