



**CONTRAVENTIONS ACT
EVALUATION
Final Report**

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**Evaluation Division
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EXECUTIVE SUMMARY

The Department of Justice Canada initiated the evaluation of the *Contraventions Act* to better understand the results achieved in using the ticketing system included in the *Act*. This evaluation plays a complementary role to those evaluations that the Department already conducted of the *Contraventions Act* Fund, which provides assistance in the delivery of services in both official languages. The evaluation is also aligned with the objectives of the 2009 Treasury Board Evaluation Policy, which expanded the scope of activities that must be evaluated.

Parliament passed the *Contraventions Act* in 1992 to establish a ticketing system that could be used to enforce certain federal statutory offences designated as contraventions. This new system was expected to better reflect the distinction between criminal offences and regulatory offences and to alter or abolish the consequences in law of being convicted of a contravention.

The methodology used to conduct this evaluation included a review of documents, studies, legislation, and case law relating to regulatory offences. It also included interviews with a wide range of key informants from federal, provincial, and municipal departments, ministries, enforcement agencies, enforcement officers, court managers, prosecutors and other stakeholders.

Key findings from the evaluation are as follows:

1. Relevance

The full and effective implementation of the *Contraventions Act* represents a critical step in ensuring that federal statutory offences are consistently enforced across Canada. One of the strategic outcomes of the Department of Justice Canada is to promote a fair, relevant and accessible justice system that reflects Canadian values. One of these values is the rule of law which requires from governments that they establish a stable, predictable, and orderly statutory framework. In the absence of the *Act*, it is doubtful that such a framework could be implemented in the area of federal statutory offences. A de facto failure to enforce federal statutory offences would point to a systemic problem, which the implementation of the *Act* helps to address. The *Act* is therefore consistent with the Minister of Justice's role as a steward of the Canadian justice system.

Without the ticketing system included in the *Act*, enforcement authorities face structural barriers that limit their ability to adequately fulfil their mandate. Apart from exceptional circumstances, the summary conviction process included in the *Criminal Code* is not an appropriate scheme to process less serious federal statutory offences. In the absence of a ticketing system, enforcement officers are often left with no option but to issue a largely meaningless warning instead of genuinely enforcing federal statutory offences.

Findings from this evaluation indicate that the scope of statutory offences designated as contraventions should be expanded. There is little rationale for excluding other less serious statutory offences that meet the overall requirements of the *Act* (e.g., limited fine, no imprisonment). Such an expansion would contribute to achieving the stated objectives of the *Act*. To this end, the Department may need to review its current guidelines relating to the designation of federal statutory offences as contraventions. These guidelines currently limit the scope of offences that can qualify as contraventions. In light of the fact that enforcement officers can either proceed with a ticket or by summary convictions, depending on circumstances, it may be beneficial to widen the current scope these guidelines have created.

2. Performance

2.1. Implementation across Canada

The implementation of the *Contraventions Act* has proven to be an incremental process. First passed in 1992, the *Act* was essentially not implemented until Parliament amended it in 1996 to allow (among other things) the federal government to sign agreements with provincial governments to use their respective prosecution schemes to process federal contraventions. On that basis, the Department initiated discussions with provincial authorities, which led to the signing of agreements in seven provinces. The ruling that the Federal Court rendered in 2001 on language rights forced the renegotiation of existing agreements and delayed the negotiation of new agreements.

Technically speaking, the *Act* is operational in all provinces except Newfoundland and Labrador, Saskatchewan and Alberta. This means that just over 80% of the Canadian population now resides in a province where contraventions tickets may be used. Justice Canada has been in negotiation with the remaining provinces.

The fact that the *Act* is not yet operational in three provinces is a concern. It creates a situation whereby the exact same unlawful behaviour that would contravene a federal statutory offence designated as a contravention is treated differently, based on the geographical location of the offender. This could trigger legal risks, particularly in provinces where the *Act* is not operational, in light of the fact that offenders are exposed to greater penalties.

2.2. Tickets issued

At the time of the evaluation, the bulk of contraventions tickets that enforcement officers were issuing were associated with driving-related offences (speeding, parking, etc.) occurring on federally owned land. Other key areas include offences related to recreational boating, the fisheries, railway safety, and commercial vehicle drivers. A number of factors, which are documented in this evaluation report, have delayed or limited the issuance of contraventions tickets.

2.3. Impacts of the *Act*

Once fully implemented, the ticketing system included in the *Act* will better equip enforcement officers. It provides an essential tool that stands between a warning and a formal charge laid in accordance with the summary conviction process included in the *Criminal Code*. The ability to issue contraventions tickets provides enforcement officers with a much more efficient tool to fulfill their mandate. In particular, it allows them to spend as much time as possible “on the ground”, monitoring compliance of their assigned protected areas. Widely used for provincial statutory offences, the ticketing system is also needed for the effective enforcement of federal statutory offences.

At the time of the evaluation, not all federal offences designated as contraventions were readily enforced. A number of barriers still remain. In some cases, administrative issues needed to be addressed before enforcement officers could be allowed to issue tickets. This explains, for instance, some of the delays in using the ticketing system in relation to the *Fisheries Act*. In other cases, enforcement officers still face competing demands, and they may not be in a position to focus on federal statutory offences, including those designated as contraventions. This is particularly the case for police services that must also enforce criminal offences. Finally, some federal departments have yet to fully embrace the *Contraventions Act* as a central tool to enforce the federal statutory offences for which they have authority.

The implementation of the *Act* has had a limited impact on the court system. Only a small portion of all contraventions tickets that enforcement officers issue end up being challenged in court. In the absence of the ticketing system included in the *Act*, it is doubtful that enforcement officers would in fact proceed by way of summary conviction. It is more likely that enforcement officers would have limited themselves to the issuance of a warning.

For those tickets that do end up being challenged in court, they represent only a fraction of all trials held for statutory offences. The impact of these trials is therefore limited.

2.4. Efficiency and Economy

There is no doubt that the *Act* provides a cost-effective approach to enforcing federal statutory offences designated as contraventions, as long as one can assume that these offences are, in fact, being enforced. Simply issuing warnings is less costly than issuing contraventions tickets. The problem, however, is that warnings are largely meaningless. They certainly have no legal consequences. The only other meaningful alternative is to proceed by way of summary conviction, which is dramatically less efficient and is more costly than issuing contraventions tickets.

The *Act* offers many benefits to both enforcement officers and citizens. For officers, the *Act* provides a much needed tool, allowing them to readily enforce statutory offences. In particular, the ticketing system allows enforcement officers to focus time and effort on the enforcement of offences, while spending less time and effort on the legal procedures associated with the summary conviction process. For citizens, those who are issued a ticket have the opportunity to settle immediately by pleading guilty and paying the fine. In particular, the ticketing system avoids the need for alleged offenders to appear in court, which could trigger legal costs that exceed the amount of fine the person is facing.

In terms of economy, the evaluation presented a brief cost comparison of the summary conviction process and ticketing scheme of the *Contraventions Act*. From this illustrative cost comparison, it was found that the ticketing scheme of the *Contraventions Act* is a much more economical approach to the courts than the summary conviction process.

1. INTRODUCTION

This document constitutes the final report of the evaluation of the *Contraventions Act* (also referred to as the *Act*). Parliament adopted the *Act* in 1992 to establish a ticketing system that could be used to enforce certain federal statutory offences designated as contraventions. This new system was expected to better reflect the distinction between criminal offences and regulatory offences and to alter or abolish the consequences in law of being convicted of a contravention.

1.1. Context for the evaluation

Two factors have principally motivated this evaluation. First, the Department of Justice Canada already completed two evaluations of the *Contraventions Act* Fund. The Department established this Fund to support provincial governments in the provision of services in both official languages when dealing with federal contraventions. While these two evaluation reports addressed a number of issues related to the performance of this Fund, they did not address the more fundamental question of whether the *Act* itself was reaching its stated objectives. This evaluation is expected to fill this gap.

Second, the Department conducted this evaluation in a revised policy context related to program evaluation. In April 2009, the federal government adopted its new Evaluation Policy, which has expanded the scope of activities and programs that must now be evaluated.¹ Assessing a significant legislative initiative such as the *Contraventions Act* directly reflects the new direction the federal government is promoting through this new Evaluation Policy.

1.2. Scope and objectives of the evaluation

This evaluation assesses the implementation of the *Contraventions Act* throughout Canada. It focuses on the experience of federal and provincial governments, as well as enforcement

¹ See Treasury Board Secretariat. (2009). *Policy on Evaluation*, Section 6.1.8.

authorities, in implementing the ticketing system included in the *Act*. The objectives of this evaluation are:

- to better understand the experience of federal and provincial governments, as well as enforcement authorities in enforcing federal statutory offences designated as contraventions;
- to assess the strengths and weaknesses of the *Act*, as currently designed; and
- to assess the extent to which the *Act* is reaching its stated objectives.

1.3. Structure of the report

This evaluation report contains six sections, including this introduction. Section 2 describes the *Contraventions Act*. Section 3 specifically describes the logic of the *Act*, including its expected impacts. Section 4 describes the methodology used to conduct this evaluation. Section 5 describes the findings from the evaluation, and Section 6 presents the conclusions and lessons learned.

2. DESCRIPTION OF THE *CONTRAVENTIONS ACT*

The passing of the *Contraventions Act* in 1992 marked an important milestone in a lengthy process to establish a clearer distinction between criminal and statutory offences. The *Act* establishes the foundation of this new approach, and is directly supported by two sets of regulations. This section describes the *Act*, its purpose and structure, and the regulatory regime associated with it.

2.1. Historical context

It has long been recognized that criminal offences (such as theft or assault) are fundamentally different from statutory offences (such as hunting a migratory bird without a federal permit) and, as such, should be treated differently. While its scope continuously evolves, a criminal offence refers to a behaviour that is not only forbidden by law, but that also—and just as importantly—violates fundamental values generally espoused by the whole of society. In 1976, the Law Reform Commission expressed serious concerns that the chaotic assemblage and mixture of criminal and statutory offences was diluting the primary purpose of criminal law:

In principle the criminal law's concern is with seriously wrongful acts violating common standards of decency and humanity. In practice only a minority of criminal offences fall under this heading. The majority, which total more than 20,000, are not necessarily wrong in themselves but prohibited for expediency. Such acts have to do with commerce, trade, industry and other matters which must be regulated in the general interest of society; and criminal prohibition is a well-trying and useful method of regulation. The regulatory offence, therefore, is here to stay. Nor have we any objection to it. What we do object to is diluting criminal law's basic message by jumbling together wrongful acts and acts merely prohibited for convenience. Once we treat the regulatory sector as seriously as the

Criminal Code, and we may end up thinking real crimes no more important than mere regulatory offences.²

To redress this ill-structured system, the Commission called for a clearer distinction between criminal and regulatory offences: “For this the remedy is *restraint*. We must keep regulatory offences in their proper place and confine “real” criminal law to its own proper job.”³ The Commission went on to suggest that two distinct regimes should be considered to deal with criminal and regulatory offences: “Real crimes need a criminal régime, violation a non-criminal régime.”⁴

The federal government did not act immediately on this recommendation. A decade later, in 1986, the Commission re-iterated its concerns, recommending a formal process to establish the distinction between criminal and statutory offences. In recommending the adoption of new legislation—the “Infraction Procedure Act”—the Commission established the overall vision that would later be reflected in the *Contraventions Act*. The Commission essentially suggested a two-step process, which included to formally classify some regulatory offences as “infractions” and to establish a separate system to process them.

All offences enacted by Parliament for which the penalty provided is not imprisonment, but a fine or other disability, would be termed “infractions.” The term “infraction” has been adopted because it is a generally accepted term describing the “least” serious category of offences – those which are not crimes. Since it is intended that all offences in the *Criminal Code* be “crimes” in that they are punishable by at least some term of imprisonment, infractions would be created and governed by federal legislation other than the *Criminal Code*. Infractions would primarily be used to enforce federal regulatory legislation.⁵

The Commission acknowledged the valued experience of provincial governments in dealing with regulatory offences. On that basis, it recommended that federal “infractions” be processed in a manner similar to that found at the provincial level:

A regime contained in a federal Infractions Procedure Act could be modeled upon legislation presently in force in Ontario and British Columbia – the *Provincial*

² Law Reform Commission of Canada. (1976). Report – Our Criminal Law. Ottawa, p. 11.

³ Ibid., p. 17.

⁴ Ibid., p. 19.

⁵ Law Reform Commission of Canada. (1986). Classification of offences: Working Paper 57. Ottawa, p. 29.

Offences Act, and the *Offence Act* respectively. Both deal with the procedures for the disposition of provincially created offences.⁶

During that same period, the Department of Justice Canada formally initiated a process to deal with federal statutory offences. It held consultations with the Royal Canadian Mounted Police (RCMP) and a variety of federal departments that were involved in establishing and enforcing federal statutory offences (such as Environment Canada, Fisheries and Oceans Canada and National Defence). The Department developed a proposal that would see the establishment of a new category of offences called “contraventions” (instead of “infractions” as proposed by the Commission). The proposed new act, the “*Contraventions Act*”, would pursue three objectives:

- to decriminalize minor statutory offences;
- to remove uncontested cases from the courts; and
- to improve the enforcement of penalties.

As a result, a new ticketing scheme was adopted with the passing of the *Contraventions Act* in 1992.

2.2. Overview of the *Contraventions Act*

The *Act* allows the federal government to designate federal statutory offences as contraventions, so that they could be processed using a ticketing system, instead of the summary conviction process included in the *Criminal Code*.

By establishing a ticketing system, the federal government wishes to reduce the burden on the court system and to limit the impact of a conviction based on a federal contravention. As stated in section 4, the purpose of the *Act* is:

- to provide a procedure for the prosecution of contraventions that reflects the distinction between criminal offences and regulatory offences and this is in addition to the procedures set out in the *Criminal Code* for the prosecution of contraventions and other offences; and
- to alter or abolish the consequences in law of being convicted of a contravention, in light of that distinction.

⁶ Ibid.

Before passage of the *Act*, the summary conviction process described in the *Criminal Code* was essentially the one that enforcement authorities had to follow when enforcing a federal statutory offence. As stated in subsection 34(2) of the *Interpretation Act*:

(2) All the provisions of the *Criminal Code* relating to indictable offences apply to indictable offences created by an enactment, and all the provisions of that Code relating to summary conviction offences apply to all other offences created by an enactment (emphasis added), except to the extent that the enactment otherwise provides.

Even in the best of circumstances, the summary conviction process systematically uses some of the court's limited time and resources. When an accused person wishes to enter a guilty plea to a summary conviction offence, he or she must proceed with a first appearance in court to enter that plea, which takes up some of the time of the judge (or justice of the peace), prosecutor and court personnel. Simply put, the summary conviction process appears disproportionate, considering the nature of many federal statutory offences.

In sum, the passing of the *Act* did not create any new federal offences and it did not abolish the summary conviction process as an option for enforcing federal statutory offences. Rather, it added a *new* option to deal with some of these offences (those designated as contraventions), when circumstances warrant, which is expected to be simpler and more effective.

2.3. The legislative and regulatory frameworks

The *Act* and its associated regulations cover all aspects of the contravention continuum, from the designation of a federal statutory offence as contravention, to the enforcement and prosecution of that offence, up to the consequences of a conviction. This subsection describes these various components.

2.3.1. Creating a federal contravention

The *Act* allows the federal government to make regulations designating federal statutory offences as “contraventions.”⁷ It is on that basis that the federal government passed the *Contraventions*

⁷ See section 8.(1) of the *Contraventions Act*.

*Regulations.*⁸ This regulation lists all federal statutory offences that are to be treated as contraventions.

The *Act* also allows the federal government to establish the amount of the fine associated with a federal contravention.⁹ That amount is systematically lower than the maximum fine an offender could face should the offence be prosecuted by way of summary conviction. The following example illustrates this principle. According to the *Historic Canal Regulations* (adopted under the *Department of Transport Act*), “taking off an aircraft on a navigation channel” is illegal.¹⁰ The federal government has designated this federal offence as a contravention. Therefore, an enforcement authority may elect to issue a ticket to someone accused of violating this provision. Should the person be found guilty, he or she will be required to pay a fine of \$200. If, for a variety of reasons, the enforcement authority elects to proceed with the summary conviction process, then the accused could be liable to a fine of up to \$400.

It is impossible to list all federal statutory offences that have been designated as contraventions. To date, there are close to 3,000 such offences, involving more than 20 different federal laws and more than 45 sets of regulations. Table 1 includes a listing of all federal laws containing federal offences designated as contraventions, the number of associated regulations containing contraventions, and an example of a federal contravention under each of these statutes.

Table 1: Legislations and associated regulations containing federal contraventions

Legislation	Number of regulations	Example of a contravention	Fine
<i>Canada Marine Act</i>	3	Obstruct course of ferry	\$ 100
<i>Canada National Park Act</i>	12	Damage an archaeological site or historical resource	\$ 300
<i>Canada Shipping Act</i>	4	Operate power-driven or electrically propelled vessel with more engine power than maximum specified	\$ 100
<i>Canada Wildlife Act</i>	0	Unlawfully destroy an animal egg	\$ 150
<i>Canadian Environmental Protection Act</i>	11	Quarterly report of Lead Concentration in Gasoline Produced (...) not submitted to the Minister with the required information	\$ 500
<i>Department of Transport Act</i>	1	Aircraft take off on a navigation channel	\$ 200
<i>Fisheries Act</i>	2	Possess any live fish for use as bait in the inland waters of New Brunswick	\$ 200

⁸ *Contraventions Regulations*, SOR/96-313.

⁹ See section 8.(c) of the *Contraventions Act*.

¹⁰ See paragraph 17(1)(a) of the *Historic Canals Regulations*

Legislation	Number of regulations	Example of a contravention	Fine
<i>Government Property Traffic Act</i>	3	Park where prohibited by sign at Schedule I airport	\$ 25
<i>Migratory Birds Convention Act</i>	2	Hunt migratory game bird after killing the permitted number	\$ 200 plus \$50 / bird
<i>National Capital Act</i>	3	Have a domestic animal at LeBreton Flats campground	\$ 150
<i>Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act</i>	1	Unlawfully ship live plant by land	\$ 100
<i>National Defence Act</i>	1	Enter controlled access area without pass	\$ 100
<i>Non-Smokers Health Act</i>	0	Fail to inform employees and members of the public of smoking prohibition	\$ 500
<i>Radiocommunication Act</i>	1	Operate a radio apparatus without a radio authorization	\$ 500
<i>Railway Safety Act</i>	0	Enter on land on which a line work is situated	\$ 100
<i>Saguenay-St. Lawrence Marine Park Act</i>	1	Conduct scientific research without a permit or without authorization	\$ 400
<i>Motor Vehicle Transport Act</i>	1	Drive after accumulating 15 hours of on-duty time without eight consecutive hours of off-duty time	\$ 250
<i>Navigable Waters Protection Act</i>	0	Permit to deposit in prohibited waters any material or rubbish liable to sink	\$ 250
<i>Telecommunications Act</i>	1	Alter markings on a telecommunications apparatus	\$ 500
<i>Tobacco Act</i>	0	Sell cigarettes in a package containing fewer than 20	\$ 500
<i>Transportation of Dangerous Goods Act</i>	0	Handle dangerous goods that are not accompanied by all applicable prescribed documents	\$ 500

2.3.2. Enforcing a federal contravention

The *Act* does not modify *who* enforces federal statutory offences, but rather *how* enforcement authorities go about executing their respective mandate. Police officers or any other person or body designated by law to administer any of the federal statutes listed in Table 1 continue to be the enforcement authority.

In the context of a ticketing scheme, the enforcement officer completes a ticket by including the prescribed information and serves it to the individual (or corporation) who is alleged to have

committed a contravention. That person will be faced with a number of options, which include at a minimum the option of pleading guilty and paying the prescribed fine, or of pleading not-guilty and requesting a trial. The obvious advantage of the ticketing model is to allow a person who does not wish to challenge the ticket to simply pay the prescribed fine. That way, only minimal time and resources are required from the court personnel to receive and process the payment. The court clerk, the prosecutor and the presiding judge (or justice of the peace) are not involved in such a scenario.

2.3.3. Application of provincial laws

To use a ticketing model to enforce federal contraventions, the federal government needed to secure the existence and availability of such a ticketing model. To this end, the *Act* offers two options.

First, the *Act* contains a series of provisions detailing how federal contraventions could be enforced through a new federal structure. These sections of the *Act* cover issues such as the completion and service of tickets, the content of the ticket, the commencement of proceedings, options available to defendants, trial procedures, the evidence, and the sentencing. However, while passed with the original bill in 1992, these sections have yet to come into force.¹¹ Implementing these sections of the *Act* would, in fact, require the establishment of a new federal scheme that would heavily involve provincial governments, which already have their own structure for prosecuting provincial offences. In other words, under that scenario, there would be two parallel systems that would pursue similar goals (prosecuting tickets), but through somewhat different ticketing systems.

Parliament opted for a second option. In 1996, it amended the *Act* to allow the federal government to use existing provincial prosecution schemes to prosecute federal contraventions. As stated in subsection 65.1(1) of the *Act*, “the Governor in Council may (...) make regulations making applicable (...) laws of the province (...) relating to proceedings in respect of offences that are created by a law of the province.” It is on that basis that the federal government adopted the *Application of Provincial Laws Regulations*. To date, this regulation has incorporated, for the purpose of enforcing federal contraventions, individual prosecuting schemes currently in place in all provinces except Saskatchewan and Alberta. Until the prosecution schemes currently applicable to these two provinces are incorporated, federal offences designated as contraventions

¹¹ See section 86 of the *Act*.

that are alleged to have been committed in these two provinces can only be prosecuted using the summary conviction process.

Using existing provincial schemes to prosecute federal contraventions creates additional demands on these systems and triggers additional costs. To help manage these, the *Act* allows the Minister of Justice Canada to sign agreements with each province.¹² These agreements relate to the administration and enforcement of the *Act* and cover any issue relating to the prosecution process, the enforcement of fines, as well as the sharing of fines and fees imposed as a result of the *Act*.

In practical terms, enforcement authorities start using a provincial ticketing scheme when both the incorporation of the provincial legislation has been completed in accordance with the *Application of Provincial Laws Regulations* and an agreement has been signed with the provincial government. In the absence of either one of these two conditions, federal offences designated as contraventions continue to be prosecuted using the summary conviction process. To date, the federal government has completed these two steps in all provinces except Newfoundland and Labrador, Saskatchewan and Alberta (see Table 2).

Table 2: Implementation process for the *Contraventions Act*

Components	NL	PE	NS	NB	QC	ON	MB	SK	AB	BC
Prosecution scheme incorporated	X	X	X	X	X	X	X			X
Agreement in place		X	X	X	X	X	X			X
<i>Contraventions Act</i> operational		X	X	X	X	X	X			X
Summary conviction only	X							X	X	

Note: The three territories are not included in this table, as this report focuses on provinces only.

2.3.4. Managing the consequences

A fundamental goal of the *Act* is to limit the consequences of being convicted of a federal statutory offence. As stated in section 4, the *Act* aims “to alter or abolish the consequences in law of being convicted of a contravention (...).”

One of these consequences relates to criminal records. Currently, information relating to a person who is convicted of an indictable or hybrid criminal offence in Canada ends up in a centralized

¹² See section 65.2 of the *Act*.

database. The Canadian Police Information Centre (CPIC), located within the RCMP, is responsible for managing this database, in accordance with federal legislation, including the *Criminal Records Act*. Federal statutory offences are typically hybrid offences. This means they can either be prosecuted as a summary conviction offence or as an indictable offence, depending on the circumstances related to the offence. As a result, information relating to a person who is found guilty of a federal statutory offence is recorded typically in the CPIC database.

The impact of having a criminal record is significant. First, it limits employment opportunities, since a number of positions will require a criminal record check. The list of these positions includes, but is not limited to:

- lawyers;
- banking, accounting, payroll, and investment positions;
- child care workers and volunteers;
- clerks and other personnel of the courts;
- correctional centre or security positions;
- dentists, doctors, nurses, and optometrists;
- peace officers;
- public service positions;
- school staff; and
- social service workers and volunteers¹³.

Second, a criminal record limits the ability of a person to travel outside of Canada. Having been found guilty of a summary conviction offence or an indictable offence does not limit the ability of a person to obtain a Canadian passport. However, certain countries have established specific requirements to limit or monitor the entry of individuals holding a criminal record.

Considering the nature of federal statutory offences designated as contraventions, the *Act* specifically states that “a person who has been convicted of a contravention has not been convicted of a criminal offence.”¹⁴ Therefore, the person does not end up with a criminal record.

¹³ See John Howard Society of Alberta. (2000). *Understanding Criminal Records*. Alberta.

¹⁴ See section 63 of the *Act*.

A second consequence relates to penalties. Federal statutes establishing statutory offences typically include a part or section that establishes the overall directives relating to penalties. A common statement found in legislation listed in Table 1 would read that “every person who contravenes a provision of the *Act* is guilty of an offence and liable:

- on conviction on indictment to a fine not exceeding <X> amount and or to imprisonment for a term of not more than <X> months, or to both; and
- on summary conviction, to a fine not exceeding <Y> amount or to imprisonment for a term of not more than <X> months, or to both.”¹⁵

Other statutes are more specific, establishing maximum amounts specific to an offence or a group of offences.

The *Act* reduces the penalty associated with those federal statutory offences that have been designated as contraventions. In accordance with section 8 of the *Act*, the federal government may make regulations to lower the fine to be paid for a contravention prosecuted by way of a ticket, and just as importantly, the *Act* specifically states that “a person who is convicted in a proceeding commenced by means of ticket is not liable to imprisonment (...).”¹⁶

2.4. The Contraventions Act Fund

A 2001 Federal Court decision jeopardized the entire federal contraventions project. Based on a case located in Ontario, the Court concluded that, as implemented at the time, the *Act* violated quasi-constitutional language rights established in the *Criminal Code* (sections 530 and 530.1) and in the *Official Languages Act* (Part IV). After reviewing measures taken to implement the *Act* in Ontario, the Federal Court concluded that the province was acting on behalf of the Government of Canada and, as such, ought to systematically and formally guarantee that any applicable federal language right be respected by the province in its dealings related to federal contraventions. Therefore, the Court ordered the federal government to:

take the necessary measures, whether legislative, regulatory or otherwise, to ensure that the quasi-constitutional 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

¹⁵ See, for instance, section 37 of the *Canada Shipping Act* or section 41 of the *Railway Traffic Act*.

¹⁶ See section 42 of the *Act*.

respected in any present or future regulations or agreements with other parties that relate to responsibility for administrating the prosecution of federal contraventions.¹⁷

In the absence of a satisfactory response, the federal government would no longer be in a position to use provincial ticketing schemes to prosecute federal contraventions.

To preserve the contravention project, the federal government responded at two levels. First, it modified the *Application of Provincial Laws Regulations* to include direct references to applicable language rights. Second, it established the *Contraventions Act* Fund, allowing the federal government to financially support initiatives that strengthen the capacity of provincial governments to deliver services related to federal contraventions in a manner consistent with applicable language rights found in the *Criminal Code* and the *Official Languages Act*. At the time of this report, the federal government had been using the Fund to support initiatives in Nova Scotia, Ontario, Manitoba, and British Columbia. These initiatives cover a range of activities related to, among other things, bilingual signage and communication tools, and language training.¹⁸

2.5. Governance and financial resources

The Department of Justice Canada invests both human and financial resources toward the ongoing implementation of the *Act*.

In May 2009, the Innovation, Analysis and Integration Directorate (within the Policy Sector) was given the mandate to oversee the implementation of the *Act* and the Fund, with a particular focus on the ongoing management of *Contraventions Act* agreements signed between the Department and the provincial governments where the *Act* is operational. The Directorate also includes the *Contraventions Act* Implementation Management team, which includes two legal counsel. The Directorate works in close collaboration with the Bureau of Francophonie, Justice in Official Languages and Legal Dualism.

The Department also established the *Contraventions Act* Fund to support the provision of services in both official languages in some of the provinces where the *Act* is operational. As

¹⁷ *Commissioner of Official Languages and her Majesty*, 2001 FCT 239.

¹⁸ For a detailed description of the initiatives funded through the *Contraventions Act* Fund, see Department of Justice Canada. (2007). Summative evaluation of the *Contraventions Act* Fund. Ottawa.

stated in the previous subsection, Justice Canada is providing financial support to four provincial governments: Nova Scotia, Ontario, Manitoba and British Columbia.

It is worth noting that the Department of Justice Canada does not provide direct financial contribution to provincial governments to cover expenditures related to the processing of federal contraventions. Instead, current *Contraventions Act* agreements typically include clauses that allow provincial governments to retain a portion of fines collected to cover these costs. Any surplus in fines collected is normally shared equally between the federal and provincial governments.

All financial resources allocated to the *Contraventions Act* are Vote 1 (Operating Expenditures) resources, applicable to salaries, operating and other related expenditures. During the five years presented in Table 3, full-time equivalent positions have been attributed to the management of the *Act*. Positions were in place prior to 2005-2006 as a result of the work related to the decision rendered by the Federal Court in 2001.

Table 3: Financial resources of the *Contraventions Act*¹⁹

Vote 1 Resources	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Full-time equivalent	3.9	3	2.2	2	2.1
Salaries	\$418,898	\$297,643	\$232,525	\$218,751	\$247,771
Operation and Maintenance	\$198,874	\$332,472	\$158,151	\$61,138	\$8,938
Total Cost	\$617,772	\$630,115	\$390,676	\$279,889	\$256,709

Source: administrative documents

¹⁹ Note that some amounts for 2005-2006, 2006-2007 and 2007-2008 were included in the financial resources of the *Contraventions Act* Fund presented in the formative and summative evaluations of the Fund released respectively in 2006 and 2007. This is due to interrelated activities between the management of the Fund, negotiation of agreements with provinces and management of the *Contravention Act*.

3. LOGIC OF THE *CONTRAVENTIONS ACT*

The logic of the *Act*, as illustrated in Figure 1, is driven by its two main objectives: to implement a new procedure to allow for the prosecution of federal contraventions by way of a ticket, and to lessen the consequences of being convicted of a federal offence designated as a contravention (see subsection 2.2). To support these goals, the implementation of the *Act* triggered a number of activities and their associated outputs and outcomes. The following subsections further describe these various components.

3.1. Activities and outputs

The first task that the federal government needed to undertake to implement the *Act* was to designate federal statutory offences as contraventions. This process, which is expected to be continuously evolving, is done in direct collaboration with the various federal departments and enforcement authorities responsible for the enforcement of federal statutory offences.

Once federal contraventions exist, the federal government undertakes the process of incorporating existing provincial prosecution schemes for the purpose of prosecuting federal contraventions. It also signs agreements with provinces to establish the overall set of parameters of the federal/provincial collaboration required under the *Act*. This process may involve a number of ministries (e.g., Attorney General, Justice, Correctional Services) in addition to court administrators, and typically requires extensive negotiations between the federal and provincial governments.

Once that foundation has been established, enforcement officers come into play. They must receive the required tools (including, predominantly, contraventions tickets) and training to start using this new prosecution scheme. They can then proceed to issue contraventions tickets.

If all of these activities are successfully carried out, federal contraventions will have been established, the required regulatory framework and agreements will have been put in place, and enforcement officers will, in fact, issue contraventions tickets.

3.2. Expected outcomes

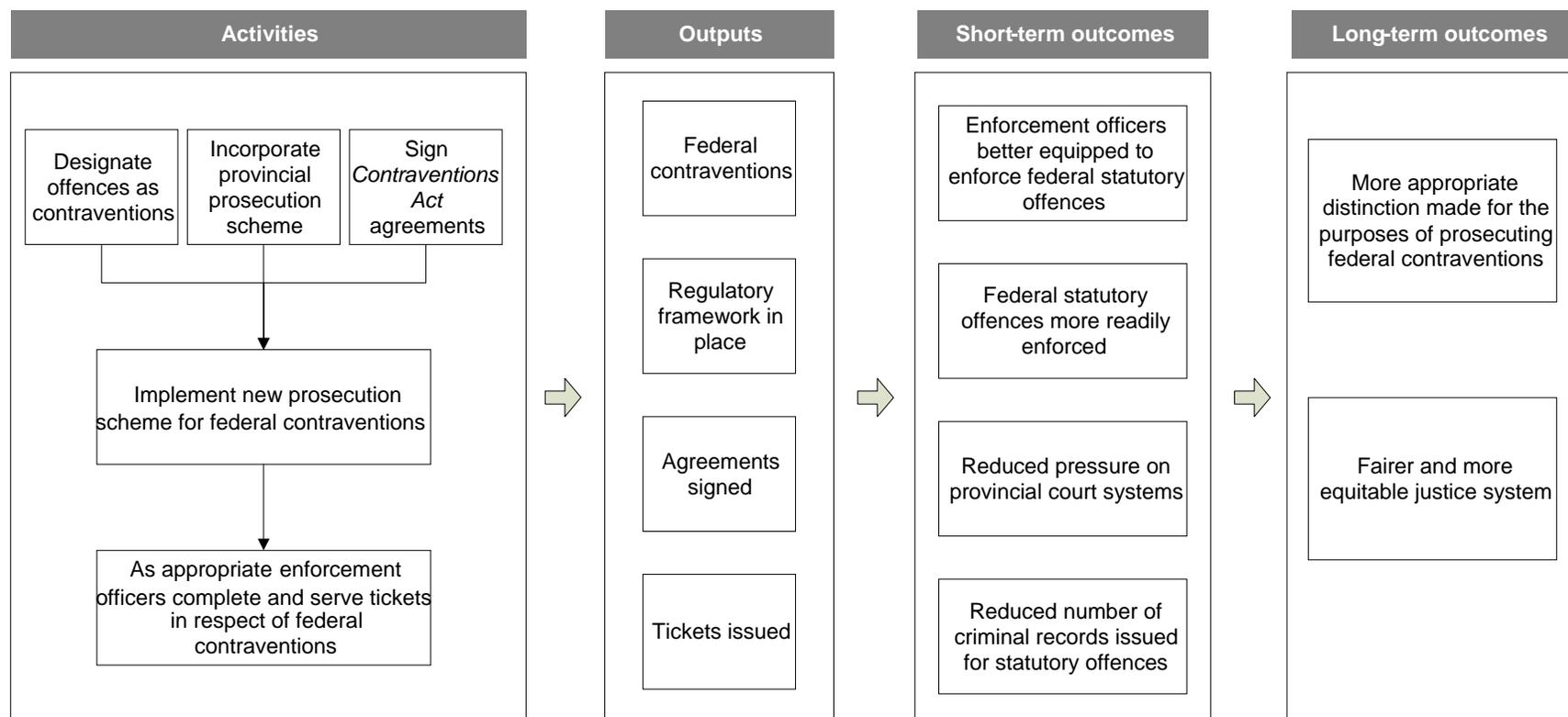
The fact that enforcement officers use a ticketing system to enforce federal contraventions is expected to have direct impacts at multiple levels:

- *Enforcement officers*: By having the option of using a ticket, enforcement officers are expected to be better equipped to enforce federal contraventions. A more straightforward ticketing system, compared to the summary conviction process, is expected to act as an incentive for officers to support a stronger enforcement of federal statutory offences.
- *Parliament*: Having federal statutory offences more readily enforced supports the fundamental role of Parliament to secure the integrity of the rule of law.
- *Court system*: The ticketing system allows the prosecution of federal contraventions to be partly redirected away from the court system, when compared with the summary conviction process. Unless someone who is alleged to have committed a federal contravention wishes to challenge a ticket, the ticketing system typically allows the person to simply pay the fine. This is clearly expected to reduce the pressure on the court system.
- *Canadians*: It has long been argued that issuing a criminal record for contravening some of the federal statutory offences was a disproportionate penalty, considering the nature of these offences. The implementation of the *Act* is therefore expected to reduce the number of Canadians who end up with a criminal record as a result of a violation of a federal statutory offence.

In the long term, the implementation of the *Act* should ensure that the justice system more accurately reflects the distinction between statutory offences and criminal offences. And by lessening the consequences of being convicted of a federal contravention, the *Act* also contributes to the goal of ensuring that Canada's justice system remains fair and equitable.

Figure 1: Logic of the *Contraventions Act*

Logic of the *Contraventions Act*



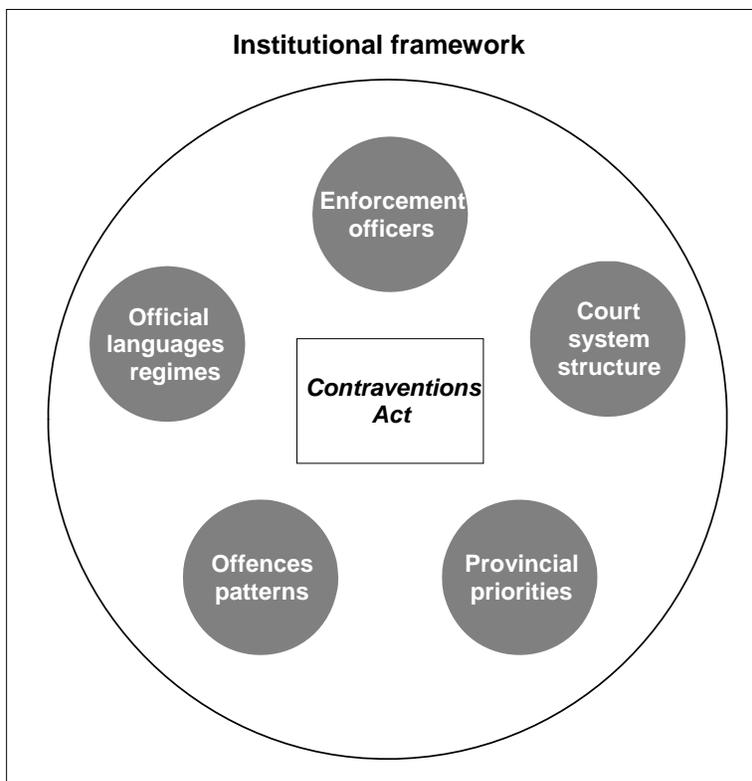
3.3. Systemic environment

The implementation of the *Act* is not done in a vacuum. On the contrary, there are a number of systemic factors that are bound to influence the extent to which the implementation of the *Act* is achieved, and its expected outcomes realized. In other words, these systemic factors are expected to have an impact (positive or negative) on the extent to which the logic illustrated in Figure 1 will unfold as planned.

Figure 2 lists five of these factors:

- *Enforcement officers*: The successful implementation of the *Act* relies heavily on the behaviour of enforcement officers. It could be argued that requirements associated with the summary conviction process acted as a disincentive to the enforcement of some federal offences that were of a less serious nature. Now that a ticketing system is available, factors such as training on the use of the ticketing system and the administrative and operational structure of enforcement authorities will play a pivotal role in the implementation of the *Act*.
- *Court system structure*: While similarities cut across jurisdictions, each province has its own court system, with its own rules, its own culture, and its own administrative procedures. Federal contraventions are adding a new component to these already complicated systems. Again, this requires the court administrators and personnel to understand the specific requirements associated with federal contraventions. Their collaboration is essential to avoid judicial challenges based on a misunderstanding of the new prosecution scheme.
- *Provincial priorities*: More than 12 years after its adoption, the *Act* is still not operational in some jurisdictions in Canada. This reflects the fact that provincial governments must be willing to focus time and resources to work with the federal government to implement the *Act*. There are a multitude of considerations, whether administrative or financial, that must be addressed before the *Act* can become fully operational. The negotiation of an agreement, as well as the communication and training required of court personnel and enforcement officers are all fundamental conditions for the successful implementation of the *Act*. For various reasons, a provincial government may conclude that the implementation of the *Act* in their province is not sufficiently a priority to allocate the required resources.

Figure 2: Institutional framework



- *Offences patterns*: The nature of the offences listed in Table 1 is such that some provinces are bound to face more cases of federal contravention violations than other provinces. A large portion of statutory offences designated as contraventions relate to the environment (marine activities, fisheries, national parks, wildlife, migratory birds) and transportation (shipping, ground transportation, and transportation of dangerous goods). Provinces with several national parks, protected habitats, or direct access to large bodies of water have a particular interest in ensuring an effective enforcement of federal contraventions. Along the same line, provinces with small populations may only rarely face the list of scenarios currently covered by statutory offences designated as contraventions.
- *Official languages regimes*: 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. Experience to date with the *Contraventions Act* Fund has demonstrated the need to

assist some provinces that have limited capacity to deliver services in both official languages. Ultimately, these language requirements may raise challenges that will act as a disincentive for a province to embark in the processing and enforcement of federal contraventions. In that sense, the *Contraventions Act* Fund plays a pivotal role, as documented in the two formal evaluations the Department of Justice Canada has conducted on the Fund.

4. METHODOLOGY

The methodology used to conduct this evaluation has two main components: a document and file review, as well as key informant interviews.

4.1. Document review

To get a detailed understanding of the *Contraventions Act*, a range of documents were reviewed. The list of documents includes, but is not limited to:

- Documents related to the history of the *Contraventions Act*. Some of these documents are public, such as studies conducted by the Law Reform Commission, whereas others are internal (e.g., briefing notes, memos). They provided critical insights on the rationale of the *Act*.
- A number of key legislative texts were reviewed. In addition to the *Contraventions Act* itself, along with its two sets of regulations, a number of federal laws and regulations currently covered by the *Act* were also reviewed. Provincial legislation on court procedures was also included.
- Current *Contravention Act* agreements along with financial and statistical reports were also reviewed. In some cases, provincial authorities provided additional statistical data on the number and the type of contraventions tickets issued in their jurisdictions.

4.2. Key informant interviews

Key informant interviews were conducted with a number of stakeholder groups from all regions of Canada where the *Act* is operational. In total, 67 interviews were conducted, involving 81 individuals. These interviews were conducted during the period between February and April 2010. Table 4 presents the distribution of key informants consulted, based on their positions.

Table 4: Distribution of key informants consulted by positions

Key informant group	Number of individuals consulted
Enforcement officers (federal, provincial, municipal)	29
Enforcement managers (federal, provincial, municipal, airports)	20
Legal counsel and prosecutors	12
Public servants (federal and provincial)	17
Court managers	3
Total	81

Some of these interviews were conducted in person, while others were conducted over the phone. Formal site visits were included as part of the data collection process, and some in-person interviews were conducted in New Brunswick, Nova Scotia and Ontario. In other provinces, however, the geographical location of stakeholders was so dispersed that phone interviews were used instead of site visits.

4.3. Analysis

The implementation of the *Contraventions Act* is largely an undocumented story. As a result, the methodology used for the evaluation was structured to allow for a thorough review of documented and undocumented facts about the *Act*, and for the gathering of opinions and perceptions of a wide range of stakeholders, with a strong emphasis on enforcement officers and managers.

Since the evaluation relied heavily on qualitative data, qualitative data analysis software (NVivo) was used to systematically structure findings along key evaluation issues, questions and indicators, and to allow for a complete integration of all qualitative information. This approach supported an analysis by organizations and positions, which was particularly important considering the nature of statutory offences covered by the *Act*.

5. KEY FINDINGS

This section presents key findings related to the *Contraventions Act*. More specifically, it explores the relevance of the *Act*, as well as performance issues such as: the effectiveness of the implementation across Canada, other issues related to the enforcement of federal contraventions, the range of impacts associated with the *Act*, and efficiency and economy issues.

5.1. Relevance of the *Contraventions Act*

The evaluation considered relevance of the *Contraventions Act* with respect to: the alignment with federal priorities and the continued need for the *Act*. In terms of relevance, the evaluation also examined the appropriateness of the summary conviction process in relation to the *Contraventions Act* as well as the scope of designation. These next subsections of the report further explore these findings.

5.1.1. Alignment with federal priorities

The expectation that citizens will obey a well defined set of rules embodied in law and systematically and uniformly enforced, has long been established as a cornerstone of the rule of law and, by extension, of democracy. One of the strategic outcomes of the Department of Justice Canada is to promote “a fair, relevant and accessible justice system that reflects Canadian values.”²⁰ One of these values is the rule of law, as stated in the preamble of the *Canadian Charter of Rights and Freedoms*: “Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law.”²¹

While there are many dimensions associated with the concept of the rule of law, they frequently convey the notion of predictability. As noted by the Supreme Court of Canada, “at its most basic level, the rule of law vouchsafes to the citizens and residents of the country a stable, predictable

²⁰ See Department of Justice Canada. (2010). 2009–2010 Report on Plans and Priorities.

²¹ See *Canadian Charter of Rights and Freedoms* as Part I of the *Constitution Act*, 1982.

and ordered society in which to conduct their affairs.”²² The Court also emphasized that “the rule of law requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order.”²³

In accordance with its constitutional authority, the federal government has enacted a wide range of federal statutory offences and, as the Supreme Court of Canada indicated, it falls upon the federal government to appropriately *maintain* this legislative framework. At a minimum, the maintenance of a legislative framework includes its proper enforcement. Findings from this evaluation attest to the significant challenges that authorities face in their attempt to enforce federal statutory offences. However, the *Contraventions Act* offers an approach that facilitates the enforcement of statutory federal offences, and that contributes to maintaining the legislative framework of Canada. The *Act* is therefore consistent with the Minister’s role as a steward of the Canadian justice system.

5.1.2. Need for the Contraventions scheme

To enforce statutory offences, designated officers must follow strict rules meant to ensure fairness and to protect citizens against arbitrary decisions and abuse of power. As noted in subsection 2.2 of this report, the summary conviction process, as defined in Part XXVII of the *Criminal Code*, is the default process to be used in all cases except indictable offences. This means that another procedure, such as the one defined in the *Contraventions Act*, may be used to enforce certain federal statutory offences but, in the absence of any other process, enforcement officers must fall back to the summary conviction procedure.

It is critical to understand just how burdensome the summary conviction process can be. While it may vary somewhat among regions, it typically includes a number of distinct steps, which can be illustrated through the following example. A wildlife officer comes across an individual who has hunted “migratory game bird after killing the permitted number”.²⁴ To enforce this federal offence using the summary convictions process, the officer needs to go through the following steps:

- The officer gathers the required information from the individuals, which includes his or her name and address, licence number, pictures, and other required information.

²² See Reference re Secession of Quebec, [1998] 2 S.C.R. 217.

²³ See Re Manitoba Language Rights, [1985] 1 S.C.R. 721.

²⁴ This contravenes section 9 of the *Migratory Birds Regulations*.

- The officer proceeds to meet the Crown prosecutor to share the information on the offence and to discuss the merits of proceeding with a charge. It is important to specify that the Crown prosecutors associated with the Public Prosecution Service of Canada (PPSC) are the ones dealing with any trial related to a federal statute, unless there is an agreement to the contrary.
- Should the Crown agree to proceed with the case, the officer prepares information, often referred to as the “long form”, which includes a detailed description of the incident that contravenes a federal statute. The officer lays the information at the court house, to be signed by a provincial judge or a justice of the peace. The officer will also get a summons signed by the judge or justice of the peace, ordering the defendant to appear in court to answer the charge.
- The officer then proceeds to serve the summons and the information to the individual who is alleged to have committed the offence. This normally requires the officer to travel to the residence of the individual to serve the summons.
- The next step is for the accused individual to appear in court and enter a plea. On this specific step, procedures vary across Canada (as they are defined by provincial laws). In some cases, the court will deal with the matter immediately. If the individual enters a guilty plea, the court will immediately proceed with the sentencing. If the person enters a not guilty plea, the court will immediately hold a trial. In other jurisdictions, the first appearance is limited to entering a plea, and the trial or sentencing will occur at a later date.
- Regardless of the procedure to be followed, the officer must prepare a court file (also referred to as a court brief), which the Crown prosecutor uses to either recommend a sentence or to proceed with the trial. To prepare the court file, the officer will gather all the notes and evidence (e.g., pictures) relating to the offence. This typically includes affidavits, which must be sworn, and the officer may need to notify witnesses to appear in court. The officer will obviously need to be available as a witness.
- Once the officer has completed the court file, he or she needs to meet with the Crown prosecutor to review it and answer any question the Crown prosecutor may have.
- In the event that a trial is held, the officer may need to meet with the Crown prosecutor on several occasions to adequately prepare the case and to assist any other witnesses that need to appear in court.

Findings from this evaluation confirm that leaving enforcement officers with no other option but to enforce federal statutory offences by way of summary conviction is immensely problematic. There are a multitude of systemic barriers that are directly associated with this scenario:

- Enforcement officers are trained to do precisely what their title indicates: enforce laws and regulations. They primarily wish to be “out there” monitoring their target groups or their assigned regulated or protected habitats. The idea of spending hours filling out forms, waiting in court to obtain signatures and travelling all over to serve documents and obtain affidavits is not an efficient use of their time.
- Convincing the Crown to proceed with a charge related to a federal statutory offences (as opposed to the *Criminal Code*) may prove challenging. Resources to prosecute are limited and case loads are significant, so the notion of spending time and resources to prosecute someone who killed three or four migratory birds over the prescribed limit may not be seen as a priority by the Crown.
- Even if the Crown agrees to proceed with the charge, the presiding judge may not share the opinion that this is time well spent by the court. A number of enforcement officers consulted as part of this evaluation recounted reactions from judges who expressed frustration with having to deal with these statutory offences. In addition to appearing less important than criminal offences such as impaired driving, theft or assault, a federal statutory offence, such as the one used for the purpose of our example, may raise questions that the presiding judge is not comfortable with. As one key informant said, “When the prosecutor is ready to proceed, then 99 times out of 100 the provincial court judge has never had anything to do with your legislation either.”
- Even if the charge successfully threads through these complications, and the person is found guilty, then the presiding judge is often left with very little direction on what penalty to impose as a result. For instance, in our example where a hunter killed too many migratory birds, the applicable legislation states that, when found guilty by way of summary conviction, a person is liable “to a fine of not more than \$300,000 or to imprisonment for a term of not more than six months, or to both”.²⁵ This clearly leaves significant discretion to the judge, who may be tempted to limit the fine to an amount that is largely symbolic. As one enforcement officer said, “The fine becomes irrelevant. The punishment becomes the obligation to go to court. The judge considers that the person has been punished enough and ends up ordering the person to pay a \$100 fine. The person just gets a slap on the wrist.”

²⁵ Subsection 13(1.1)b) of the *Migratory Birds Convention Act*, 1994 (1994, c. 22)

Completing this process to end up with a fine of \$100, \$200 or even \$400 appears highly inefficient. Simply put, the summary conviction process seems at odds with the nature of many federal statutory offences. So, how do enforcement officers react? Often by simply not laying a charge, as made abundantly clear during interviews held as part of this evaluation. Enforcement officers often limit themselves to the issuance of a “warning”, which has no legal consequences. There is no doubt that a warning is a useful tool that enforcement officers may use to educate the general public or to deal with minor offences committed in mitigating circumstances, but it becomes problematic when enforcement officers resort to issuing warnings because they simply lack an alternative that would suit the offence they are dealing with. Having a body of federal statutory offences that are largely not enforced contradicts some of the fundamental values associated with the rule of law, such as the need to maintain a predictable and ordered statutory framework.

The concept of a ticketing system, as embodied in the *Contraventions Act*, was unanimously supported by enforcement officers and managers consulted as part of this evaluation.

Issuing a ticket allows officers to enforce federal statutory offences, while avoiding the lengthy process associated with the summary conviction scheme. As described in subsection 2.3 of this report, the ticketing system included in the *Contraventions Act* provides certainty by establishing set fines and allowing officers to issue a ticket on the spot, without having to secure a prior authorization from the Crown or from any other authority. The alleged offender can also opt to pay the fine, which puts an end to the process, without having to engage the court system.

The ticketing system appears particularly well suited for first-time offenders, or individuals who appear to genuinely lack an understanding of the federal legislation they are accused of violating. Enforcement officers consulted as part of this evaluation often emphasize with the need for a range of tools that suit the various scenarios they must deal with.

For some, having statutory offences enforced by way of a ticket (instead of the formal summary conviction process) may have initially appeared to trivialize these offences. It was an early perception that some enforcement officers have reported during interviews held as part of this evaluation. However, it now appears that experience gained to date with the *Act* has put this concern to rest.

5.1.3. When the summary conviction process remains appropriate

The implementation of the *Contraventions Act* does not signal the end of the summary conviction process to deal with federal statutory offences, including those designated as contraventions. Key informants consulted as part of this evaluation emphasized on several occasions the relevance of proceeding with the summary conviction process when circumstances warrant, which would include the following scenarios:

- The officer is dealing with a repeat offender, for whom the issuance of tickets does not appear to have the desired impact. By ordering the person to show up in court and explain his or her behaviour, the summary conviction process sends a more forceful message. Having a repeat offender case is also easier to justify to both the Crown and the presiding judge.
- The officer is aiming for a penalty more severe than the one available under the *Contraventions Act*. Proceeding by summary conviction allows the Crown to ask for the penalty included in the actual legislation establishing the offence (instead of the reduced penalty established in the *Contraventions Regulations*), which typically includes a significant range.
- The officer wishes to proceed with several charges, and may also be seeking specific court orders in relation to the offence. Issuing a ticket would not achieve the desired outcome. The officer would have to proceed by way of summary conviction.

Enforcement officers will therefore continue to use the summary conviction process to deal with serious cases related to any of the federal statutory offences designated as contraventions.

5.1.4. The scope of designation

The scope of federal statutory offences designated as contraventions has a direct impact on the relevance of the *Act* itself. In fact, the issue of scope can be addressed through two complementary perspectives.

First, at a conceptual level, it may not be apparent why the *Contraventions Act* would not cover essentially any federal offence for which a limited and set fine appears appropriate when no aggravating circumstances exist. As already noted, the *Act* adds a new component to an enforcement officer's tool box, but it does not take anything away from it. When circumstances warrant it, enforcement officers always maintain the option of proceeding by way of summary conviction.

Second, at a practical level, if offences designated as contraventions are not the “right ones”, then the relevance of the *Act* becomes more ambiguous. The vast majority of key informants consulted as part of this evaluation called for an expansion of the current scope of federal offences designated as contraventions.

According to those key informants, areas that would benefit from a broadening of the scope of contraventions include the fisheries (*Small Fishing Vessel Inspection Regulations*, *Atlantic Fishery Regulations*, *Fishery (General) Regulations* and *Management of Contaminated Fisheries Regulations*); the environment (*Species at Risk Act* and its regulations); broadcasting (*Broadcasting Act* and the *Radiocommunication Act*, along with their associated regulations); and explosives (*Explosives Act* and its regulations).

It is important to note that the decision to expand the scope of the *Contraventions Act* rests primarily with each federal department responsible for these statutes. The Department of Justice Canada also plays a role, which is further discussed in the next subsection of the report.

5.2. Performance: Effectiveness

This subsection of the report focuses on performance issues associated with the implementation of the *Contraventions Act* across Canada. It discusses the effectiveness of the *Act* and the implication of having three provinces where the *Act* is not operational, before turning to the implementation process in provinces where the *Act* is operational. Other issues related to performance that are presented include: the role of the Department of Justice Canada; engagement of key stakeholders; and the enforcement of federal contraventions. Impacts of the *Act* on enforcement officers, the court system and broader societal impacts are also presented.

5.2.1. Achieving a full implementation of the Act

The implementation of the *Contraventions Act* has proven to be an incremental process. First passed in 1992, the *Act* was essentially not implemented until Parliament amended it in 1996 to allow (among other things) the federal government to sign agreements with provincial governments to use their respective prosecution schemes to process federal contraventions. On that basis, the Department initiated discussions with provincial authorities, which led to the signing of agreements in seven provinces (see Table 5). As noted in subsection 2.4 of this report, the ruling that the Federal Court rendered in 2001 on language rights forced the renegotiation of existing agreements and delayed the negotiation of new agreements.

Table 5: Year that *Contraventions Act* agreements were first signed, by province

Jurisdictions	Date
Ontario	1996
New Brunswick	1997
Prince Edward Island	1997
Manitoba	1997
Nova Scotia	1999
Quebec	2000
British Columbia	2004

Source: administrative documents

Technically, the *Act* has been operational in seven provinces for a number of years. In reality, the implementation of these agreements has also proven to be incremental. In fact, some federal departments have yet to use the ticketing system available as a result of the *Act*, even in jurisdictions where agreements have been signed for several years. A few cases in point:

- At the time of the evaluation, there were no tickets being issued in New Brunswick for designated statutory offences included in the *Canada Shipping Act* and its regulations (which include the lengthy list of offences included in the *Small Vessel Regulations* on the operation of pleasure crafts), as well as in the *Maritime Provinces Fishery Regulations* (which include several offences related to fishing in inland and tidal waters). Administrative issues, particularly relating to seizures and forfeitures, have apparently delayed the issuance of tickets. Key informants consulted as part of this evaluation indicated that they expect tickets to be issued in 2010.
- Very few tickets are being issued in Nova Scotia related to designated offences included in the *Canada Shipping Act* and its regulations. This appears to be the consequence of issues related to enforcement authorities, which are further discussed in this subsection of the report.
- Few tickets, if any at all have been issued to date in relation to designated offences included in the *Tobacco Act*. Findings from this evaluation confirm that, in some regions of the country, the ticketing system has yet to be used for this purpose. A lack of enforcement capacity and unclear administrative procedures appear to have delayed the issuance of tickets.

Federal and provincial governments, as well as enforcement authorities, will need to address a number of issues before the *Act* becomes fully operational where *Contraventions Act* agreements

have been signed. Many of these challenges are documented in this report, particularly in this subsection.

Beyond implementation issues associated with current agreements, the fact remains that the *Act* is still not operational in Newfoundland and Labrador, Saskatchewan and Alberta. Maintaining a partial implementation of the *Act* may trigger a number of risks.

First, the enforceability of federal statutory offences in these three provinces, particularly those designated as contraventions, can be seriously questioned. Enforcement officers are faced with the scenario described in subsection 5.1 of this report whereby they either issue a warning or proceed with the full summary conviction process. However, in these circumstances, enforcement officers often choose to not lay charges or to simply issue a warning, which has no legal consequences.

Second, having two separate procedures related to the same federal offence, with different outcomes associated with each of them, contradicts the notion of having a consistent and predictable statutory framework in relation to federal statutes. As one key informant said, “Everyone should receive the same treatment when they commit a federal offence. It should not matter what province you live in. If you violate a regulation in Saskatchewan, you need to go to court whereas you only get a ticket in Manitoba for the same offence.”

5.2.2. *Contraventions Act* agreements

Contraventions Act agreements have proven to be a helpful tool in structuring the collaboration between the federal and provincial governments. Provincial representatives consulted as part of this evaluation have expressed a high degree of satisfaction with the agreements themselves and their ongoing relationship with Justice Canada.

On the issue of reporting, provinces are essentially divided into two groups:

- Those provinces that access resources under the *Contraventions Act* Fund must submit specific reports, based on a template that the Department has prepared. These provinces are Nova Scotia, Ontario, Manitoba and British Columbia. To date, these jurisdictions have submitted the required reports, which describe activities undertaken with the Fund, along with statistics on the number and type of contraventions tickets issued in the province.

- In the remaining three provinces (Prince Edward Island, New Brunswick and Quebec), current reporting activities differ. While the province of Quebec submits some annual statistics on federal contraventions along with financial information, the other two provinces are currently not submitting any such report, despite the reporting provisions contained in the *Contraventions Act*.

Having statistics consistently gathered in all provinces where the *Act* is operational (regardless of contributions made through the Fund) would greatly contribute to effective monitoring of its implementation. This is particularly desirable since these statistics exist in provincial databases.

5.2.3. The role of the Department of Justice Canada

The Department of Justice Canada plays a pivotal role in the implementation of the *Contraventions Act*. A predominant aspect of this role consists of constantly monitoring legislative amendments made to statutes currently covered under the *Act* to ensure they maintain the accuracy of the *Contraventions Regulations*. The Department is also responsible for systematically informing enforcement authorities of any amendments made to these regulations, so that enforcement officers may operate on an appropriate basis.

Findings from this evaluation indicate that the Department has faced some challenges in assuming these responsibilities. Some representatives from provincial governments have pointed to delays in relaying information on legislative amendments made to statutes currently covered under the *Act*. To fully address this challenge, the Department must have an effective internal strategy on communicating changes made to a law or regulation that are currently designated as contraventions. The Department must also have an effective external communication strategy to relay amendments to *Contraventions Regulations* to other federal departments. Experience to date indicates that inadequate mechanisms exist within the Department to systematically communicate this information in a timely manner.

In addition, some provincial representatives were uncertain whether all enforcement agencies were being updated. This is particularly significant, since several federal departments count on provincial or municipal authorities to enforce their legislation. The extent to which municipal police officers, members of the RCMP, provincial conservation officers, or other provincial or municipal inspectors are kept informed of changes made to the *Contraventions Regulations* remains uncertain.

Activities of the Department also extend to the actual designation of federal statutory offences as contraventions. Each federal department is primarily responsible for determining which offences, of those it is responsible for, should be designated as contraventions. Once a federal department has decided to proceed as such, it must work directly with legal counsel associated with the Innovation, Analysis and Integration Directorate to complete the required steps. To facilitate this process, the Directorate has published guidelines meant to assist other federal departments in deciding whether a specific offence can be appropriately designated as contraventions. In essence, these guidelines cover the nature and the severity of offences considered for designation. It puts the emphasis on designating offences that are minor and that are of a regulatory nature. It should be noted that a department cannot proceed with a designation unless it is first approved by the Directorate. After its approval, the designation goes through the normal federal regulatory approval process.

Finally, Justice Canada is also involved in the provision of the appropriate training of enforcement officers. On several occasions, individuals interviewed as part of this evaluation have indicated they attended training sessions involving representatives from the Department, along with representatives from their respective provincial government. Despite the limited capacity that exists in the Department to deliver training sessions, these key informants were pleased with the training they received, which allows them to better understand the processes associated with the *Contraventions Act*.

5.2.4. Engaging key stakeholders

The successful implementation of the *Contraventions Act* requires the involvement and collaboration of a wide range of stakeholders. As previously mentioned in this subsection, a number of these stakeholders belong to provincial and municipal entities, such as municipal and provincial police services, conservation officers and provincial inspectors. In all cases, the work of these provincial enforcement authorities is complementary to the work of federal enforcement officers such as fishery officers, RCMP officers, railway police officers, federal park wardens and wildlife enforcement officers.

Due to the limited number of federal enforcement officers available across the country, the assistance of provincial and municipal authorities becomes critical in effectively enforcing federal statutory offences. Yet, findings from this evaluation indicate that there are very few incentives for these provincial or municipal authorities to spend time and resources enforcing federal statutes. In fact, provincial and municipal enforcement officers consulted as part of this

evaluation indicated that they consider the enforcement of federal statutes to be largely incidental to their primary mandate, which is to enforce provincial or municipal statutes. If they come across a violation of a federal statute for which they have the authority, they will typically deal with it. The same goes for when a federal department contacts them for assistance—as much as possible, they will provide assistance. But this work is essentially done in a reactive mode.

Not surprisingly, the systemic barrier that provincial and municipal authorities face in enforcing federal statutes is financial. If a provincial or municipal enforcement officer can simply issue a ticket for a federal contravention and the offender pays the fine, the impact of issuing the ticket on the workload of that officer is limited. But what happens if the ticket is challenged? The enforcement officer must then spend time in the office and in the court room on a matter that is not related to his or her primary responsibility. And what about the scenario where the federal offence is not designated as a contravention (or is occurring in a province where the *Act* is not operational)? Then, the enforcement officer becomes engaged in the burdensome summary conviction process. Managers involved in provincial and municipal authorities consulted as part of this evaluation expressed serious reservations about the notion of having their enforcement officers spending too much time enforcing federal statutes, since that work is not being compensated by the federal government. Again, this may become a strong incentive for provincial and municipal authority to simply issue a warning.

Another complication in engaging key stakeholders relates to the work of the PPSC. As stated before, unless there is an agreement to the contrary, Crown prosecutors associated with the PPSC are the ones dealing with any trial related to a federal statute. The work done by these prosecutors is invoiced back to the federal department responsible for the statute that created the federal statutory offence. This procedure requires federal regional managers to monitor the costs being incurred by these prosecutors. Having a number of municipal or provincial enforcement officers issuing tickets or laying charges can therefore trigger unexpected costs. Some provincial enforcement officers consulted as part of this evaluation recalled having their charge dropped by the federal department, on the basis that it did not have the resources to prosecute them. This scenario may create yet another incentive for provincial or municipal officers to limit themselves to the issuance of a warning.

Among all stakeholder groups involved in the implementation of the *Contraventions Act*, the one that stands somewhat apart from all others are the airports. Major airports in Canada are run by local airport authorities. Although their activities are regulated by federal laws, they are not linked to any federal department and constitute separate and independent entities. Yet, airports operate on federally owned land and are expected to enforce a number of federal statutes, such as

the *Government Property Traffic Act*, which regulates (among other things) parking at airports. The implementation of the *Act* at some of Canada’s main airports has proven to be very problematic. Essentially, these airport authorities do not have the ability to issue tickets that could be registered into the provincial court system in order to be enforced. Adding to that difficulty is the fact that these airport authorities do not have resources to prosecute them. In particular, it is unclear which federal department would pay for services provided by the PPSC in the case of a trial. Since airport authorities do not access any revenues from the issuance of tickets, they can hardly justify spending resources on prosecuting these tickets. As a result, most of these airports are issuing administrative tickets that are not enforceable through the court system. By extension, this means that the contraventions listed in the *Government Property Traffic Act* and related to these airports are simply not enforced.

5.2.5. Enforcement of federal contraventions

Arguably, the volume of federal contraventions tickets issued across Canada has been lower than expected. This subsection of the report explores some of the factors that have contributed to this outcome.

Over a three-year period (2006–2008), enforcement officers have issued between 18,000 and 20,000 tickets per year for federal statutory offences designated as contraventions. Reflecting demographic trends, the bulk of tickets have been issued in Ontario and Quebec. Table 6 includes the distribution of tickets among the seven provinces where the *Act* is operational.

Table 6: Number of contraventions tickets issued, per province

Provinces	2006–2007	2007–2008	2008–2009
PE	n/a ¹	n/a ¹	n/a ¹
NS	364	326	198
NB ²	7	13	6
QC	6,191	4,978	7,120
ON	11,831	10,361	8,235
MB	305	225	422
BC	1,155	1,924	1,960
Total (partial)	19,853	17,827	17,941

Source: administrative data

¹ n/a: not available.

² These statistics do not include parking violations that occurred on the Gagetown military base.

Common among all provinces is the fact that a significant portion of contraventions tickets are issued for driving-related offences (speeding, parking, etc.) occurring on federally owned land. Among the four provinces where this type of data was available at the time of the evaluation (NS, ON, MB, BC), this category of offence represented between 40% and 90% of all contraventions tickets issued. The size, location and economic profile of each province determine where the remaining portion of tickets was issued:

- In Nova Scotia, most of the remaining tickets were issued for offences relating to the fisheries.
- In Ontario, other key areas were recreational fishing and boating, and railway safety.
- In Manitoba, other key areas were commercial vehicle drivers (hours of service) and railway safety.
- In British Columbia, the other key area was recreational boating.

The expectation has been that more tickets would be issued. During interviews conducted as part of this evaluation, several key informants confirmed that current statistics appear rather low, particularly in provinces other than Ontario and Quebec. The review of *Contraventions Act* agreements also supports this finding. In many provinces, there was an expectation that provincial authorities would be in a position to cover their administrative costs out of revenues generated by the federal contraventions (revenues in excess of these administrative costs would be shared equally among the federal and provincial government). With volumes below 500 tickets per year in a number of provinces, it is obvious that this leaves limited resources to cover administrative costs, let alone share any surplus.

The following sections explore a number of factors that have limited the number of tickets issued.

Is the enforcement of contraventions a priority?

By their very nature, federal statutory offences designated as contraventions are “less serious” offences and, as such, their enforcement is not always seen as a priority. As already mentioned in this subsection of the report, provincial or municipal authorities do not tend to proactively monitor and enforce federal contraventions. When it comes to federal enforcement agencies, competing priorities may also limit the level of efforts dedicated to enforcing federal statutory offences designated as contraventions.

Findings from this evaluation point to a significant difference in behaviour between the RCMP, which is a more general enforcement authority, and specialized groups such as fishery officers, railway police officers, federal park wardens and wildlife enforcement officers.

Although the RCMP is a federal agency responsible for enforcing federal statutes, it is facing pressures to deal with a multitude of crimes and offences. Interviews with RCMP representatives pointed to a reluctance in dedicating much time and resources to enforce federal contraventions. These are simply not pressure points and, as such, do not get much of the attention of RCMP officers and managers. This is particularly significant for a department like Transport Canada, which does not directly employ enforcement officers. The Department relies instead on other enforcement agencies, such as the RCMP, to enforce legislation such as the *Small Vessels Regulations*, which apply to recreational boating.

Specialized federal enforcement agencies will logically be more inclined to invest time and resources to enforce federal statutory offences, since this is their primary mandate. Interviews conducted as part of this evaluation confirmed that these enforcement authorities are well aware of the availability of the ticketing system included in the *Contraventions Act*. What is seen as a problem, however, is the current scope of the *Act*. As mentioned in subsection 5.1 of this report, several key informants consulted as part of this evaluation have called for an expansion of the current scope of the *Contraventions Act*. For example, there are currently 56 regulations that have been adopted pursuant to the *Canada Shipping Act*. Only five of these regulations are currently included, in part, in the *Contraventions Regulations*. Much of the same situation applies to the *Fisheries Act*, which includes 31 regulations. Two of these regulations are currently included, in part, in the *Contraventions Regulations*. Findings from this evaluation indicate that the vast majority of offences that federal fisheries officer enforced are contained in the *Fishery (General) Regulations*, which are currently not included in the *Contraventions Regulations*.

Lack of resources to enforce federal contraventions

Many of the federal statutory offences designated as contraventions cover scenarios that typically occur in remote locations, such as those dealing with inland fishing, migratory birds, national parks, protected areas or recreational boating. Other designated offences, such as those related to smoking, may occur at any corner store across Canada. With a country as large as Canada, effectively covering all target areas presents a formidable challenge.

Not only do enforcement authorities have limited resources to cover these target areas, but for a number of these departments, these resources have declined over the years. As a result of these limited or declining resources, a number of federal departments have come to depend on provincial or municipal authorities to enforce their designated offences. But as already noted in this report, these provincial and municipal authorities tend to be quite reluctant to invest too much time and resources toward a task they do not consider to be their primary responsibility, particularly in light of the fact that they receive no compensation from the federal government to do so.

Alternatives to the alternative

Although the ticketing system included in the *Contraventions Act* represents an alternative to the summary conviction process, there are, in fact, other alternatives available to some enforcement authorities.

First, the *Fisheries Act* already contains a ticketing system. This ticketing system offers much of the same benefits as the one contained in the *Contraventions Act*.²⁶ Enforcement officers write tickets containing a set fine, allowing the person receiving it to either pay the fine or challenge it. In order to use that system, Fisheries and Oceans Canada must establish the necessary administrative procedures to have these tickets processed through the provincial court system (along the same lines as what needs to be done for federal contraventions). Fisheries and Oceans Canada has completed this process in British Columbia, but not in Atlantic Canada. This explains the fact that contraventions tickets under the *Fisheries Act* are issued in Nova Scotia for instance, but not in British Columbia.

To facilitate the enforcement of the *Canada Shipping Act*, in 2008, the federal government adopted regulations that allow enforcement officers to issue administrative monetary penalties.²⁷ The rationale behind this new system is largely similar to the one that motivated the adoption of the *Contraventions Act*, which is to avoid the summary conviction process. At this point, these penalties apply to all vessel types except recreational boats, whereas the *Contraventions Act* typically applies to recreational boats (although some designated offences apply to all vessel types). As a result, these two tools play a largely complementary role and administrative penalties do not technically represent an alternative to the *Contraventions Act*. It is nonetheless worth mentioning the availability of this tool, as its application may evolve in the future.

²⁶ See section 79.7 of the *Fisheries Act* (R.S., 1985, c. F-14).

²⁷ See the *Administrative Monetary Penalties Regulations* (SOR/2008-97)

When faced with certain prohibited behaviours, enforcement officers often have a choice between issuing a federal ticket (under the *Contraventions Act*) or a provincial ticket (under provincial statutes). This is typically the case for offences related to hunting and fishing. For instance, to legally hunt migratory birds, an individual requires both a federal and a provincial licence. Findings from this evaluation indicate that penalties under provincial legislation tend to be more severe than those included in federal legislation such as the *Migratory Birds Convention Act*, in addition to providing greater opportunities to seek forfeiture of equipment. Since there are far more provincial conservation officers than federal enforcement officers (such as wildlife or fisheries officers), it may be tempting for a provincial enforcement officer to proceed with a legislation that he or she is more comfortable with, particularly if greater penalties are sought.

Getting tickets into the court system

Some enforcement authorities are unable to issue contraventions tickets that courts can enforce. As already mentioned in this subsection, most of Canada's international airports do not have the required administrative arrangements to allow their enforcement officers to issue enforceable tickets for parking-related offences. Findings from this evaluation indicate this problem also applies to some of Canada's military bases. In the absence of a clear procedure to issue federal contraventions tickets, the Military Police officers issue administrative parking tickets, which are not enforceable in court. Close to 90% of these administrative tickets are left unpaid.

The non-payment of fines

Not all individuals who are found guilty of an offence and who are ordered to pay a fine actually pay their fine. Findings from this evaluation indicate that this problem is not limited to federal contraventions. Ensuring that convicted individuals pay their fines related to municipal offences (such as those for unauthorized parking) or provincial offences (such as speeding) has also proven to be a challenge.

At this point, the *Contraventions Act* does not provide a straightforward solution to deal with unpaid fines. In fact, one of the main characteristics of the *Act*, which is that no individual convicted through a contraventions ticket is liable to imprisonment, has raised some difficulties.²⁸ It appears to have had the unintended impact of discrediting the contraventions tickets among some enforcement officers. During consultations held as part of this evaluation, a number of

²⁸ See section 42(2) of the *Contraventions Act*, which also prohibits the use of warrants of committal, as described in section 806(2) of the *Criminal Code*. Warrants of committal allow, among other things, for the arrest of an individual who fails to pay a fine prescribed by the *Criminal Code* or other federal statutes.

enforcement officers complained that some offenders who were issued a ticket were systematically ignoring these tickets, with no consequence ensuing. Wanting to avoid the embarrassment of issuing yet another ticket that would be ignored, these officers tended to issue warnings and when enough of those have been issued to the same individual, they then turn to the summary conviction process.

To address this issue, it is important to understand how responsibilities are assigned for the collection of unpaid fines. The enforcement of all offences listed in the *Contraventions Act* is systematically assigned to a federal department that, in turn, designates municipal, provincial or federal authorities to issue tickets as appropriate. Once a ticket has been issued, it is the responsibility of the enforcement officer to monitor the file until its final disposition. In the event that the person is found guilty of having committed the offence (whether through failing to appear in court or through an unsuccessful challenge of the offence), it is no longer the responsibility of the enforcement officer to ensure the person pays the fine. While rules vary among provinces, this responsibility typically rests with the courts themselves. In some cases, the responsibility may be assigned directly to the PPSC.

To assist in recouping unpaid fines, courts or the PPSC may contract a collection agency that will use all legal means at its disposal to ensure that fines are actually paid. Findings from this evaluation indicate that resources available to collect unpaid fines are limited and, logically, these agencies focus on the more substantive fines. Since most federal contravention fines are limited to \$500 or less, they do not tend to be a priority for collection agencies.

To avoid judicial procedures to force the payment of somewhat limited fines, authorities have come up with a number of administrative tools. At the municipal level, unpaid fines may end up on one's municipal tax bill. At the provincial level, many governments have implemented systems whereby unpaid fines are directly linked to the driver's licence renewal process. Such a system is not currently available at the federal level for contraventions. Many individuals consulted as part of this evaluation recommended that unpaid fines associated with a federal contravention be linked to a driver's licence. However, the feasibility of implementing such a process appears doubtful, since the issuance of drivers' licences is a provincial responsibility, while contraventions are a federal responsibility. Technically, unpaid contraventions could be linked to other types of licences, such as a federal hunting licence for migratory birds, but the scope of such a system appears limited and, at the time of writing this report, had not been implemented.

A more promising avenue would be to link unpaid contraventions fines to recovery mechanisms of the Canada Revenue Agency (CRA). According to key informants consulted as part of this evaluation, the CRA already has procedures in place to recover amounts due to the federal government. No doubt, this avenue would require the negotiation of appropriate protocols and procedures, but it would clearly strengthen the enforcement of federal contraventions by giving it “more teeth”. This, in turn, would act as an incentive for enforcement officers to issue contraventions tickets when circumstances warrant it.

The one alternative that is currently available to enforcement officers if an individual were to systematically ignore his or her tickets is to proceed by way of summary conviction. While this alternative will always remain available, the fact remains that the very purpose of implementing the *Contraventions Act* was to avoid the summary conviction process. Resorting to an administrative solution (such as CRA recovery mechanisms) will always be more efficient than resorting to a legal solution (such as the summary conviction process).

Seizures and forfeitures

The ability of enforcement officers to seize items associated with a perceived offence constitutes an important tool, particularly when it comes to enforcing statutory offences related to hunting, fishing, or protected areas. This may provide critical evidence should the matter be brought to the attention of the court. Moreover, in some circumstances, enforcement officers may seek forfeiture of the equipment used at the time of the offence, which substantially increases the penalty that the alleged offender is facing as a result of his or her behaviour. According to enforcement officers consulted as part of this evaluation, the possibility of having one’s shotgun or fishing boat forfeited as a result of an offence acts as a particularly strong deterrent. It should be noted that forfeiture is typically sought in the case of more serious offences.

To this day, there is confusion remaining as to the extent to which enforcement officers may seize items or seek forfeiture in relation to a federal statutory offence designated as a contravention. Several key informants indicated that this remains an unresolved issue. For instance, uncertainties around the issue of seizure and forfeiture are said to have contributed to delaying the issuance of tickets in New Brunswick for designated offences included in the *Fisheries Act* or its associated regulations. In June 2008, the Department of Fisheries and Oceans Canada issued national enforcement guidelines confirming that enforcement officers may seize items or request forfeiture by issuing a Notice of Forfeiture, in addition to the contraventions ticket. It appears these guidelines have yet to be fully implemented.

5.2.6. Impacts on enforcement officers

The most significant impact expected from the implementation of the *Contraventions Act* is on the behaviour of enforcement officers. The *Act* has been designed to provide an efficient tool, allowing officers to more effectively enforce certain federal statutory offences designated as contraventions. This subsection of the report explores evaluation findings related to the training of officers on how to use the ticketing scheme, the directives and procedures in place for issuing contraventions tickets, and the impact of this tool on the behaviour of enforcement officers.

Access to the required training

Overall, federal departments are providing the required training to enforcement officers on the issuance of contraventions tickets. This is particularly the case for those federal departments that directly employ enforcement officers (as opposed to relying on other enforcement authorities). More specifically, Fisheries and Oceans Canada, Environment Canada, Industry Canada, as well as the St. Lawrence Seaway Management Corporation (non-profit organization) and the Canadian Pacific (private company) offer training to their respective enforcement officers on the content of the *Contraventions Act* and on the issuance of contraventions tickets in accordance with provincial statutes. It appears that other federal departments have yet to systematically offer such training to their enforcement officers.

For departments that rely on other enforcement authorities, such as Transport Canada, it is more challenging to ensure that all potential enforcement officers receive the required training. It is important to note that Transport Canada does offer training and is clearly available to offer more training as required. The challenge is to gather all potential enforcement officers, who may not perceive this training to be a priority. In fact, some police officers who were interviewed as part of this evaluation were not aware that the *Act* was operational in their jurisdiction.

Like any training initiative, every department and entity involved in the issuance of contraventions tickets must deal with the turnover among enforcement officers, which creates a need for ongoing training. Key informants also emphasized the need for ongoing resource people whom enforcement officers could access if they had specific questions to address in relation to the *Act*.

Directives on the issuance of contraventions tickets

Regardless of the entity they work for or their geographical location, enforcement officers have considerable discretion when it comes to issuing a warning, a ticket, or laying a charge. Findings

from this evaluation leave no doubt that officers are expected to use their judgement and experience to assess each circumstance they face and decide on the best strategy to deal with it.

Obviously, the discretion of officers is not absolute. Every entity that employs enforcement officers aims for some consistency in the enforcement of statutory offences. To this end, they use formal or informal guidance. Some federal departments, such as Fisheries and Oceans Canada, have issued written guidance, which still leaves a fair amount of discretion to enforcement officers. Other entities count on ongoing communications among enforcement officers to ensure a common understanding of statutory offences and how best to address various scenarios they may encounter.

Some federal departments, such as Transport Canada, have developed tools, often in the form of a booklet that enforcement officers can carry with them to have direct access to relevant information on the various federal statutory offences that have been designated as contraventions. Departments face a significant challenge in developing these tools as statutes covered by the *Contraventions Act* are regularly amended. Since these tools are still paper-based, keeping them updated has proven difficult.

Beyond specific directives on the issuance of contraventions tickets, it is critical for senior managers within each federal department involved in the issuance of contraventions tickets to send a clear message urging enforcement officers to use the ticketing scheme when appropriate. Findings from this evaluation indicate that this is not always the case, leaving enforcement officers uncertain about the extent to which they should use this ticketing tool.

Behavioural impacts

The availability of a ticketing system to enforce statutory offences is unanimously supported by enforcement authorities and officers. As made abundantly clear throughout this report, the ticketing system included in the *Contraventions Act* is seen as critical and essential. What is somewhat concerning, however, is the extent to which key informants still refer to the “potential” of this tool, close to 15 years after the *Act* coming into force. This report does point to a number of challenges that have yet to be addressed to allow for a full implementation of the *Act*. As a result, actual changes in behaviour among enforcement officers have yet to fully materialize. Having stated that, the fact remains that approximately 18,000 contraventions tickets are currently being issued per year across Canada (where the *Act* is operational), which demonstrates that the *Act* is having a direct and beneficial impact on the behaviour of enforcement officers.

Achieving the expected changes in behaviour among enforcement officers will always remain more challenging among those entities that do not directly report to federal departments responsible for various statutes covered by the *Act*. This is particularly the case for police services and provincial enforcement entities. This largely results from these entities facing competing demands and they may not perceive the enforcement of federal statutory offences as a priority.

5.2.7. Impacts on the court system

A prime objective of the *Contraventions Act* is to divert charges related to less serious federal statutory offences away from the court system. Paradoxically, the implementation of the *Act* may have increased, albeit to a very limited scale, the level of activities within the court system. This subsection of the report further explores these findings.

Volume of cases

Since the *Contraventions Act* facilitates the enforcement of designated federal statutory offences, it is bound to trigger a number of trials involving individuals who wish to challenge their tickets. As mentioned in Table 6, enforcement officers issued close to 18,000 contraventions tickets in 2007-2008. As a result of limitations in data availability, it is not possible to know the total number of trials held across Canada related to contraventions tickets. However, statistics are available for four of the provinces where the *Act* is in operation: Nova Scotia, Ontario, Manitoba and British Columbia. In these four provinces, a total of 1,807 trials were held in 2007–2008, the vast majority of which (1,780) were held in Ontario. With 5,000 contraventions tickets issued in Quebec, a number of trials were undoubtedly held that same year. It is just not possible to know how many.

To achieve the expected outcome of a reduced burden on the court system, one would need to assume that, in the absence of the ticketing scheme included in the *Contraventions Act*, the behaviour of enforcement officers would remain essentially the same, and that they would enforce statutory offences through the summary conviction process. Using the 2007–2008 statistics, this would mean that enforcement officers would have laid 18,000 charges through the summary conviction process. Issuing 18,000 tickets instead, with only a fraction resulting in a trial, would be a substantial reduction on the burden of the court system. As clearly stated in this report, however, the reality is dramatically different. In the absence of the ticketing system, it is

clear that a smaller number of charges would have been laid, and enforcement officers would have either issued warnings, or simply not have dealt with these offences.

Having between 3% and 15% of tickets challenged (depending on the province) somewhat increases the workload of the court system. However, it is important to emphasize that this represents only a fraction of the total number of trials held in each of these provinces. For instance, in 2006–2007, enforcement officers in Nova Scotia issued 364 contraventions tickets, and 11 trials were held in relation to these. During the same year, these officers issued approximately 35,000 tickets for provincial statutory offences (there is no data available on the number of trials held in relation to these). Therefore, contraventions tickets represent 1% of all tickets issued in the provinces for statutory offences (federal and provincial combined). By extension, it only represents a fraction of the total number of trials held in relation to a statutory offence.

Official languages requirements

A direct impact of using the provincial court system to process contraventions tickets relates to official languages requirements. As indicated in subsection 2.4 of this report, when they process contraventions tickets, provincial governments are acting on behalf of the federal government. As a result, they must comply with all language rights requirements that would be applicable in a federal context.

Provincial governments have implemented a number of changes to their procedures to comply with applicable language rights contained in the *Criminal Code* and the *Official Languages Act*. As noted in the 2007 *Summative Evaluation of the Contraventions Act Fund*, the Department of Justice Canada has provided financial assistance to the governments of Nova Scotia, Ontario, Manitoba and British Columbia to ensure they can provide the required services in both official languages, and the results have been positive:

“The four participating provinces are fully prepared to offer trials dealing with federal contraventions in a manner consistent with language rights protected in sections 530 and 530.1 of the *Criminal Code*. Each province has built the capacity to uphold these rights, which can be addressed in advance once a person alleged to have committed a federal contravention opts for a trial in French. (...)

The four participating provinces have also taken measures to actively offer extra-judicial services in both official languages in all court locations covered by Part

IV of the *Official Languages Act*. Experience to date indicates that providing these services systematically and proactively is a challenge and will certainly require ongoing monitoring.”²⁹

The implementation of the *Contraventions Act* has raised the profile of official languages in the court system. Building on their capacity to offer trials in both official languages for criminal offences, provincial governments are now expanding their capacity to cover federal statutory offences. Some of the key informants consulted as part of this evaluation noted that the recruitment of bilingual staff continues to be a significant challenge. Regardless, these individuals noted that the enforcement of contraventions tickets has had the unintended, yet positive impact of making official languages more integrated in their ongoing management of court services and activities.

5.2.8. Broader societal impacts

Previous sections of this report have already documented a number of benefits (potential and realized) associated with the *Contraventions Act*, particularly as they relate to enforcement officers. The *Act* also offers a number of other benefits, which are described in this subsection.

Other benefits of the ticketing system

For Canadians, implementation of the *Contraventions Act* offers several benefits. First, it establishes a much clearer distinction between criminal and statutory offences. As already stated in this report, under the summary conviction process, all individuals against whom a charge has been laid must appear in court, even if it is to enter a guilty plea. Practically speaking, it means that someone who is accused by way of summary conviction of contravening a rule related to recreational boating, for instance, would systematically end up in a criminal court that is also hearing criminal cases. As one key informant said, “Having a person who committed a contravention sitting beside a drug trafficker is a problem. It just doesn’t look right.” By having the opportunity to pay the fine directly, the vast majority of individuals who are issued a contraventions ticket never interact with the court.

Second, the ability to pay a fine that is associated with a contraventions ticket also means that the person does not need to seek legal representation. Canadians are typically uncomfortable appearing in court without legal representation. Using the same example, even if a person simply

²⁹ See: Department of Justice Canada. (2007). Summative evaluation of the *Contraventions Act* Fund. Ottawa, p. v.

wants to plead guilty to a charge that has been laid, he or she may end up seeking legal representation and incurring costs that would far exceed the fine itself.

Third, the ticketing system offers the ability to deal quickly with a fine. Instead of having to wait for the summary conviction process to be initiated, the person who was issued a contraventions ticket and who does not wish to challenge that offence can pay immediately and close the file.

Finally, the implementation of the *Act* brings greater certainty and consistency in the way that federal statutory offences designated as contraventions are enforced. By having a set fine, Canadians can expect the same treatment wherever the *Act* is currently operational.

Criminal records

One of the central objectives of the *Contraventions Act* is to remove the stigma and the impact of having a criminal record for individuals who are found guilty of certain regulatory offences designated as contraventions. The purpose of the *Act* is to reflect the distinction between regulatory offences and criminal offences and “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 adds that “a contravention does not constitute an offence for the purpose of the *Criminal Records Act*.”³⁰ This is a significant change considering the impact that a criminal record may have on the ability of an individual to practice certain professions, find employment, or to travel internationally.

5.3. Performance: Efficiency and Economy

The 2009 *Treasury Board Policy on Evaluation* requires that all evaluations provide an assessment of the degree to which programs have been efficient in their use of resources in producing outputs which support the achievement of intended results. This section of the report examines the efficiency and economy of the *Contraventions Act*.

The evaluation includes a brief analysis of court costs in order to compare the summary conviction process with the *Contraventions Act* ticketing scheme. For the purpose of this illustrative analysis, two hypotheses are required for the two schemas to be comparable: the same

³⁰ See section 63 of the *Act*

number and type of offences are enforced under each process, and the average court cost for a trial related to these offences is \$859³¹.

Under the summary conviction process (prior to implementation of the *Contraventions Act*), if an enforcement officer enforces 100 federal statutory offences, the totality of these cases would be prosecuted by the summary conviction process and therefore, 100 trials would take place. The average total cost for the court to prosecute the offences would be \$85,900 (\$859 x 100 trials).

After the implementation of the *Act*, if the same enforcement officer enforced 100 federal statutory offences, the totality of these cases would be prosecuted by the ticketing system and only a percentage of these cases would end up in front of the court system. This evaluation found that between 3% and 15% of the tickets issued are challenged, depending on the province. To illustrate the financial economy for the courts, this analysis will use both percentages to establish a range of economy. For the lower percentage of challenged tickets, the average total cost for the courts would be \$2,577 (\$859 x 3 trials). For the higher percentage, the average total cost for the courts would be \$12,885 (\$859 x 15 trials). These amounts represent a reduction of between 85% and 97% of court costs if federal statutory offences are enforced using the ticketing system included in the *Act*. There would be even more of a savings if one were to include the amounts of paid tickets in the analysis (i.e. the tickets that don't go to court but get paid through fines).

While this cost-effectiveness analysis is purely illustrative, and does not take into account a number of factors such as amounts invested in training for enforcement officers, amounts offered through the support fund, and productivity gains related to the absence of criminal records, this analysis nonetheless demonstrates that the costs for the courts are significantly reduced with the ticketing system included in the *Act*.

³¹ This average cost is based on provincial court expenditures (court expenditures, prosecution costs, and legal aid) from three jurisdictions in Canada (Newfoundland and Labrador, Ontario, and British Columbia) relating to summary offences charges.

6. CONCLUSIONS AND LESSONS LEARNED

This final section of the report presents conclusions and lessons learned, based on the findings presented in Section 5. The information is structured along the evaluation issues and questions identified for this evaluation.

6.1. Relevance

1. How is the implementation of the *Act* aligning with federal priorities as they relate to statutory offences? How does it relate to the strategic priorities of the Department?

One of the strategic outcomes of the Department of Justice Canada is to maintain “a fair, relevant and accessible justice system that reflects Canadian values.”³² One of these values is the rule of law which requires from governments that they establish a stable, predictable and orderly statutory framework. In the absence of the *Contraventions Act*, it is clear that such a framework could not be implemented in the area of federal statutory offences. The *Act* offers an approach that facilitates the enforcement of statutory federal offences, and that contributes to maintaining the regulatory framework of Canada. The implementation of the *Act* is therefore in the interest of the Department and consistent with its Minister’s role as a steward of the Canadian justice system.

2. Is the current range of statutory offences designated as contraventions adequate? Should it be expanded?

The scope of statutory offences designated as contraventions should be expanded. There is little rationale for excluding other less serious statutory offences that meet the overall requirements of the *Act* (e.g., limited fine, no imprisonment). Such an expansion would contribute to achieving the stated objectives of the *Act*. To this end, the Department may need to review its current guidelines relating to the designation of federal statutory offences as contraventions. These guidelines currently limit the scope of offences that can qualify as contraventions. In light of the fact that enforcement officers can either proceed with a ticket or by summary convictions, depending on circumstances, it may be beneficial to widen the current scope these guidelines have created.

³² See Department of Justice Canada. (2010). 2009-2010 Report on Plans and Priorities.

3. How is the implementation of the *Act* aligned with the needs of enforcement authorities?

Put simply, the ticketing system included in the *Act* is needed. Without it, enforcement authorities face structural barriers that limit their ability to adequately fulfil their mandate. Apart from exceptional circumstances, the summary conviction process included in the *Criminal Code* is not an appropriate scheme to process less serious federal statutory offences. In the absence of a ticketing system, enforcement officers are often left with no option but to issue a warning instead of genuinely enforcing federal statutory offences.

6.2. Performance

4. To what extent is the *Act* operational across Canada? What is the strategy of the Department in relation to jurisdictions where the *Act* is not operational?

Technically speaking, the *Act* is operational in all provinces except Newfoundland and Labrador, Saskatchewan and Alberta. This means that just over 80% of the Canadian population now resides in a province where contraventions tickets may be used. The Department of Justice Canada has been in negotiation with the remaining provinces.

5. What are the impacts of having the *Act* not operational in some provinces? Does it create legal risks?

The fact that the *Act* is not yet operational in three provinces is a concern. It creates a situation whereby the exact same unlawful behaviour that would contravene a federal statutory offence designated as a contravention is treated differently, based on the geographical location of the offender. This could trigger legal risks, particularly in provinces where the *Act* is not operational, in light of the fact that offenders are exposed to greater penalties.

6. What are the current patterns of offences relating to federal contraventions?

At the time of the evaluation, the bulk of contraventions tickets that enforcement officers were issuing were associated with driving-related offences occurring on federally owned land. Other key areas include offences related to recreational boating, the fisheries, railway safety and commercial vehicle drivers. A number of factors, which are documented in this report, have delayed or limited the issuance of contraventions tickets.

7. Are enforcement officers better equipped as a result of the implementation of the Act?

Once fully implemented, the ticketing system included in the *Act* will better equip enforcement officers. It provides an essential tool that stands between a warning and a formal charge laid in accordance with the summary conviction process included in the *Criminal Code*. The ability to issue contraventions tickets allows enforcement officers to be much more efficient in fulfilling their mandate. In particular, it allows them to spend as much time as possible “on the ground”, monitoring their target groups or their assigned protected areas. Widely used for provincial statutory offences, the ticketing system is also needed for the effective enforcement of federal statutory offences.

8. Are federal offences designated as contraventions more readily enforced as a result of the Act?

At the time of the evaluation, not all federal offences designated as contraventions were readily enforced. A number of barriers still remain. In some cases, administrative issues needed to be addressed before enforcement officers could be allowed to issue tickets. This explains, for instance, some of the delays in using the ticketing system in relation to the *Fisheries Act*. In other cases, enforcement officers still face competing demands, and they may not be in a position to focus on federal statutory offences, including those designated as contraventions. This is particularly the case for police services that must also enforce criminal offences. Finally, some federal departments have yet to fully embrace the *Contraventions Act* as a central tool to enforce the federal statutory offences for which they have authority.

9. What impact, if any, has the implementation of the Act had on the court system?

The implementation of the *Act* has had a limited impact on the court system. As stated in subsection 5.1 of this report, in the absence of the ticketing system included in the *Act*, enforcement officers often chose to not lay charges or to issue a warning, which has no legal consequences. Many offences observed by enforcement officers did not end up in the court system. With the *Contraventions Act*, more offences are enforced but only a small portion of all contraventions tickets that enforcement officers issue end up being challenged in court (between 3% and 15%, depending on the province). Therefore, the ticketing system included in the *Contraventions Act* did not substantially decrease the caseload on the court system.

Also, for those contravention tickets that do end up being challenged in court, they represent only a fraction of all trials held for provincial and federal statutory offences combined.

Considering the low fluctuation of case loads in the court system before and after the *Act* as well as the low proportion of federal statutory offences trials compared to the provincial ones, the impact of the *Contraventions Act* on the court system is limited.

10. Does the *Act* provide a cost-effective approach to enforcing statutory offences designated as contraventions?

There is no doubt that the *Act* provides a cost-effective approach to enforcing federal statutory offences designated as contraventions, as long as one can assume that these offences are, in fact, being enforced. Simply issuing warnings is less costly than issuing contraventions tickets. The problem, however, is that warnings are largely meaningless as they have no legal consequences. The only other meaningful alternative is to proceed by way of summary conviction, which is dramatically less efficient and is more costly than issuing contraventions tickets.

11. Does the *Act* provide a fairer approach to enforcing statutory offences designated as contraventions?

The *Act* offers many benefits to both enforcement officers and citizens. As already mentioned, it provides a much needed tool for officers, allowing them to readily enforce statutory offences. This means that the *Act*, but particularly its ticketing system, allows enforcement officers to focus time and effort on the enforcement of offences, while spending less time and effort on the legal procedures associated with the summary conviction process. Those who are issued a ticket have the opportunity to settle immediately by pleading guilty and paying the fine. In particular, the ticketing system avoids the need for alleged offenders to appear in court, which could trigger legal costs that exceed the amount of fine the person is facing.

7. RECOMMENDATIONS AND MANAGEMENT RESPONSE

Recommendation 1: The Department of Justice Canada, in collaboration with other federal departments, should assess opportunities for expanding the current scope of the *Contraventions Act*.

Management Response:

Management agrees with this recommendation. The Department will work towards the creation of a network of federal institutions currently involved with contraventions to explore the possibility of expanding the use of contraventions and to put in place, in cooperation with Legislative Services, operating procedures in order to be kept abreast of legislative changes. The issue of cost recovery in relation to training will be explored.

Recommendation 2: The Department of Justice Canada should explore avenues for collecting unpaid fines relating to federal contraventions.

Management Response:

Management agrees with this recommendation. In the late 1990's, the Department had discussed the matter of collecting unpaid fines with representatives of the Canada Revenue Agency. As several issues had been raised, the Department did not pursue the matter any further. The Department will again explore the feasibility of collecting unpaid fines relating to federal contraventions by examining all possibilities in order to determine whether these fines can be collected.

Recommendation 3: The implementation of the *Contraventions Act* in Newfoundland and Labrador, Saskatchewan and Alberta should be considered a priority of the Department of Justice Canada.

Management Response:

Management agrees with this recommendation. The Department is already in negotiations with Newfoundland and Labrador and anticipates being able to enter into an agreement with the province by the end of the fiscal year. The delay in reaching agreement has been outside of the control of the Department. The Department will also pursue the interest of Alberta and Saskatchewan in entering into an agreement to implement contraventions in their respective jurisdictions. In addition, the Department will review all its agreements to ensure some uniformity across Canada.

Recommendation 4: The Department of Justice Canada should implement a consistent data collection strategy in all provinces where the *Contraventions Act* is currently operational. This data should include, at a minimum, yearly statistics on the number and types of federal contraventions tickets being issued, challenged in court, and paid.

Management Response:

Management agrees with this recommendation. The Department will explore provincial and territorial interest in establishing a federal-provincial-territorial working group to ensure full implementation of contraventions, to discuss the collection of useful data to support the use of contraventions and to establish a close network to engage provincial and territorial stakeholders.

Recommendation 5: The Department of Justice Canada should consider allocating additional resources to execute its mandate, enabling it to fulfill more adequately its duties which would include the implementation of the above recommendations, training and other activities to ensure that the *Contraventions Act* is implemented across Canada.

Management Response:

Management agrees with this recommendation. The Department will bring to the attention of senior management the need to establish a team whose qualifications fully reflect the nature of the duties related to the implementation of a legislative scheme across Canada, as well as the challenges and issues common to the evolution of this file.

Management wishes to establish a stable and durable team that will be in a position to ensure the implementation of not only the *Contraventions Act*, but also the continued management of the various operations and structures required to ensure the full achievement of the objectives of the regime established by the *Act*. Therefore, management believes it is appropriate to reorganize the team in order to respond adequately and in a timely manner to the increasing demands of client departments, in particular within the framework of the increased complexity of the regulatory process, as well as to the necessity to implement the regime throughout Canada and to the service and legal guidance delivery. These elements constitute the basis for the implementation of the *Contraventions Act*

In addition, a relevant team will enable the creation and maintenance of a network of federal institutions and a federal-provincial-territorial working group to ensure not only that our practices are uniform, but that they are constantly improving.