



FORMATIVE EVALUATION OF THE CONTRAVENTIONS ACT FUND

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**Evaluation Division
Policy Integration and Coordination Section**



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EXECUTIVE SUMMARY

1. Introduction

In 2003, the Department of Justice Canada established the *Contraventions Act* Fund in response to a 2001 Federal Court ruling on language rights requirements applicable to federal contraventions. As part of its performance measurement strategy, the Department of Justice scheduled this formative (mid-term) evaluation, to be conducted during fiscal year 2005-2006. At the time of the evaluation, activities had been implemented in Ontario and Manitoba. This document constitutes the formative evaluation's final report.

2. Program description

Parliament passed the *Contraventions Act* in 1992 to create a new and simpler scheme to process a series of federal offences identified by way of regulation. Essentially, the goal is to simplify the procedures to be used to deal with certain federal offences that were, up to that point, processed by way of summary conviction in criminal courts.

The mechanics of the *Contraventions Act* includes the identification of federal offences that are to be considered "contraventions" and the establishment of a scheme to process these contraventions. In 2001, the Federal Court was asked to clarify the extent to which judicial and extra-judicial language rights requirements were applicable in the context of the *Contraventions Act*. The Court concluded that while the federal government is authorized to use the prosecution scheme of a province or territory to process federal contraventions, it must comply with all language rights requirements that would be applicable in the context of a federal prosecution scheme. More specifically, the Court stated that any level of government that processes federal contraventions is, in fact, acting on behalf of the Government of Canada.

Following the Federal Court decision, the Department of Justice initiated the process of modifying existing *Contraventions Act* agreements to include new provisions addressing language rights requirements identified in the ruling. To support this process, the Department of

Justice received funding to establish the *Contraventions Act* Fund, which is the object of this formative evaluation.

3. Methodology

The methodology used to conduct this evaluation has three main components:

- a document and file review;
- key informant interviews with representatives from the federal government, the provincial governments of Ontario and Manitoba, the Office of the Commissioner of Official Languages and the *Association des juristes d'expression française du Manitoba*; and,
- site visits in Ontario (Brampton and Newmarket) and Manitoba (Steinbach and St-Pierre-Jolys).

4. Program rationale

The Federal Court ruling confirmed that any province or municipality that processes federal contraventions is, for all intents and purposes, acting on behalf of the federal government. In this context, provinces or municipalities that process federal contraventions must uphold all language rights provided by the *Criminal Code* and Part IV of the *Official Languages Act*.

Two key steps are required to adequately cover the quasi-constitutional language rights requirements associated with federal contraventions. First, the federal government must ensure that agreements relating to the processing of federal contraventions do incorporate and respect the language rights included in the *Criminal Code* and the *Official Languages Act*. In the two jurisdictions covered by this evaluation, agreements include a clear commitment from the signatory provinces to uphold these language rights.

Second, the provincial and municipal authorities responsible for processing federal contraventions must demonstrate due diligence in upholding these language rights. Just like any federal department, these authorities are expected to take all necessary measures to respect their language rights commitments. It must be noted, however, that shortcomings in providing services in both languages do not, in themselves, affect the validity of the federal government's decision to incorporate provincial and territorial prosecution schemes to deal with federal contraventions. Authorities processing federal contraventions cannot be held accountable to a

level that is beyond what federal departments are subject to. After 30 years, many federal departments still struggle to meet the requirements under Part IV of the *Official Languages Act*. Therefore, the expectations for both federal departments and provincial or municipal authorities that process federal contraventions are similar; they are not expected to be flawless in delivering bilingual services, but rather, they are expected to take all necessary measures to uphold their commitments and demonstrate due diligence and good faith in doing so.

5. Design and delivery

At the time of the evaluation, *Contraventions Act* agreements had been signed with nine jurisdictions. However, only six of these agreements (Ontario, Manitoba, and British Columbia, Nova Scotia, Municipalities of Ottawa and Mississauga) include sections dealing specifically with the full language rights requirements from the *Criminal Code* and the *Official Languages Act* (Part IV). The Department of Justice is currently negotiating with the remaining jurisdictions to either modify the existing agreements or negotiate a first agreement. The Department's goal remains to have agreements in place in all jurisdictions before the end of fiscal year 2007-2008.

Whether the federal government succeeds in signing agreements with all jurisdictions will essentially affect the level of financial resources that the federal government must attribute to the *Contraventions Act* Fund. However, it does not affect the rationale for having the Fund itself. In the event that some jurisdictions do not sign a *Contraventions Act* agreement, federal contraventions will continue to be processed by summary conviction. In this sense, failing to have agreements in place in all jurisdictions may affect the achievement of the *Contraventions Act's* stated objectives, but it does not affect the achievement of the *Contraventions Act Fund's* stated objectives.

Both the Provinces of Ontario and Manitoba have implemented the activities identified in their *Contraventions Act* agreements:

- The Province of Ontario focussed the implementation of its activities in seven court locations, based on identified gaps. The range of activities included bilingual signage and allocation of bilingual court personnel in judicial and extra-judicial positions. The Ontario government also implemented province-wide activities, such as the printing and distribution of certificates of offence, designed to meet all language rights requirements.
- Also based on identified gaps, the Province of Manitoba focussed on the implementation of video links in regions of the province where such technology was not previously available.

Among other things, this new technology allows federal contraveners to plead guilty with an explanation before a bilingual magistrate or justice of the peace. The province also made available the services of justice generalists, who are in a position to provide a range of out-of-court bilingual services. Like Ontario, Manitoba implemented province-wide activities, such as the printing of certificates of offence that meet all language rights requirements.

The *Contraventions Act* agreements in Ontario and Manitoba adequately cover the language requirements relating to the *Contraventions Act*, as defined by the Federal Court. They unequivocally commit both provinces to uphold all language rights contained in the *Criminal Code* and the *Official Language Act* (Part IV), as applicable.

As these agreements evolve and as jurisdictions gain experience in dealing with federal contraventions, it is possible that unforeseen service gaps will emerge. In the same vein, it is possible that gaps initially identified will be addressed and will not require ongoing funding. An example of the latter would be the funding allocated for signage; now that the signs are up, these activities will most probably not appear in future agreements in Ontario and Manitoba. In this context, the lists of activities funded under the *Contraventions Act* agreements are expected to evolve. But the commitment to uphold all language rights applicable to federal contraventions is expected to remain intact, which in itself, largely responds to the Federal Court ruling.

Both Ontario and Manitoba have submitted reports that contain the information requested in the template that the Department of Justice Canada provided to them. This information allows the Department of Justice to report on the types of activities supported by the Fund and the volume of federal contraventions processed in each jurisdiction, including the number of French trials conducted.

It is unfortunate that databases in Ontario (ICON) and Manitoba (CON) do not allow for the systematic tracking of French trials. At this point, both provinces manually track the number of French trials occurring in their jurisdiction that involve federal contraventions. Considering the low volume of French trials occurring at this point in time, it may not be cost-effective to modify these databases, but this issue will need to be monitored. While helpful for conducting needs assessment or planning activities, the volume of French trials involving federal contraventions is of limited consequences. Jurisdictions must have the capacity to administer federal contravention in accordance with applicable language rights, regardless of volume levels.

6. Results

In both Ontario and Manitoba, the ranges of activities supported by the Fund were determined through a consultative process involving both the Department of Justice Canada and the provincial Attorney General offices. We also note that the French Language Services for the Justice Sector in Ontario and the French Language Services Secretariat in Manitoba have been involved to some degree in these consultations.

Activities identified by both levels of government do relate to the provision of bilingual services in the context of federal contraventions. We have found no evidence indicating that these activities were not required. As noted earlier, however, it is to be expected that the range of activities funded in each jurisdiction will evolve over time. As jurisdictions gain further experience, unforeseen service gaps may emerge. The structure of the *Contraventions Act* agreements offers the required flexibility to address such gaps.

Activities supported by the *Contraventions Act* Fund have modestly increased the capacity of both Ontario and Manitoba to offer bilingual services. Both provinces already had important infrastructures in place to offer bilingual services, both judicial and extra-judicial. Activities supported by the Fund have therefore been limited to certain court locations or certain areas of service.

The increased capacity to deliver bilingual services in relation to federal contraventions will also benefit individuals who are charged under a provincial offence. As previously noted, this is an unexpected, but positive, impact resulting from the implementation of the *Contraventions Act* Fund.

The data reported to date by the Fund's recipients provide valuable information for assessing the achievement of intermediate and long-term outcomes. By describing the types of activities funded, the volumes of charges laid under the *Contraventions Act* (including the number of French trials) and the types of contraventions committed (charges per federal legislation), these reports provide relevant contextual and performance information.

One area that raises some concerns is the reporting of complaints. *Contraventions Act* agreements in Ontario and Manitoba commit both provinces to inform Canada of any complaints concerning language requirements. In turn, both provincial ministries rely on court offices to track and report on any complaint that may arise. To date, no complaints have been reported.

Considering the rather technical nature of the prosecution schemes applicable to federal contraventions, it appears unlikely that an individual who is charged under a federal contravention and who faces difficulty in receiving bilingual services would know where to turn to file a complaint. Technically speaking, this individual could turn to the Commissioner of Official Languages to file a complaint. But this assumes that the individual is aware that the provincial court office involved in the complaint is, in fact, acting on behalf of the federal government. A more likely scenario is the one that unfolded in 1997 when the *Association des juristes d'expression française de l'Ontario* filed a complaint with the Commissioner of Official Languages, which ultimately led to the Federal Court ruling.

In this context, the requirement to report any complaint should remain in any *Contraventions Act* agreements. However, one must exercise caution and not read too much into this data. As part of a summative evaluation of the Fund, the Department may wish to include other methods, such as the use of investigators to act as members of the general public to assess the availability of service in the two languages, on the telephone and in person.

1. INTRODUCTION

In 2003, the Department of Justice Canada established the *Contraventions Act* Fund in response to a 2001 Federal Court ruling on language rights requirements applicable to federal contraventions. As part of its performance measurement strategy, the Department of Justice scheduled this formative evaluation, to be conducted during fiscal year 2005-2006. At the time of the evaluation, activities had been implemented in Ontario and Manitoba. This document constitutes the formative evaluation's final report.

1.1. Context for the evaluation

This formative evaluation constitutes a central component of the Department's strategy to measure the performance of the *Contraventions Act* Fund.

In early 2003, funding was approved for the *Contraventions Act* Fund, to cover six fiscal years, from 2002-2003 to 2007-2008. The Results-based Management and Accountability Framework (RMAF) developed for the *Contraventions Act* Fund plans for a formative evaluation to occur in 2005-2006 and a summative evaluation to occur in 2007-2008.

In addition to meeting a performance measurement requirement, the formative evaluation is expected to support the efforts of the Department in negotiating *Contraventions Act* agreements with other jurisdictions.

1.2. Scope and objectives of the evaluation

This evaluation focuses on activities funded in Ontario and Manitoba. An agreement had also been signed in British Columbia and Nova Scotia, but the implementation of activities was not sufficiently advanced to be included in this evaluation.

The evaluation pursues three objectives:

- To provide the Department of Justice with an assessment of the progress on the implementation and early results of the *Contraventions Act* Fund. More specifically, the evaluation is expected to:
 - examine and assess the extent to which the design of the Fund responds to the language requirements relating to the *Contraventions Act* and meets the needs of the provinces and territories;
 - examine and assess the progress and success of implementation of the Fund to date, whether it is effective and according to plan, and with a view to improve implementation; and,
 - examine, assess and report on early information on expected results to date.
- To prepare the Fund for the summative evaluation, determine what adjustments, if any, are required to any aspect of the Fund to better achieve its expected impacts.
- To review the RMAF's performance and evaluation strategies to ensure that they are still relevant and that there is a focus on indicators that will demonstrate clearly the achievements of the Fund.¹

Supporting these objectives is an evaluation framework developed as part of the Fund's RMAF.

1.3. Structure of the report

This evaluation report contains six sections, including this introduction. Section 2 describes the *Contraventions Act* Fund. Section 3 describes the methodology for this formative evaluation, and Section 4 summarizes the key findings. Section 5 presents the conclusions and lessons learned and Section 6 presents the recommendations and management response.

¹ Source: Department of Justice. (2005). Request for Proposals: Mid-term evaluation of the Contraventions Act Fund.

2. DESCRIPTION OF THE CONTRAVENTIONS ACT FUND

The federal government implemented the *Contraventions Act* Fund in response to a decision from the Federal Court on language requirements applicable to federal contraventions. This section of the report describes the policy and legislative context of the *Contraventions Act* Fund, as well as its program logic, management structure, and resources.

2.1. Policy and legislative context

The policy and legislative context of the *Contraventions Act* Fund is particularly relevant, as it directly shapes the program's goals, activities, and expected impacts.

2.1.1. The Contraventions Act

Parliament passed the *Contraventions Act* in 1992 to create a new and simpler scheme to process a series of federal offences identified by way of regulation. Essentially, the goal is to simplify the procedures to be used to deal with certain federal offences that were, up to that point, processed by way of summary conviction in criminal courts.

Before 1992, a federal offence could only be processed by either indictment or summary conviction:

- Indictable offences are serious offences (typically criminal ones) such as robbery, murder or impaired driving causing bodily harm, which require, by virtue of the serious nature of the offence, a particularly strict and often lengthy prosecution scheme.
- Summary conviction offences include certain criminal offences that are not as serious as indictable offences, such as possession of stolen property, assault, fraud, and most impaired driving offences. They also include a series of offences established by federal legislation other than the *Criminal Code*. For instance, fishing in a designated wildlife area (*Canada Wildlife Act*), operating a pleasure craft with an insufficient number of personal flotation devices (*Canada Shipping Act*), or supplying a tobacco product to a young person in a public

place (*Tobacco Act*) all constitute federal offences to be prosecuted by way of summary conviction.

In 1992, Parliament passed the *Contraventions Act* to create an alternative to the summary conviction process. The passing of this legislation pursued three specific objectives:

- to decriminalize certain federal offences;
- to improve the enforcement of federal laws and regulations;
- to ease the Courts' workload by allowing offenders to make voluntary payments.

The mechanics of the *Contraventions Act* includes the identification of federal offences that are to be considered "contraventions" and the establishment of a scheme to process these contraventions.

The identification of "contraventions" is done by regulation.² The *Contraventions Regulations* (SOR/96-313) has already identified more than 2,000 federal offences (involving close to 20 acts and more than 40 sets of regulations) that are now considered contraventions. Instead of being processed by way of summary conviction in criminal courts, these federal offences are processed by an alternative scheme created by the *Contraventions Act*.

An alternative prosecution scheme can be established in one of two ways:

- Option 1: The federal government can implement the prosecution scheme currently included in the *Contraventions Act*.
- Option 2: The federal government can make the offence scheme of a province or territory applicable for the purpose of processing federal contraventions. Simply put, this means that a federal contravention is treated much like a provincial offence. For example, should a person be caught fishing in a wildlife area (a federal contravention), he or she receives a ticket that will include all of the same options as those applicable when a person is ticketed for not wearing a seat belt (provincial offence). While different among jurisdictions, these options typically involve the possibility of paying the fine, pleading guilty with an explanation, or opting for a trial. In the latter two cases, the procedure is usually done in front of a justice of the peace and not in front of a provincial judge (as would be the case in a summary conviction process).

² See section 8.(1) of the *Contraventions Act*, 1992, c.47.

The federal government has chosen the second option. While technically feasible, the first option was discarded, principally on the ground that it would be too costly and ineffective.

Making a provincial or territorial offence scheme applicable to federal contraventions involves two key steps:

- First, the federal government must establish the proper regulatory framework by formally including a provincial or territorial offence scheme into the *Contraventions Act*. In accordance with section 65.1 of the *Contraventions Act* and using the *Application of Provincial Laws Regulations* (SOR/96-312), the federal government has completed this first step in seven jurisdictions: Newfoundland and Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, and Manitoba.
- Second, the federal government typically signs an agreement with the jurisdiction involved, establishing the terms and conditions under which a provincial or territorial offence scheme will be used. Among other things, these agreements specify how the costs for processing federal contraventions and the revenues from federal contraventions are to be managed.

2.1.2. Language rights requirements

As part of the administration of the *Contraventions Act*, the federal government must ensure that applicable language rights are respected, both in-court (judicial) and out-of-court (extra-judicial).

Section 16 of the *Canadian Charter of Rights and Freedoms* and sections 530 and 530.1 of the *Criminal Code* give all Canadians the right to have a trial in the official language of their choice in matters dealing with federal statutes. As established by jurisprudence, this right extends to the full procedure before the court, which must be institutionally bilingual.³

Section 20 of the Charter and Part IV of the *Official Languages Act* give all Canadians the right to be served by federal institutions in the official language of their choice, under certain conditions, including the need for significant demand for services in the official language of the minority.

In 2001, the Federal Court was asked to clarify the extent to which these language rights requirements were applicable in the context of the *Contraventions Act*.⁴ The Court concluded

³ See *R. v. Beaulac* [1999] 1 S.C.R. 768.

⁴ See Commissioner of Official Languages and her Majesty, 2001 FCT 239.

that while the federal government is authorized to use the prosecution scheme of a province or territory to process federal contraventions, it must comply with all language rights requirements that would be applicable in the context of a federal prosecution scheme. More specifically, the Court stated that any level of government that processes federal contraventions is, in fact, acting on behalf of the Government of Canada. In any such case, section 25 of the *Official Languages Act* stipulates that the authority acting on behalf of the federal government is subject to the same language rights requirements as those applicable to a federal institution:

25. Every federal institution has the duty to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in Canada or elsewhere can communicate with and obtain those services from that person or organization in either official language in any case where those services, if provided by the institution, would be required under this Part to be provided in either official language.

The *Contraventions Act* also stipulates that all sections of the *Criminal Code* relating to summary conviction offences apply to the processing of federal contraventions, except to the extent that the *Contraventions Act*, the regulations, or the rules of court provide otherwise. Sections 530 and 530.1 of the *Criminal Code*, covering language requirements, therefore apply to federal contraventions.

The Federal Court specifically ordered the Department of Justice Canada:

to 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.

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

2.2. Program logic

The *Contraventions Act* Fund supports a number of activities that are expected to contribute to the achievement of policy goals. This section describes the Fund's program logic. It is based on the Fund's logic model included as Figure 1, on page 15.

2.2.1. Program goals

The central goal of the *Contraventions Act* Fund is to achieve an implementation of the *Contraventions Act* that respects all applicable language rights requirements. More specifically, the Fund pursues three objectives:

- “To implement, in cooperation with the provinces, territories, municipalities or non-governmental organizations, measures to permit the use of both official languages in proceedings instituted under the *Contraventions Act*.”
- In the case of judicial services, to ensure access to justice in accordance with the language rights set out in section 530 and 530.1 of the *Criminal Code*.
- In the case of extra-judicial services, to recognize the obligations respecting language set out under Part IV of the *Official Languages Act*.⁵

2.2.2. Program activities and outputs

The activities undertaken as part of the *Contraventions Act* Fund occur at both the federal and provincial levels.

At the federal level, the Department of Justice is expected to negotiate *Contraventions Act* agreements that address the language rights requirements established by the *Criminal Code* and the *Official Languages Act*. The federal government must also modify, as applicable to each covered jurisdiction, the *Application of Provincial Laws Regulations* (SOR/96-312) to recognize these language rights.

At the provincial level, the *Contraventions Act* Fund supports a range of activities deemed necessary to increase the linguistic capacity of existing provincial offence schemes, so as to

⁵ Department of Justice Canada. (2003). Department of Justice Funding Program for the Implementation of the Contraventions Act: Terms and Conditions.

respect the language rights requirements applicable to federal contraventions. The list of activities funded in each jurisdiction is expected to vary based on identified gaps and needs, but will typically include some of the following components:

- the hiring and allocation of bilingual judicial (such as justices of the peace) 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.

2.2.3. Expected impacts

The implementation of activities, particularly at the provincial level, is expected to contribute to the achievement of a series of immediate, intermediate, and long-term outcomes:

- In the short term, the activities are expected to increase the capacity of funding recipients (court locations) to deliver services in both official languages. This is expected to occur for both judicial and extra-judicial services.
- In the medium term, the *Contraventions Act* Fund is expected to satisfy the language rights requirements established by the *Criminal Code* and the *Official Languages Act*. This, in turn, would assure the Department of Justice that the court order issued by the Federal Court has been adequately addressed.
- In the long term, the *Contraventions Act* Fund is expected to allow the federal government to fully implement the *Contraventions Act* in a manner that is respectful of the quasi-constitutional language rights of Canadians. For this to happen, *Contraventions Act* agreements meeting the language rights requirements will need to be signed in all jurisdictions.

Finally, the *Contraventions Act* Fund is expected to support 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.

Logic Model for the *Contraventions Act* Fund

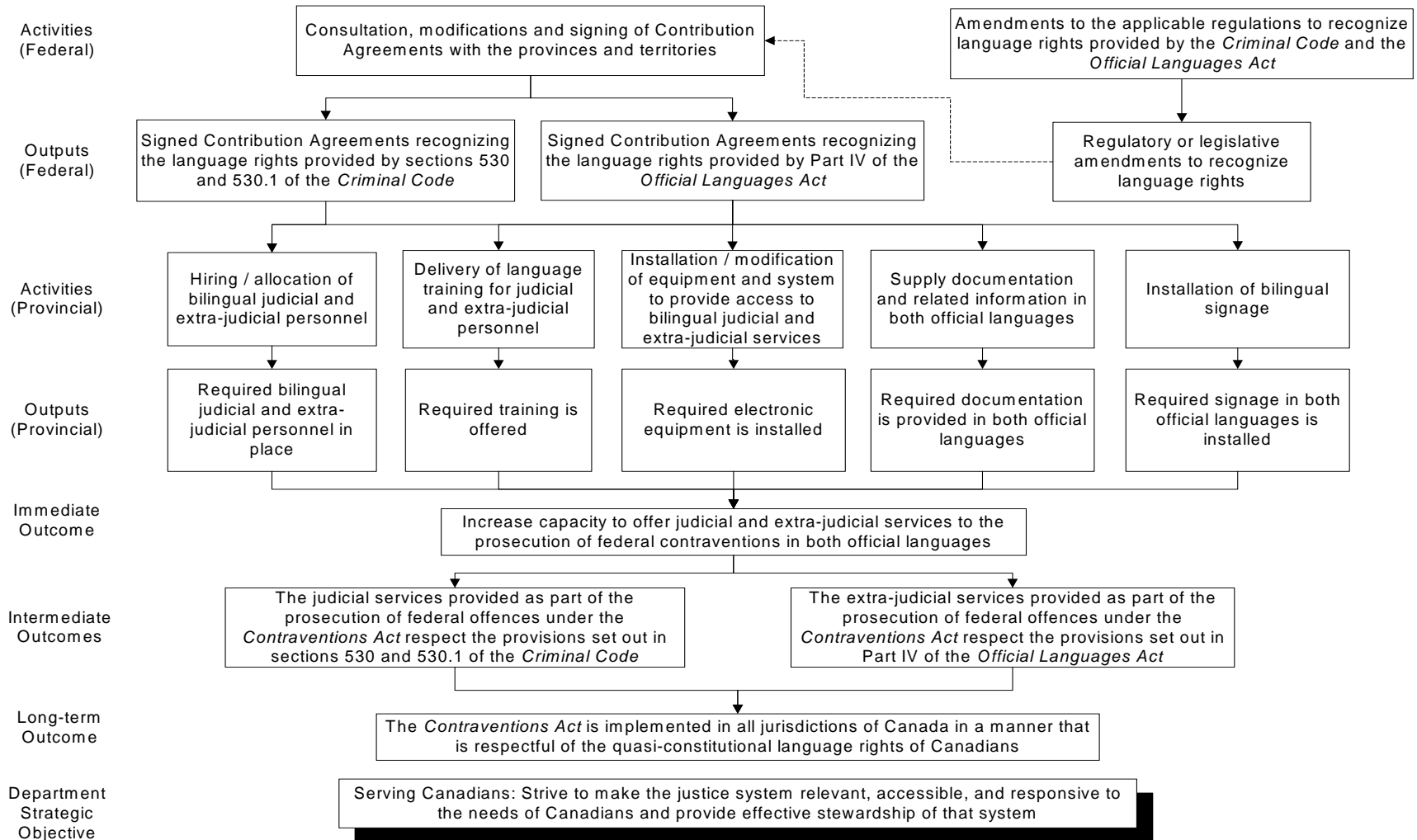


Figure 1

2.3. Management structure

The Contraventions and Contracts Management Division, within the Department of Justice Canada, manages the *Contraventions Act* Fund. The Division leads the negotiations of *Contraventions Act* agreements with the provinces, territories, and municipal governments, as applicable. The Contraventions and Contracts Management Division also leads the process of establishing the proper regulatory framework to incorporate provincial and territorial prosecution schemes into the *Contraventions Act*.

The provincial and territorial governments (typically the Attorney General) manage the ongoing implementation of *Contraventions Act* Fund activities, in close collaboration with managers in court locations. The responsibilities of provincial and territorial governments include, among other things:

- the printing and distribution of offence notices in both official languages;
- the proper recording of federal contraventions into the provincial or territorial databases;
- the provision of trials, guilty plea with representation, and other related services in the official language chosen by the contraveners (including judicial and extra-judicial services), in accordance with the *Criminal Code* and the *Official Languages Act*;
- the monitoring and following up on any complaint concerning non-compliance to official languages requirements.

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

- the number of offence notices issued for contraventions for the individual statutes 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 French trials held.

2.4. Program resources

To date, the Department of Justice has secured \$38.2 million in funding for the *Contraventions Act* Fund, which covers six fiscal years. Table 1 shows the distribution of these funds.

Table 1: Financial resources (\$ million)							
Jurisdictions	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	Total
Vote 5:							
- Ontario	2.2	2.8	2.8	2.8	2.8		13.4
- Other jurisdictions		0.7	2.6	4.7	5.6	6.6	20.2
Vote 1	0.2	0.9	0.9	0.9	0.9	0.8	4.6
Total	2.4	4.4	6.3	8.3	9.3	7.4	38.2

3. METHODOLOGY

The methodology used to conduct this evaluation has three main components: a document and file review, key informant interviews, and site visits.

3.1. Document and file review

To get a detailed understanding of the *Contraventions Act* Fund and of the provincial prosecution schemes in Ontario and Manitoba, a range of documents were reviewed:

- *Contraventions Act* agreements and other documents related to the implementation of the *Contraventions Act* Fund;
- official program documentation;
- reports submitted by the Provinces of Ontario and Manitoba on the implementation of activities funded through *Contraventions Act* agreements;
- court decisions and expert opinions relating to the *Contraventions Act*, Part XVII of the *Criminal Code* (section 530), and Part IV of the *Official Languages Act*;
- annual reports from the Office of the Commissioner of Official Languages;
- RMAF for the *Contraventions Act* Fund;
- legislative and regulatory frameworks applicable for the prosecution of provincial offences in Ontario and Manitoba.

3.2. Key informant interviews

Key informant interviews were conducted between June 24 and December 22, 2005, with representatives from the federal government, the provincial governments of Ontario and Manitoba, the Office of the Commissioner of Official Languages and the *Association des juristes d'expression française du Manitoba*. Table 2 presents the distribution of key informants consulted.

Table 2: Distribution of key informants consulted	
Key informant group	Number of individuals consulted
Department of Justice Canada	3
Commissioner of Official Languages	1
Attorney General of Ontario	4
Non-visited court houses in Ontario that received funding	5
Manitoba Justice	2
French-language Services Secretariat (Manitoba)	2
<i>Association des juristes d'expression française</i>	2
Total	19

3.3. Site visits

Site visits were conducted in Ontario and Manitoba. The site visit in Manitoba was conducted between July 11 and 13, 2005, and the site visit in Ontario was conducted between November 29 and December 1, 2005. Two sites were visited per province:

- In Ontario, site visits were conducted in Brampton and Newmarket. These sites are designated under the *Official Languages Act* regulations, but are not designated under the provincial *French Language Services Act*. The *Contraventions Act* Fund is supporting activities at these two sites.
- In Manitoba, site visits were conducted in Steinbach and St-Pierre-Jolys. The Steinbach Courthouse serves a number of communities with high concentrations of francophones, such as the rural municipality of De Salaberry, Ste. Anne, and the village of St-Pierre-Jolys. The *Contraventions Act* Fund has also supported activities in St-Pierre-Jolys to increase access to bilingual services in the context of the *Contraventions Act* Fund.

4. KEY FINDINGS

This section of the report combines information from the document review, the key informant interviews, and the site visits. As applicable, findings are grouped under each of the two jurisdictions covered by the evaluation: Ontario and Manitoba.

4.1. Program rationale

The *Contraventions Act* Fund has come to play a central role in the implementation of the *Contraventions Act*, supporting the viability of the federal government's decision to incorporate provincial and territorial offences schemes into the *Contraventions Act*.⁶ By increasing the institutional capacity of provincial and territorial prosecution schemes to offer services in both official languages, the federal government is in a position to pursue the implementation of the *Contraventions Act* in all jurisdictions of the country.

The extent to which the *Contraventions Act* Fund is required varies across Canada. By incorporating provincial and territorial prosecution schemes into the *Contraventions Act*, the federal government essentially incorporates a set of regimes that differ both in their structure and in their capacity to offer bilingual services. While some provincial schemes, such as New Brunswick, Ontario and Manitoba, offer bilingual services that come a long way to meet federal standards, other jurisdictions offer no such services, so the gaps vary accordingly across Canada.

Provincial governments in Ontario and Manitoba signed *Contraventions Act* agreements that commit themselves to offer, as circumstances apply to federal contraventions, services that fulfil all language rights requirements set out in the *Criminal Code* (sections 530 and 530.1) and the *Official Languages Act* (Part IV). Combined to the *Application of Provincial Laws Regulations* (SOR/96-312), this commitment largely responds to the order issued by the Federal Court. In particular, it avoids having to compare and assess the extent to which provincial legislations on

⁶ See Section 2.1.1 of this report for a discussion of the two options that the federal government faced in implementing the *Contraventions Act*.

bilingual services meet the federal standards established in the *Criminal Code* and the *Official Languages Act*. Simply put, the current framework means that, regardless of any provincial legislation dealing with official languages and of any gap that may exist, signatory provinces commit themselves to uphold federal language rights requirements.

In practical terms, however, what the signatory provinces are committing themselves to do is considerable. The range of services to be offered in both official languages in the context of the *Contraventions Act* includes both judicial and extra-judicial services. In dealing with a federal contravention, Canadians have a right to be served in either official language in all circumstances covered by the *Criminal Code* (sections 530 and 530.1) and the *Official Languages Act* (Part IV). As noted in Section 2.1.2 (page 11 of this report), the Federal Court has clearly established the fact that any provincial or municipal authority that processes a federal contravention is, in fact, acting on behalf of the federal government and must therefore meet all the language rights requirements applicable to a federal institution.

The language rights requirements applicable to judicial services, as set out in the *Criminal Code*, require any court dealing with federal contraventions to be institutionally bilingual. The Supreme Court of Canada has largely clarified the extent of the language rights included in the *Criminal Code* in *R. v. Beaulac*:

Section 530(1) creates an absolute right of the accused to equal access to designated courts in the official language that he or she considers to be his or her own. The courts called upon to deal with criminal matters are therefore required to be institutionally bilingual in order to provide for the equal use of the two official languages of Canada.⁷

In practical terms, this means that all key aspects of a trial relating to a federal contravention must provide equal access to services in both official languages:

- The justice of the peace or provincial judge presiding over a federal contravention trial must speak the language of the contravener.
- If the contravener is not represented by counsel, the justice of the peace or provincial judge must advise him or her of the right to have a trial in either official language.

⁷ *R. v. Beaulac* [1999] 1 S.R.C. 768, par. 28.

- The contravener and his or her counsel have the right to use either official language during the trial.
- Any witness may give evidence in either official language.
- Interpreters must be available to assist any party involved in the trial.
- Any judgement issued in writing must be made available in the official language of the contravener.⁸

The language rights requirements for extra-judicial services apply to any provincial entity or any court office that processes federal contraventions and that meets the conditions set out in Part IV of the *Official Languages Act* (such as the presence of a significant demand for services in the official language of the minority). To the extent that any such provincial entity or court office is acting on behalf of the federal government, it must uphold the right of any contravener to communicate with and receive services in both official languages, as prescribed by the *Official Languages Act*:

- This duty applies to both oral and written communications.
- Appropriate measures must be taken to ensure that there is an active offer of services in both official languages. This includes the provision of signs, notices, and other information in both official languages.
- Signage must give equal predominance to English and French.

In this context, the *Contraventions Act* Fund allows the Department of Justice Canada to support activities that are deemed appropriate and necessary to increase the capacity of a province or territory to offer bilingual services when processing federal contraventions and thus, to meet language right commitments included in its *Contraventions Act* agreement. Technically, a jurisdiction could sign a *Contraventions Act* agreement that would not include any activity funded by the *Contraventions Act* Fund. Such would be the case in a jurisdiction where the language rights applicable to the prosecution of provincial offences meet all requirements set out for federal contraventions. This, however, is unlikely and, in any circumstances, would constitute an exception. The *Contraventions Act* Fund therefore constitutes an important tool to support the efforts of the federal government to fully implement the *Contraventions Act* across Canada.

⁸ Adapted from sections 530 and 530.1 of the *Criminal Code*.

4.2. Contraventions Act agreements

The goal of the federal government is to incorporate the prosecution scheme of every province and territory, using *Application of Provincial Laws Regulations* (SOR/96-312) and to sign *Contraventions Act* agreements in support of that process. These agreements establish the roles and responsibilities of the signatory parties in managing and processing federal contraventions.

Contraventions Act agreements have been used to clarify the language requirements applicable to federal contraventions. To date, provincial governments that have signed such agreements have committed themselves to a set of measures that include the following components:

- to make offence notices for a federal contravention available in both official languages;
- to schedule trials and plea of guilty with representation, as applicable, in the official language chosen by the contraveners;
- to make available, at no cost and in a timely fashion, the short-form description of any federal contravention in the preferred official language of the contravener;
- to make bilingual prosecutors available for any proceeding relating to a federal contravention;
- to uphold all language requirements established by the *Criminal Code* and Part IV of the *Official Languages Act*;
- to systematically monitor and follow up on any complaint concerning a non-compliance to the service requirements established in Part IV of the *Official Languages Act*.

The agreements also identify the activities supported through the *Contraventions Act* Fund. The list of these activities is based on identified gaps and needs of the jurisdiction involved.

Also identified in the agreements are the court service locations where extra-judicial services must be offered in accordance with Part IV of the *Official Languages Act*. As for trials involving federal contraventions, they are not limited to certain locations; they must be available in both official languages at any court location in Canada, in accordance with the language rights requirements established in the *Criminal Code*. In other words, if language rights pertaining to Part IV of the *Official Languages Act* are available only at locations that meet certain criteria, the language rights pertaining to the *Criminal Code* are not subject to any such criteria.

At the time of the evaluation, the federal government had signed agreements with eight provincial governments: Newfoundland and Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, and British Columbia. Of all these agreements, however, only three address the extent of language rights requirements established in the 2001 Federal Court ruling. Department of Justice officials have indicated that negotiations are under way with the remaining jurisdictions to modify existing agreements or to sign new agreements. The Department's goal is to have all agreements in place by the end of fiscal year 2007-2008.

In the absence of a *Contraventions Act* agreement (and of the related regulatory framework), federal contraventions continue to be processed by summary conviction.

4.3. Implementation in Ontario

This section of the report describes the activities implemented in Ontario, with the support of the *Contraventions Act* Fund, and assesses their results to date.

4.3.1. Activities

The *Contraventions Act* Fund supports activities in seven court service areas of Ontario, as well as province-wide activities. Ontario has a total of 55 court service areas, and in accordance with the *Courts of Justice Act*, courts in all 55 service areas must have the capacity to offer judicial (in-court) services in both French and English to process provincial offences and, by extension, federal contraventions.⁹ In accordance with the *French Language Services Act*, 24 court service areas must also have the capacity to offer extra-judicial (out-of-court) services in both French and English to process provincial offences.¹⁰ When applying the standards established by the *Official Languages Act* (Part IV), the vast majority of designated court service areas are already covered by the *French Language Services Act*. Only seven court service areas that are designated under the *Official Languages Act* (Part IV) are not covered by the *French Language Services Act*. As a result, these seven court service areas are where the *Contraventions Act* Fund supports activities, so that they can process federal contraventions. Table 3 identifies the court service areas where the *Contraventions Act* Fund supports activities.

⁹ Sections 125 and 126 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

¹⁰ French Language Services Act, R.S.O. 1990, c. F.32

Table 3: List of court service areas targeted for funding	
Court service areas	Regions
Brampton	Regions of Peel
Kitchener / Cambridge	Region of Waterloo
Milton / Oakville	Halton Region
Newmarket	Region of York
Orangeville	Dufferin County
Oshawa	Durham Region
St. Thomas	Elgin County

Both Provincial Offences Courts and the Ontario Court of Justice are involved in processing federal contraventions. As a result, both court levels receive funding under the *Contraventions Act* Fund:

- Municipal governments are responsible for the establishment and management of Provincial Offences Courts. This role came as a result of an amendment to the *Provincial Offences Act* enacted in 1998 that allows the Attorney General of Ontario to sign agreements with municipalities to allow them to undertake court administration and court support in relation to provincial offences and federal contraventions.¹¹ The vast majority of provincial offences and federal contraventions are processed by Provincial Offences Courts.¹²
- Under specific circumstances or when no Provincial Offences Court has been established, the Ontario Courts of Justice process provincial offences and federal contraventions.¹³

The Fund supports start-up and ongoing expenses:

- In the first year of program implementation (2002-2003), close to \$1.5 million was allocated for the printing and distribution of certificates of offence (tickets) that are used for both provincial offences and federal contraventions. These new certificates were designed to meet

¹¹ See Streamlining of Administration of Provincial Offences Act, 1997 (Bill 108).

¹² Section 162.(1) of the *Provincial Offences Act* allows a municipality to perform court administration and court support functions for the purposes of the Act and the *Contraventions Act* and to conduct prosecutions in proceedings under Parts I and II of the Act and under the *Contraventions Act* that are commenced by ticket under Part I or II of the Act.

¹³ For instance, Ontario Courts of Justice hear appeals of decisions rendered by justices of the peace sitting on Provincial Offences Courts. Also, Ontario Courts of Justice conduct prosecutions (for both provincial offences and federal contraventions) in proceedings that are commenced by summons under Part III of the *Provincial Offences Act*.

all language rights requirements applicable to provincial offences and federal contraventions, and were distributed to enforcement authorities in all 55 service areas of the province.

- Also during the 2002-2003 fiscal year, approximately \$ 475,000 was allocated to the production and installation of bilingual outdoor and indoor signage in Provincial Offences Court and Ontario Court of Justice locations in the seven targeted areas.

The bulk of ongoing funding has been allocated to hiring, contracting, and/or training bilingual personnel in a range of judicial (in-court) and extra-judicial (out-of-court) positions:

- Judicial positions include:
 - Bilingual justice of the peace;
 - Bilingual prosecutors;
 - Bilingual court monitors;
 - Bilingual interpreters.
- Extra-judicial positions include:
 - Bilingual prosecutors (for first attendance meetings);
 - Bilingual counter staff (receptionists, court staff).

A total of \$2.2 million was allocated to the Province of Ontario to cover activities funded during the first year of program implementation (2002-2003), and a total of \$2.8 million was allocated to cover activities funded on an ongoing basis (2003-2004 and ongoing).

4.3.2. Results

With the funding they received, courts located in the seven targeted areas of Ontario increased their capacity to offer judicial and extra-judicial services in both official languages. During our interviews and site visits, key informants indicated that the needs assessment and planning processes in relation to activities supported by the *Contraventions Act* Fund was led by each court management group, in collaboration with the Ontario Ministry of the Attorney General and its French Language Services for the Justice Sector. As applicable, these court locations have filled, assigned, or contracted judicial and extra-judicial positions to bilingual individuals. They have also modified their signage and communication tools to make them fully bilingual.

The specific measures in place in the seven targeted court areas combined with the existing legislative obligations regarding services in French, the regulatory framework under the *Contraventions Act*, and the agreement signed all create a framework that arguably meets the language rights requirements identified in the Federal Court's decision.

In practical terms, contraveners are entitled to receive, as applicable, judicial and extra-judicial services in both official languages as they proceed with one of the three options available to them:

- *Option 1:* The contravener may plead guilty and pay the fine. Should the contravener decide to pay the fine on-line, he or she will be directed to www.paytickets.ca, which is offered in both English and French.
- *Option 2:* The contravener may opt to plead guilty with an explanation. In such a case, the contravener will meet with a justice of the peace within the times and days designated for this purpose. The contravener is entitled to meet a justice of the peace who speaks his or her preferred official language.
- *Option 3:* The contravener may opt for a trial. In such a case, the contravener is entitled to a trial in his or her preferred official language. This right extends to any dealings occurring during first attendance meetings.¹⁴

It should be noted that the establishment of the appropriate framework, while important, does not guarantee that the offering of bilingual services in the context of the *Contraventions Act* will be flawless in all 55 court service areas of Ontario. The Federal Court ruling specifically asked that the language rights requirements contained in the *Criminal Code* and the *Official Languages Act* (Part IV) be respected in “regulations or agreements with other parties that relate to responsibility for administering the prosecution of federal contraventions.” In the present context in Ontario, both the regulation and agreements unequivocally state that these language rights requirements must be upheld by all designated court locations, including those receiving funding under the *Contraventions Act* Fund. Starting from this premise, the more practical question is whether these services are, in fact, provided on the ground.

Our interviews and site visits indicated that the language rights requirements pertaining to Part IV of the *Official Languages Act* raise more challenges than the offering of bilingual judicial

¹⁴ First attendance meetings are voluntary meetings between the prosecutor and the contravener to discuss the contravention and to possibly reach a resolution.

services. The main reason provided by key informants is that judicial services are more predictable than extra-judicial services, allowing for advanced planning to occur:

- *Judicial services:* In the event that a contravener anywhere in Ontario opts for a trial in French, court management can take all necessary steps to ensure that the trial will be properly conducted in French. Among other things, bilingual justices of the peace (or provincial judges as applicable), bilingual prosecutors and bilingual court workers and interpreters will be assigned before the hearing.
- *Extra-judicial services:* Extra-judicial services in French are available, but not necessarily to the same extent as services offered in English. When the contravener selects Option 2 (plead guilty with an explanation), asks for a first attendance meeting, or just shows up at the counter to pay the fine or request further information, limited advanced planning can be done. Our interviews indicated that the contravener may need to request services in French to obtain them because only a fraction of court workers greeting clients are in designated bilingual positions. Also, it may be possible for a contravener to plead guilty with an explanation in French, but this may require a second appointment because the prosecutor in attendance the day that the contravener shows up may not be bilingual. Court offices have the capacity to offer extra-judicial services in both official languages, but they are not institutionally bilingual.

The experience of federal departments in providing bilingual services in accordance with Part IV of the *Official Languages Act* confirms that the challenges faced by the Province of Ontario in providing extra-judicial services in both official languages are not unusual. After 30 years under the *Official Languages Act*, several federal departments still struggle to comply with all requirements included in Part IV of the *Act*, including the active offering of services in both official languages. A special study on bilingual services to the public, conducted in 2001 for the Office of the Commissioner of Official Languages, tested the capacity of designated federal offices to fulfil their language rights requirements. Its results indicated that consistent bilingual greeting on the telephone was provided by 59% of the designated offices consulted and bilingual greeting in person was provided by only 20% of the designated offices consulted.¹⁵ Furthermore, in her recent annual report, the Commissioner of Official Languages indicated that 80% of all complaints received by her Office relate to the provision of bilingual services to the public and

¹⁵ Mattar, S., & Gratton, M. (2001). National Report on Service to the Public in English and French: Time for a Change in Culture. Ottawa, section 3.2.

added that “observations made in 2004 showed that in one quarter of approximately 300 high-demand offices, services were not always available in both official languages.”¹⁶

The actual demand for judicial services in French in the context of federal contraventions is limited at this point in time. Administrative data indicated that during the fiscal year 2004-2005, approximately 13% of all federal contraventions in Ontario went to trial. Of those contraventions that went to trial, less than 1% were heard as part of a French trial. Table 4 includes further details:

Table 4: Statistics on charges and trials in Ontario (2004-2005)	
Federal contraventions	Number
Number of new charges	11,909
Number of trials held	1,566
Number of French trials held	12
Source: Ontario Annual Report for 2004-2005	

Overall, federal contraventions constitute only a fraction of the cases heard by the Provincial Offences Courts and the Ontario Court of Justice. In comparison, approximately 1.5 million charges are laid under the *Provincial Offences Act* in a given year in Ontario, of which approximately 400,000 will be disposed of at trials by a justice of the peace.¹⁷

The interviews and site visits conducted in Ontario identified one significant and positive unintended impact resulting from the implementation of the *Contraventions Act* Fund. The activities funded in the seven targeted areas have improved the capacity of these court locations to offer services in French in the context of provincial offences. Before the implementation of *Contraventions Act* Fund activities, these court locations were in no position to systematically offer bilingual services when dealing with provincial offences, since they are not covered by the province’s *French Languages Services Act*. Outdoor and indoor signage, communication tools, and bilingual positions all benefit Ontarians who wish to be served in French when dealing with a provincial offence.

¹⁶ Office of the Commissioner of Official Languages. (2005). *Annual Report 2004-2005*. Ottawa.

¹⁷ Lennox, B.W. (2000). Ontario Court of Justice: Upon the Opening of the Courts of Ontario for 2000.

4.3.3. Reporting

The Province of Ontario is expected to submit performance and financial data twice yearly to the Department of Justice Canada. These reporting requirements are established by the *Contraventions Act* Agreement signed between Ontario and Canada (including the requirements under Schedule III).

Performance data include information on the number of offence notices issued, the fines imposed, the number of trials held, and the number of French trials held. It must also contain information on any complaints relating to the language rights requirements applicable to federal contraventions. Finally, the performance report must include a listing of federal charges per federal act and regulation covered by the *Contraventions Regulations* (SOR/96-313).

Financial data include a listing of eligible expenditures actually incurred in the targeted court service areas, per main category of expenditures (staffing, training, signage, communication tools, etc.).

Reports submitted to date by Ontario cover all key aspects of the reporting requirements. However, our interviews and site visits identified reporting challenges:

- The Ontario government has encountered delays in submitting its reports. The deadlines identified in the agreement have not been met.
- There is no systematic procedure to track and report complaints. The Ontario government is relying on court offices to report any complaint. To date, no complaint has been reported. This may be due to the relatively low volume of federal contraventions.
- Court offices are tracking and reporting the number of French trials manually. While all federal contraventions are inputted into ICON, the database does not allow for the systematic tracking of French trials.

4.4. Implementation in Manitoba

In this section of the report, we turn to the activities implemented in Manitoba, with the support of the *Contraventions Act* Fund, and assess their results to date.

4.4.1. Activities

In accordance with the *Application of Provincial Laws Regulations* (SOR/96-312), the prosecution scheme contained in the *Summary Convictions Act* is used to process federal contraventions in Manitoba. Much like Ontario, this prosecution scheme offers three main options to contraveners: they can pay the fine, plead guilty with an explanation before a magistrate, or ask for a trial presided over by a provincial judge.

The needs assessment and planning processes relating to the *Contraventions Act* Fund in Manitoba considered the established capacity of the province to offer services in French:

- For in-court services, Manitoba has a constitutional obligation, as well as an established capacity, to offer trials in French in all locations of the province.¹⁸ A recent development in that regard is the implementation in 2004 of a circuit point of the Provincial Court in the Bilingual Service Centre of St. Pierre-Jolys, which is institutionally bilingual. As needed, fully bilingual personnel, including provincial judges or justices of the peace, prosecutors, court workers, and interpreters, can also be assigned to any court location that lacks the in-house capacity to offer bilingual trials.
- Out-of-court services follow the principles established in Manitoba's *French Language Services Policy*. This policy commits provincial ministries to actively offer French-language services in designated areas of the province. The policy covers signage and oral and written communications. Of the three judicial districts covered by Part IV of the *Official Languages Act* in Manitoba, two are included in a designated area under the policy (Winnipeg and Steinbach). The third district, Selkirk, is not included in a designated area.

Based on these premises, activities implemented in Manitoba with the support of the *Contraventions Act* Fund have focused on increasing the capacity of some court locations to offer out-of-court services in French:

- Video links have been installed in court locations that were lacking such equipment. Among other things, these links will allow contraveners to appear, at distance, before a bilingual magistrate or justice of the peace to plead guilty with an explanation.

¹⁸ Section 23 of the *Manitoba Act, 1870*, states that “[e]ither the English or the French language may be used (...) by any person, or in any Pleading or Process, in or issuing from any Court of Canada established under the British North America Act, 1867, or in or from all or any of the Courts of the Province.”

- The Manitoba Department of Justice has established the position of “justice generalist” to answer any question or provide information to contraveners. Located in the Bilingual Service Centre in St. Pierre-Jolys, the justice generalist can also be reached by a toll-free phone number.

During the first year of implementation (2003-2004), the Fund also supported the printing and distribution of common offence notice forms (tickets) that were designed to meet all language rights requirements applicable to provincial offences and federal contraventions. The remaining funding is essentially used for the assignment of bilingual justices of the peace.

A total of \$400,000 was allocated to the Province of Manitoba to cover activities funded during the first year of program implementation (2003-2004), and a total of \$300,000 was allocated to cover activities funded on an ongoing basis (2004-2005 and ongoing).

4.4.2. Results

The activities funded in Manitoba have increased the courts’ capacity to offer bilingual services in the context of the *Contraventions Act*:

- The addition of video link equipment in court locations where such equipment was previously unavailable facilitates access to bilingual magistrates or justices of the peace, particularly for those contraveners who decide to plead guilty with an explanation in French. The video link allows the provincial government to provide access to French services in areas where the demand for such services is low.
- Providing access to a justice generalist in a Bilingual Service Centre or by toll-free phone number also represents an innovative strategy to provide extra-judicial services in French to any contravener in the province.

These measures, combined with the existing constitutional obligations under the *Manitoba Act 1870*, the commitments under the *French Languages Services Policy*, and the terms of the Agreement, create a framework that goes a long way in addressing the language rights requirements identified in the Federal Court’s ruling.

Much like the situation in Ontario, our interviews and site visits indicated that the language rights requirements in the *Official Languages Act* (Part IV) raise more challenges in their application than the offering of bilingual trials. The Province of Manitoba has the institutional

capacity, and has had this capacity for some time, to offer bilingual trials across the province. Contraveners may also plead guilty with an explanation before a bilingual magistrate or justice of the peace, either in person or through a video link. However, the capacity of the province to systematically offer out-of-court bilingual services at designated court offices is more limited. For instance, bilingual services are not available, over the counter, in the Provincial Court office in Steinbach. Instead, the court office has established a procedure allowing individuals who wish to be served in French (for additional information about a contravention or about their options) to be connected with the justice generalist in St. Pierre-Jolys. While their capacity to offer bilingual services has increased through bilingual signage, bilingual positions or referral procedures, these court locations are not, in practical terms, institutionally bilingual.

The goal of the *Contraventions Act* Fund is, above all, to build the courts' capacity to process federal contraventions in both official languages, regardless of volume. It is nonetheless helpful to note that relatively few federal contraventions charges are laid in Manitoba in any given year. As Table 5 illustrates, just over 400 charges were laid for federal contraventions during the first year of program implementation (2003-2004). Of those, only 7% went to trial, and, that year, no trial was conducted in French.

Table 5: Statistics on charges and trials in Manitoba (2003-2004)	
Federal contraventions	Number
Number of new charges	407
Number of trials requested	28
Number of French trials held	0
Source: Manitoba Annual Report for 2003-2004	

As in Ontario, the interviews and site visits conducted in Manitoba indicated that the courts' increased capacity to offer bilingual services is also benefiting individuals charged with provincial offences. This constitutes an unintended positive impact resulting from the implementation of the *Contraventions Act* Fund. This additional impact is particularly welcomed considering the low volume of bilingual activities to date in relation to federal contraventions.

4.4.3. Reporting

The Province of Manitoba is expected to submit performance and financial data once a year to the Department of Justice Canada. These reporting requirements are established by the

Contraventions Act Agreement signed between Manitoba and Canada (including the requirements under Schedule II).

As previously noted, performance data include information on the number of offence notices issued, the fines imposed, the number of trials held, and the number of French trials held. It must also contain information on any complaints relating to the language rights requirements applicable to federal contraventions. Finally, the performance report must include a listing of federal charges per federal act and regulation covered by the *Contraventions Regulations* (SOR/96-313).

Financial data include a listing of eligible expenditures actually incurred per main category of expenditures (staffing, equipment, communication tools, etc.).

To date, Manitoba has submitted, in a timely fashion, reports that cover all key aspects of the reporting requirements. However, as in Ontario, our interviews and site visits identified reporting challenges:

- There is no systematic procedure to track and report complaints. The Manitoba government is relying on court offices to report any complaint. To date, no complaint has been reported.
- Court offices are tracking and reporting the number of French trials manually. While all federal contraventions are inputted into the CON system, the database does not allow for the systematic tracking of French trials.

5. CONCLUSIONS AND LESSONS LEARNED

This section of the report presents conclusions and lessons learned, based on the findings presented in Section 4.

5.1. Program rationale

The one evaluation question under program rationale relates to the extent of bilingual services to be provided in the context of the *Contraventions Act*.

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| <ol style="list-style-type: none">1. To what extent must the federal government provide bilingual services in the context of the <i>Contraventions Act</i>? |
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The Federal Court ruling confirmed that any province or municipality that processes federal contraventions is, for all intents and purposes, acting on behalf of the federal government. In this context, provinces or municipalities that process federal contraventions must uphold all language rights provided by the *Criminal Code* and Part IV of the *Official Languages Act*.

Two key steps are required to adequately cover the quasi-constitutional language rights requirements associated with federal contraventions. First, the federal government must ensure that agreements relating to the processing of federal contraventions do incorporate and respect the language rights included in the *Criminal Code* and the *Official Languages Act*. In the two jurisdictions covered by this evaluation, agreements include a clear commitment from the signatory provinces to uphold these language rights.

Second, the provincial and municipal authorities responsible for processing federal contraventions must demonstrate due diligence in upholding these language rights. Just like any federal department, these authorities are expected to take all necessary measures to respect their language rights commitments. It must be noted, however, that shortcomings in providing services in both languages do not, in themselves, affect the validity of the federal government's decision to incorporate provincial and territorial prosecution schemes to deal with federal contraventions. Authorities processing federal contraventions cannot be held accountable to a level that is beyond what federal departments are subject to. As noted in this report, after 30

years, many federal departments still struggle to meet the requirements under Part IV of the *Official Languages Act*. Therefore, the expectations for both federal departments and provincial or municipal authorities that process federal contraventions are similar; they are not expected to be flawless in delivering bilingual services, but rather, they are expected to take all necessary measures to uphold their commitments and demonstrate due diligence and good faith in doing so.

5.2. Design and delivery

Four evaluation questions address issues relating to the design and delivery of the *Contraventions Act* Fund.

2. Have *Contraventions Act* Agreements been signed in every province?

At the time of the evaluation, *Contraventions Act* agreements had been signed with nine jurisdictions. However, only six of these agreements (Ontario, Manitoba, and British Columbia, Nova Scotia, Municipalities of Ottawa and Mississauga) include sections dealing specifically with the full language rights requirements from the *Criminal Code* and the *Official Languages Act* (Part IV). The Department of Justice is currently negotiating with the remaining jurisdictions to either modify the existing agreements or negotiate a first agreement. The Department's goal remains to have agreements in place in all jurisdictions before the end of fiscal year 2007-2008.

Whether the federal government succeeds in signing agreements with all jurisdictions will essentially affect the level of financial resources that the federal government must attribute to the *Contraventions Act* Fund. However, it does not affect the rationale for having the Fund itself. In the event that some jurisdictions do not sign a *Contraventions Act* agreement, federal contraventions will continue be processed by summary conviction. In this sense, failing to have agreements in place in all jurisdictions may affect the achievement of the *Contraventions Act*'s stated objectives, but it does not affect the achievement of the *Contraventions Act* Fund's stated objectives.

3. Are the activities of the Fund implemented as expected?

Both the Provinces of Ontario and Manitoba have implemented the activities identified in their *Contraventions Act* agreements:

- The Province of Ontario focussed the implementation of its activities in seven court locations, based on identified gaps. The range of activities included bilingual signage and

allocation of bilingual court personnel in judicial and extra-judicial positions. The Ontario government also implemented province-wide activities, such as the printing and distribution of certificates of offence, designed to meet all language rights requirements.

- Also based on identified gaps, the Province of Manitoba focussed on the implementation of video links in regions of the province where such technology was not previously available. Among other things, this new technology allows federal contraveners to plead guilty with an explanation before a bilingual magistrate or justice of the peace. The province also made available the services of justice generalists, who are in a position to provide a range of out-of-court bilingual services. Like Ontario, Manitoba implemented province-wide activities, such as the printing of certificates of offence that meet all language rights requirements.

4. Do Contraventions Act Agreements adequately cover the language requirements relating to the Contraventions Act, as defined by the Federal Court?

The *Contraventions Act* agreements in Ontario and Manitoba adequately cover the language requirements relating to the *Contraventions Act*, as defined by the Federal Court. They unequivocally commit both provinces to uphold all language rights contained in the *Criminal Code* and the *Official Language Act* (Part IV), as applicable.

As these agreements evolve and as jurisdictions gain experience in dealing with federal contraventions, it is possible that unforeseen service gaps will emerge. In the same vein, it is possible that gaps initially identified will be addressed and will not require ongoing funding. An example of the latter would be the funding allocated for signage, now that the signs are up, these activities will most probably not appear in future agreements in Ontario and Manitoba. In this context, the lists of activities funded under the *Contraventions Act* agreements are expected to evolve. But the commitment to uphold all language rights applicable to federal contraventions is expected to remain intact, which in itself, largely responds to the Federal Court ruling.

5. Is the reporting provided by the provinces / territories adequate to meet the federal government's needs for accountability?

Both Ontario and Manitoba have submitted reports that contain the information requested in the template that the Department of Justice Canada provided to them. This information allows the Department of Justice to report on the types of activities supported by the Fund and the volume of federal contraventions processed in each jurisdiction, including the number of French trials conducted.

It is unfortunate that databases in Ontario (ICON) and Manitoba (CON) do not allow for the systematic tracking of French trials. At this point, both provinces manually track the number of French trials occurring in their jurisdiction that involve federal contraventions. Considering the low volume of French trials occurring at this point in time, it may not be cost-effective to modify these databases, but this issue will need to be monitored. While helpful for conducting needs assessment or planning activities, the volume of French trials involving federal contraventions is of limited consequences. Jurisdictions must have the capacity to administer federal contravention in accordance with applicable language rights, regardless of volume levels.

5.3. Results

Three evaluation questions explore the results achieved to date through the implementation of the *Contraventions Act* Fund.

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| 6. What is the range of activities supported by the Fund to date? Are these activities required? Are gaps remaining to fulfil the federal government's obligations? |
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In both Ontario and Manitoba, the ranges of activities supported by the Fund were determined through a consultative process involving both the Department of Justice Canada and the provincial Attorney General offices. We also note that the French Language Services for the Justice Sector in Ontario and the French Language Services Secretariat in Manitoba have been involved to some degree in these consultations.

Activities identified by both levels of government do relate to the provision of bilingual services in the context of federal contraventions. We have found no evidence indicating that these activities were not required. As noted earlier, however, it is to be expected that the range of activities funded in each jurisdiction will evolve over time. As jurisdictions gain further experience, unforeseen service gaps may emerge. The structure of the *Contraventions Act* agreements offers the required flexibility to address such gaps.

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| 7. To what extent has the capacity of the provinces and territories to deliver bilingual services increased? |
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Activities supported by the *Contraventions Act* Fund have modestly increased the capacity of both Ontario and Manitoba to offer bilingual services. Both provinces already had important infrastructures in place to offer bilingual services, both judicial and extra-judicial. Activities

supported by the Fund have therefore been limited to certain court locations or certain areas of service.

The increased capacity to deliver bilingual services in relation to federal contraventions will also benefit individuals who are charged under a provincial offence. As previously noted, this is an unexpected, but positive, impact resulting from the implementation of the *Contraventions Act* Fund.

8. Is the data reported sufficient to measure the program's intermediate and long-term outcomes?
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The data reported to date by the Fund's recipients provide valuable information for assessing the achievement of intermediate and long-term outcomes. By describing the types of activities funded, the volumes of charges laid under the *Contraventions Act* (including the number of French trials) and the types of contraventions committed (charges per federal legislation), these reports provide relevant contextual and performance information.

One area that raises some concerns is the reporting of complaints. *Contraventions Act* agreements in Ontario and Manitoba commit both provinces to inform Canada of any complaints concerning language requirements. In turn, both provincial ministries rely on court offices to track and report on any complaint that may arise. To date, no complaints have been reported.

Considering the rather technical nature of the prosecution schemes applicable to federal contraventions, it appears unlikely that an individual who is charged under a federal contravention and who faces difficulty in receiving bilingual services would know where to turn to file a complaint. Technically speaking, this individual could turn to the Commissioner of Official Languages to file a complaint. But this assumes that the individual is aware that the provincial court office involved in the complaint is, in fact, acting on behalf of the federal government. A more likely scenario is the one that unfolded in 1997 when the *Association des juristes d'expression française de l'Ontario* filed a complaint with the Commissioner of Official Languages, which ultimately led to the Federal Court ruling.

In this context, the requirement to report any complaint should remain in any *Contraventions Act* agreements. However, one must exercise caution and not read too much into this data. As part of a summative evaluation of the Fund, the Department may wish to include other methods, such as the use of investigators to act as members of the general public to assess the availability of service in the two languages, on the telephone and in person.

6. RECOMMENDATIONS AND MANAGEMENT RESPONSE

ISSUE 1

There is no systematic procedure to track and report complaints. *Contraventions Act* agreements in Ontario and Manitoba commit both provinces to inform Canada of any complaints concerning language requirements. In turn, both provincial ministries rely on court offices to track and report on any complaint that may arise. To date, no complaints have been reported. This may be due to the relatively low volume of federal contraventions. Alternatively, considering the rather technical nature of the prosecution schemes applicable to federal contraventions, it appears unlikely that an individual who is charged under a federal contravention and who faces difficulty in receiving bilingual services would know where to turn to file a complaint. Technically speaking, this individual could turn to the Commissioner of Official Languages to file a complaint. But this assumes that the individual is aware that the provincial court office involved in the complaint is, in fact, acting on behalf of the federal government. A more likely scenario is the one that unfolded in 1997 when the *Association des juristes d'expression française de l'Ontario* filed a complaint with the Commissioner of Official Languages, which ultimately led to the Federal Court ruling.

It is recommended that:

The Department of Justice, explore in partnership with provinces, options for tracking and reporting complaints.

Management Response

Management agrees with this recommendation. It will study, in consultation with its provincial and municipal partners, electronic ways of tracking and reporting such complaints.

ISSUE 2

The Ontario government has encountered delays in submitting its reports. The deadlines identified in the agreement have not been met. This limits the occurrence of timely decision making.

It is recommended that:

The Department of Justice monitor timelines for receiving reports from Ontario.

Management Response

Management agrees with this recommendation. A standard reporting template has since been developed to facilitate the reporting of information and reminding letters will be forwarded at critical stage(s) during the fiscal year.

ISSUE 3

Court offices are tracking and reporting the number of French trials manually. Both databases in Ontario (ICON) and Manitoba (CON) do not allow for the systematic tracking of French trials. At this point, both provinces manually track the number of French trials occurring in their jurisdiction that involve federal contraventions. Considering the low volume of French trials occurring at this point in time, it may not be cost-effective to modify these databases, but this issue will need to be monitored.

It is recommended that:

The Department of Justice continue to monitor the volume of French trials to determine if there is a need to provide funding to modify provincial databases to meet federal reporting requirements.

Management Response:

Management agrees with this recommendation. Both provinces will be invited to revisit this issue and estimate the level of effort and resources required.