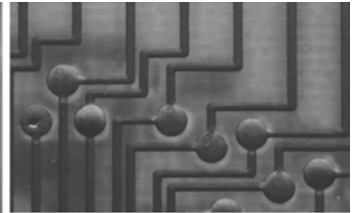
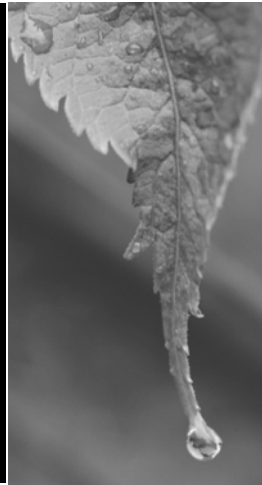


2005-2006 Formative Evaluation of the
“Strategy For Enhanced Protection of
Canadian Capital Markets” (Integrated
Market Enforcement Teams Component)
June 2003 to October 31, 2005



FINAL REPORT

Prepared for
Public Safety and Emergency Preparedness
Canada

Prepared by
Consulting Services
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Executive Summary

The September 30, 2002 Speech from the Throne committed the government of Canada to bolster enforcement of serious corporate fraud offences.¹ In February 2003, the federal Budget pledged up to \$30 million per year for five years to create Integrated Market Enforcement Teams (IMETs) and to strengthen prosecutorial capacity. Budget 2003 also announced planned legislative amendments to: 1) strengthen corporate fraud offences, evidence gathering, and sentencing; and 2) establish concurrent jurisdiction to prosecute fraud offences federally.

On June 12, 2003, the Solicitor General of Canada, and the Minister of Justice Canada and Attorney General of Canada, announced: the creation of six Integrated Market Enforcement Teams between 2003-2004 and 2004-2005, and an additional three teams in 2005-2006; funding for the teams; and, legislative amendments. The IMETs are composed of RCMP investigators, forensic accountants, Federal Prosecution Service (FPS) legal advisors, and seconded experts from stakeholder organizations. Implementation of the IMET initiative's initial six teams commenced in June 2003 in Toronto and Vancouver, and gradually phased into Montreal and Calgary.

Objective of the Formative Evaluation

Public Safety and Emergency Preparedness Canada (PSEPC)² engaged Public Works and Government Services, Consulting Services (CS) to conduct the formative evaluation of the IMET initiative. The primary purpose of the evaluation is to provide input into the full implementation decision (i.e., the implementation of the additional three IMETs teams beyond the current six). Specifically, this formative evaluation examines the following evaluation issues: rationale, design/delivery and success to date. As well, the evaluation sought to draw lessons learned that could be useful in the continued implementation, management and governance of the IMETs, and to position the initiative for the summative evaluation. This report satisfies PSEPC's commitment to submit a formative evaluation of the initiative to the Treasury Board Secretariat.

Methodology

The formative evaluation relied heavily on the previously established RMAF/RBAF (2004)³ and, in consultation with the client, CS confirmed and validated the key evaluation questions to be addressed. A working group, representing all initiative partner departments/agencies provided direction and oversight to the evaluation. The evaluation commenced July 2005, data collection was concluded, for the most part, in October 2005. The evaluation itself covers the period from June 2003 to October 31, 2005.

¹ "The Canada We Want", Speech from the Throne, 30 September 2002, www.pco-bcp.gc.ca/sft-ddt/vnav/06_2_e.htm

² In a previous iteration and structure, known as the Department of the Solicitor General of Canada.

³ Consulting and Audit Canada, Risk-based Audit and Results-based Management and Accountability Framework for "A Strategy For Enhanced Protection Of Canadian Capital Markets" (Integrated Market Enforcement Teams Component), March 2004.

Findings of this evaluation are based on a review of key documents, the analysis of administrative data at both national and team levels, six focus groups with team members across the country, and forty-two interviews. The interviews included departmental staff from the federal partner departments/agencies at both national and regional levels, as well as external partners and stakeholders.

Given the sensitive nature of the data (i.e., the on-going nature of the investigations and the fact that, in keeping with the IMET mandate, the number of project-status investigations⁴ underway is limited) the data analysis was limited at the aggregate level. At the time of this evaluation, no charges had been laid in project-status investigations and therefore disclosure activities have not yet been undertaken, nor have there been any prosecutions of cases investigated using the IMET approach. This in turn limits the scope of the evaluation to outcomes that can be measured 'to date' in the program's lifecycle.

Evaluation Findings

Rationale

With regard to the investigative capacity, interviewees strongly supported the expansion of the initiative to its full team complement from the current six teams to the planned nine teams. Specifically, interviewees suggested adding teams in Toronto and Montreal and to maintain or strengthen the Quick Start⁵ capacity. There was significantly less support for further expansion in the West. Support for an expansion beyond the full ramp-up of the initiative (i.e., beyond a total of nine teams) is weak, largely based on the need to first see results from the current level of investment. The need for a potential expansion of IMET resources was brought forward during discussions regarding the reconsideration of the current IMET mandate, and during discussions regarding the need for advisors and prosecutors on Quick Start projects.

With regard to prosecutorial capacity, the findings of the formative evaluation are currently inconclusive due to initial limitations placed on funding and the structure of prosecutorial resources. As well, the natural lifecycle of project-status cases has not yet reached the prosecution stage, making an assessment as to the actual prosecutorial capacity difficult.

⁴ In order for an investigation to be given project-status it must have a relatively high PROOF scores, an approved operational plan and costing, and have been reviewed by a Joint Consultative Group. Managers are tasked with striving to ensure that a full investigative team is assigned to each project-status investigation.

⁵ The Quick Start capacity allows for the rapid deployment of IMET members in the event that it becomes necessary to launch an investigation in a location other than Montreal, Toronto, Calgary or Vancouver. The Quick Start team develops the necessary Operational Plan, begins investigative work and sets up the necessary infrastructure in the alternative location. With time, the duties of the Quick Start team are assumed by regional investigators and support staff.

Design and Delivery

Nature and type of investigations and prosecutions

This evaluation suggests that the nature and type of investigations meet the initiative's objectives. The project status investigations currently undertaken by the IMETs focus on capital market offences, in keeping with the initiative's original mandate.⁶

Adequacy and timeliness of services and activities

Although some IMET investigations did not achieve project-status and were undertaken in order to achieve early successes, for the most part, these investigations do not appear to have impeded the progress of project-status investigations.

The one year timeline for the completion of project-status investigations has not been met to date and may be considered overly optimistic, given the number of intervening factors that influence the progress of an investigation. In addition, due to the fact that the initiative is still currently in its implementation stage, logistical and administrative issues related to the start up of the initiative may have resulted in delays in starting investigations.

The Quick Start approach is seen as an effective means to investigate cases outside the four permanent IMET units. However, IMET HQ staff encountered some logistical difficulties in setting up the Quick Start team. In addition, the reporting structure for the team was not clearly defined at the outset, and as a result, the roles and responsibilities of investigators were not always clear.

Level of cooperation between IMETs and stakeholders

The multidisciplinary approach to investigations is seen as key to the success of the initiative. While there is some debate as to the need for co-location, evidence suggests that the level of cooperation within the teams is good. Cooperation between the IMETs and the RCMP Commercial Crime units has improved since the outset of the initiative. Continuous communication is required in order to foster these relationships. On-going, systematic consultation and communication between IMETs has commenced and will continue to be important to the success of the initiative (e.g. regular retreats; network/conference opportunities for legal advisors).

Adequacy of number and mix of resources

The organizational structure, number and mix of resources are generally considered to be appropriate and have evolved over time to respond to specific challenges that were not foreseen during the initial design stage of the program. However, there is one specific shortcoming as there is currently no provision in the initiative to resource legal advice or federal prosecutors in support of the Quick Start. Some challenges have also been encountered in staffing existing positions (e.g., RCMP capital market experts), partly as a result of the specialized skill set required. This issue will likely continue to be a challenge in the future.

⁶ Due to issues of confidentiality, it was not possible to confirm that all cases under investigation deal with publicly-traded companies, the third component of the original mandate.

Appropriateness and Timeliness of Human Resources (HR) activities and processes

The RCMP HR regime being piloted through the IMETs has, to date, produced positive results. Several interviewees and focus group participants agree that the RCMP's competency-based HR Regime has allowed the IMETs to seek out the best candidates. It was often cited as a definite success of the initiative. However, some positions remain to be staffed and there are concerns that, as the IMETs grow, it will become difficult to find sufficient numbers of qualified resources. Findings also indicate that filling several investigator positions with understudies may weaken IMETs because there are finite investigative positions per team and understudy positions occupy investigator positions.

There have been issues in deploying resources to the Quick Start capacity, in part, as a result of the limited ability of regular IMETs to spare investigators and/or legal advisors.

Adequacy and appropriateness of RCMP developmental programs and training activities

Development programs such as the Internship and the Understudy programs are new and much work has been done in finalizing and implementing these initiatives. The details surrounding the implementation of the Internship Program were recently finalized, and based on focus group results there remains a need to communicate the details of the program. Several interviewees and focus group participants suggested that there may be limited interest in the Understudy Program in future waves of staffing, since these positions do not provide acting remuneration and have the potential to be perceived as less valuable members of the team. Furthermore, functional guidance on training within the RCMP for the IMET initiative could be strengthened. Based on the focus group results, it would also appear that there are various views on requirements to maintain and upgrade skill sets of current IMET members.

Adequacy and timeliness of RCMP investigative tools

Overall, a majority of those consulted as part of this evaluation believe that the appropriate investigative tools are currently available and being used by IMETs. These tools are available to law enforcement agencies in a wide range of criminal investigations. Although satisfactory, some state that the processes associated with some investigative tools could be streamlined further (e.g. production orders, MLATs) in order to make them less cumbersome.

The PROOF scoring system and the profiling system were generally perceived as timely and efficient. However, the effort required in using other investigative tools (e.g. production orders, MLATs) at times leads investigators to view the process as slow and overly-bureaucratic. Respondents suggested that the Major Case Management System (MCMS) is effective but that the number of resources available to support and manage this system is inadequate, which may lead to backlogs and time inefficiencies.

MoUs are considered to be essential to good collaboration and the participation of partner organizations in the IMET initiative. However, some individuals involved in the initiative are not satisfied with the timeliness of the development of MoUs between the

RCMP and certain partners and suggested that these agreements should have been completed prior to the establishment of the IMETs.

Appropriateness of the IMET Governance Structure

Overall, the elements of the governance structure were assessed as functioning well, and were sufficiently streamlined and clear. Issues raised with regard to possible improvements were focused on optimizing the Executive Council and Interdepartmental Working Group to further the initiative. Joint Consultative Groups (JCG) were seen as useful, timely, inclusive and effective.

Success to date

Improved detection and targeting of major fraud cases

While it is early in the implementation and evolution of the IMET initiative, there are indications that the cases targeted for investigations are those that meet the mandate of the organization. The PROOF criteria, although currently under a degree of debate, have contributed to ensuring the right choices are made with respect to investigations.

To date, about one-third of the substantive leads pursued by the IMETs (those which resulted in an investigative action) were generated either through the JCG or were self-generated. Based on this limited information, there is some indication that detection has improved somewhat, although it is not clear to what extent these leads would not have been uncovered had the IMET initiative not been in existence.

Improved investigations

Improvements in investigations, as measured by increased timeliness and improved quality, are not supported by the evidence gathered to date. While IMET members feel the right conditions have now been established to allow for improvements to occur, they have not yet been translated into measurable results. Since no project-status investigations have been concluded to date, it is not possible to determine whether the investigations have improved in terms of better evidence and improved disclosure.

Timeliness, as measured by a decrease in the overall length of investigations has not met the target of 12 months in six of the nine project-status cases. The other three cases have been underway for less than 12 months; however, based on comments by interviewees, they are also not likely to meet the one year target. Many interviewees believe the one year target was not realistic for these types of investigations. There was no consensus on a more appropriate target, although 18 months was mentioned by some as being more realistic. Using this timeline, three investigations have not met the target. At a very basic level, project-status investigations should, at a minimum, be timelier than comparable major investigations undertaken prior to the IMET initiative. While no baseline has been identified, using a “typical case” as a proxy, the investigation of cases should at a minimum be completed (charges laid) in less than four years (the length of time of the investigation into the Livent case, considered to be a good proxy).

Deterrence of serious market fraud

One way to deter serious market fraud is to bring forward cases for prosecution. At this point in time, no project-status cases have been brought forward. However, a proxy measure of general deterrence, which can be measured at this point in time, is heightened awareness of the actions being taken through the IMET initiative. Interviewees for the most part believe that public awareness has increased, although some limit the increased awareness to those more closely involved with the initiative (e.g. Securities Commissions, associations). Activities that were public in nature were seen to have made the biggest contribution to awareness.

1. Introduction

1.1 Purpose of Evaluation and Report

The Integrated Market Enforcement Teams (IMET) Component of the ‘Strategy for Enhanced Protection of Canadian Capital Markets’ was an initiative announced in the 2003 budget in support of the Government of Canada’s efforts to strengthen and maintain the integrity of Canada’s capital markets. The federal budget pledged up to \$30 million per year for five years to create up to nine IMETs composed of RCMP investigators, forensic accountants, Federal Prosecution Service legal advisors and subject-matter experts. These teams were to be located in Toronto, Montreal, Vancouver and Calgary.

The primary purpose of the IMETs formative evaluation is to draw lessons learned that could be useful in the management and governance of the IMETs – including the continued implementation and expansion of the initiative. As a result, this formative evaluation focused on the following evaluation issues: rationale, design/delivery and success to date. It also aims to position the initiative for the summative evaluation. Finally, this evaluation satisfies Public Service and Emergency Preparedness Canada’s (PSEPC) commitment to submit a formative evaluation of the Initiative to the Treasury Board Secretariat.

The formative evaluation is based on the existing Evaluation Framework (March 2004).⁷ PWGSC’s Consulting Services was asked to carry out the formative evaluation of the IMETs and this report provides the findings of the evaluation.

1.2 Summary of Contents and Structure of Report

This report is divided into several sections. Section 2 provides a profile of the IMET initiative and Section 3 describes the approach and methodology used to carry out the formative evaluation. Sections 4 to 6 present the evaluation findings by evaluation issue (Rationale, Design and Delivery; and Success to date).

Four appendices follow the main body of the report. The evaluation framework used to guide the research is in Appendix A, a list of documents reviewed for the purpose of this evaluation is in Appendix B, data collection instruments are in Appendix C, and the list of recommendations is in Appendix D.

⁷ Consulting and Audit Canada, Risk-based Audit and Results-based Management and Accountability Framework for “A Strategy For Enhanced Protection of Canadian Capital Markets”, March 2004.

2.0 Profile: Integrated Market Enforcement Teams Initiative

This section provides a brief overview of the rationale, goal and objectives, design and delivery aspects, resources, and the governance structure for the implementation and monitoring of the IMET initiative.

2.1 Background

Canadian investor confidence

American corporate scandals such as Enron (2001) and WorldCom (2002) shook the credibility of global capital markets. Public opinion surveys and studies at the time suggested that the majority of Canadians had lost confidence in the stock market. A 2002 syndicated study reported that “the vast majority [79 per cent of Canadians polled] believe that a number of Canadian corporations have committed the same types of fraud that Enron and WorldCom did, but they just have not been caught yet”.⁸ A *National Post*/COMPAS web-survey conducted in 2002 showed that investor confidence fell sharply following the collapse of WorldCom, and that the majority of those surveyed believed both the Canadian and American economies would continue to suffer as long as illegal corporate activities weighed heavily on investor confidence.

The need for increased enforcement capacity

Even before these events occurred, other challenges had surfaced. In 1998, KPMG had conducted a Strategic Study of the RCMP Economic Crime Program. The study concluded that the RCMP’s limited capability to conduct national and international economic crime investigations had resulted in extended time periods for investigations, low probabilities of conviction and a loss of deterrent impact on would-be wrongdoers. The study cited the RCMP’s Economic Crime Program’s broad mandate as an issue, suggesting that its capacity to conduct efficient capital markets investigations was particularly limited.

Official documents indicate that, prior to the creation of the IMET initiative, there were fewer than ten RCMP Full Time Equivalents (FTEs) dedicated to securities fraud cases of every magnitude in Canada. The IMET initiative, at full strength, was to add 61 investigative FTEs to the RCMP, to be divided among nine integrated teams focusing on the most serious cases of capital markets and securities fraud.

Federal Commitments

The September 30, 2002 Speech from the Throne committed the government of Canada to bolster enforcement of serious corporate fraud offences through “*review[ing] and,*

⁸ Ipsos-Reid (syndicated study): *Testing Confidence*, 2002. See also Ipsos-Reid: *Trend Report*, September/October 2002.

where necessary, chang[ing] its laws and strengthen[ing] enforcement to ensure that governance standards for federally incorporated companies and financial institutions remain of the highest order.”⁹

In February 2003, the federal Budget pledged up to \$30 million per year for five years to create Integrated Market Enforcement Teams (IMETs) and to strengthen prosecutorial capacity. Budget 2003 also announced planned legislative amendments to 1) strengthen corporate fraud offences, evidence gathering and sentencing; and 2) establish concurrent jurisdiction to prosecute fraud offences federally.

On June 12, 2003, the Solicitor General of Canada, and the Minister of Justice Canada and Attorney General of Canada, announced the creation of: six Integrated Market Enforcement Teams between 2003-2004 and 2004-2005, and an additional three teams in 2005-2006; funding for the teams; and, legislative amendments. The IMETs are composed of RCMP investigators, forensic accountants, Federal Prosecution Service (FPS) legal advisors and seconded experts from stakeholder organizations. The RCMP commenced implementation of the IMET initiative in June 2003 in Toronto and Vancouver and gradually phased into Montreal and Calgary.

2.2 Mandate of the IMET

The teams were created to investigate serious *Criminal Code* capital markets fraud offences that are of national significance and involve actions of publicly-traded companies with sufficient market capitalization to pose a genuine threat to investor confidence and economic stability in Canada.

Bill C-46, *An Act to Amend the Criminal Code (Capital Markets Fraud and Evidence-Gathering)*, was tabled in the House of Commons on June 12, 2003. To complement the existing provincial jurisdiction for prosecutions, the proposed legislation introduced amendments establishing concurrent jurisdiction, to permit federal prosecutors to play a prosecutorial role in regard to fraud that focused on a narrow range of cases that threaten the national interest in the integrity of the capital markets.

Bill C-46 did not receive Royal Assent before the Session of Parliament was prorogued in November 2003. As a result, the Bill died on the Order Paper. On February 12, 2004, the legislation was re-introduced in Parliament as Bill C-13 (*An Act to amend the Criminal Code (Capital Markets Fraud and Evidence Gathering)*) (Bill C-13).¹⁰ Bill C-13 received Royal Assent on March 29, 2004.

⁹ “The Canada We Want”, Speech from the Throne, 30 September 2002, www.pco-bcp.gc.ca/sft-ddt/vnav/06_2_e.htm

¹⁰ The legislative amendments a) created a new *Criminal Code* offence of improper insider trading that targets employees of corporations and others who use privileged information not available to other investors in order to benefit themselves; b) protect employees who report unlawful conduct within their corporation from threats or retaliation by creating a new employment-related intimidation offence to deter such conduct; c) raise maximum sentences for existing fraud and related offences and establish aggravating factors to assist the courts in determining a sentence that reflects the seriousness of the crime; d) enhance the evidence-gathering tools available to investigators by adding production order powers, with appropriate safeguards, to the *Criminal Code*. Investigators can obtain pertinent documents or data from third parties (those not under investigation) within a specified time period. While these orders prove particularly useful in cases of capital markets fraud, they are available in regard to all criminal offences.

Section 1 of Bill C-13, which provides for concurrent jurisdiction for the Attorney General of Canada to prosecute the offences in sections 380, 382, 382.1 and 400 of the *Criminal Code*, came into force on September 15, 2005. Sections 2 to 8 of Bill C-13 came into force on September 15, 2004.

2.3 Objectives of the IMET Initiative

The IMET initiative objective is to maintain investor confidence in Canada's capital markets by deterring market fraud through enhanced enforcement and prosecution of serious market fraud offences in Canada. The IMET initiative seeks to ensure that those who commit serious capital markets fraud offences will be detected, charged and prosecuted in an effective and timely fashion.

2.4 Description of the IMET Initiative

The IMET component of the Strategy for Enhanced Protection of Canadian Capital Markets allowed for the establishment of nine teams. Each team was to be composed of the following experts (drawn from partner departments, secondees from stakeholder organizations and/or contracted resources):

- RCMP Investigators—6
- Investigative Assistants—1 or 2
- Special Investigators—1 per city
- Legal Advisors—1
- Forensic Accountants—1 per city
- Major Case Management Experts—1 per city
- Administrative Assistants—1 or 2

Federal prosecutors from the Department of Justice Canada's Federal Prosecution Service may be assigned to the prosecution of charges laid by the IMETs, either as part of a provincial prosecution team, if requested to join, or when the federal Crown assumes conduct of an IMET prosecution.

Implementation of the teams was to be gradual. In 2003-2004, two teams were to be established in Toronto, and one in Vancouver, followed by the creation of teams in Calgary, in Montreal and a third team in Toronto in 2004-2005. Full implementation of the initiative after 2004-2005 would depend upon the results of an interim evaluation to be provided to the Treasury Board Secretariat. If the interim evaluation demonstrates that expansion is justified, the program would be fully phased-in by 2005-2006 with one additional team established in Vancouver, Calgary and Montreal.

The initiative was also designed to have a Quick Start capacity. All team members would be available for the purpose of rapid deployment, in the event that it became necessary to launch an immediate investigation in a location other than Toronto, Montreal, Calgary or Vancouver. In the short-term, these resources would develop the necessary Operational Plan, begin investigative work and set up the necessary infrastructure. Over time, their

duties would be assumed by investigators, counsel and support staff located in the region. A co-ordination capacity would be established at RCMP Headquarters (HQ) in Ottawa.

Target population

The IMET component of the Strategy for Enhanced Protection of Canadian Capital Markets was designed to:

- show potential wrongdoers in the corporate community that special investigative units are now dedicated to detecting and enforcing capital market fraud offences, thus strengthening general deterrence;
- show the Canadian public that the federal government is taking steps to strengthen and maintain the integrity of Canada's capital markets;
- demonstrate to law enforcement partners that the federal government intends to strengthen the overall capacity to enforce capital market fraud offences; and
- signal to stakeholder organizations such as the Investment Dealers Association and the Mutual Funds Dealers Association that these offences are taken seriously.

Roles and responsibilities

Each of the partners involved in the implementation of the IMET initiative of the Strategy for Enhanced Protection of Canada's Capital Markets has specific roles and responsibilities related to their departmental mandates.

Royal Canadian Mounted Police (RCMP)

In keeping with the RCMP's strategic priority of integrated policing, the RCMP support each team by assigning investigators, and ensuring the availability of forensic accountants (on contract), investigative assistants, major case managers, and administrative and operational support staff.

Staff at RCMP HQ provide direct assistance (i.e., intelligence-gathering and profiling) to the teams and respond to requests from local team managers for disbursement of additional funds from the centrally controlled operations and maintenance fund. Because some IMETs investigations may have international dimensions, an RCMP liaison officer at Headquarters assists the teams in gathering evidence in foreign jurisdictions by preparing Mutual Legal Assistance Treaty (MLAT) requests.

In order to ensure continuity in investigating cases, the RCMP competency-based human resources management principles are applied to IMETs staffing. These principles assist the RCMP in ensuring that investigators are properly trained and are able to obtain promotions while remaining within the teams.

The RCMP, along with the Department of Justice Canada (DoJ), also has access to a contingency fund to cover exceptional costs associated with investigations and federal prosecutions (see Section 2.6 for a more thorough description of the fund). This fund is included in the RCMP's reference levels.

Department of Justice Canada (DoJ)

Legal counsel from the FPS provide advice and assistance regarding aspects such as wiretap applications, search warrants and disclosure advice to the IMETs during the course of investigations.

Resources at DoJ HQ also assist with the preparation of MLAT requests to foreign governments and make the requests according to treaty requirements, as well as handle any requests for extradition resulting from the initiative. The initiative identified one position for the International Assistance Group in FPS HQ in Ottawa for that purpose, which was filled on October 15, 2005.

If the federal Attorney General assumes the prosecution of a case, federal prosecutors will provide prosecutorial services to the teams once cases are deemed to be close to the prosecution stage, should a province decline to prosecute (pursuant to agreements, provinces have the right of first refusal to prosecute IMET-generated cases). A coordinator, reporting to the Senior General Counsel¹¹, will have overall responsibility for FPS service delivery through the teams.

The DoJ is also responsible for the management of a reserve fund, established to help defray exceptional provincial costs associated with the prosecutions of IMETs-generated cases (see Section 2.6 for a description of the fund).

Public Safety and Emergency Preparedness Canada (PSEPC)

One FTE analyst position has been added to the Policing, Law Enforcement and Interoperability Branch at PSEPC. This analyst is responsible for providing briefing and logistical support to the Executive Council; coordinating evaluations of the initiative; and coordinating the development of policy responses to evaluation findings, as needed. PSEPC is also responsible for providing policy advice to the Solicitor General of Canada (Minister of Public Safety and Emergency Preparedness of Canada), in fulfilling his or her national leadership role with respect to the development of policing policy in Canada.

The IMET initiative relates to PSEPC's strategic outcome: "Innovative Strategies and Better Tools for Law Enforcement To Respond to Organized Crime and Other Criminal Activities, in Both the Domestic and International Contexts."

¹¹ In the original design of the initiative, the coordinator was to report to the Deputy Attorney General of Canada (Criminal Law). However, the position was classified at a level that resulted in a change in the reporting structure.

2.5 Governance

There are two primary bodies tasked with managing and accounting for the operation of the IMET initiative: the Executive Council and Joint Consultative Groups. The Executive Council's role is to provide leadership and guidance to the initiative as a whole. The Joint Consultative Groups' role is to provide operational oversight and make decisions pertaining to the actual operation of the IMET initiative.

Executive Council

Chaired by PSEPC, the Executive Council is an oversight committee composed of Assistant Deputy Minister-level representatives from key federal government departments and agencies –DoJ, Finance Canada, PSEPC and the RCMP. The Council meets as required, initially at least semi-annually, to ensure that the operations are coordinated and aligned with the strategic direction and vision of the initiative. The Council may also provide a forum to network with stakeholders and non-partners, including securities industry representatives and provincial officials. The Executive Council is supported by an Interdepartmental Working Group.

Joint Consultative Groups (JCG)

An operational Joint Consultative Group, including representatives from the RCMP, DoJ and other non-federal operational partners, such as provincial securities commissions and provincial police forces, operates in each city and provides input to a regularly-produced summary report (prepared by the RCMP Director of the IMET initiative) for the Executive Council. Each JCG meets regularly to provide guidance and advice with respect to: 1) case selection, to ensure that cases selected are in keeping with the teams' mandate; 2) issues surrounding case retention; and, 3) investigations. A JCG in each city permits decision making specific to the market and regulation in each province, while the Executive Council ensures that the intent of the initiative is coordinated across the country.

2.6 Budget Resources

A total of \$120 million was to be provided for the initiative for a five year period, beginning in 2003/2004, and distributed as follows:

Table 1 IMET Resource Allocation						
Department/agency	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008	Total
PSEPC Sub-total	225,000	225,000	225,000	225,000	225,000	1,125,000
Department of Justice Canada Sub-total	688,000	2,187,000	4,700,000	4,700,000	4,700,000	16,975,000
RCMP Sub-total	8,087,000	13,188,000	17,575,000	17,575,000	17,575,000	74,000,000
<u>Contingency Fund</u>	1,000,000	2,200,000	3,750,000	3,750,000	3,750,000	14,450,000
<u>Reserve fund for provincial prosecutions</u>		2,200,000	3,750,000	3,750,000	3,750,000	13,450,000
<u>Total Funding</u>	10,000,000	20,000,000	30,000,000	30,000,000	30,000,000	120,000,000

While funding for the IMET initiative has been allocated for a five year period, funding will continue past the 2007-08 fiscal year.

Contingency Fund

The contingency fund is designed to cover exceptional federal investigative expenses related to the IMET initiative. Exceptional federal prosecutorial expenses can also be covered by the fund, where federal prosecutors play a role in the prosecution of cases. “Exceptional” refers to expenses that are considered exceptional by their very nature or exceed expenses that would normally be incurred in the course of an average investigation or prosecution. As well, the expenses must be such that it could be difficult for the investigation or prosecution to proceed effectively unless access to the contingency fund is granted.

The contingency fund for exceptional federal expenses associated with investigations and prosecutions related to the IMET initiative could be accessed to cover expenses including, or analogous to, the following: travel expenses, disclosure expenses, expenses associated with specialized contracts, and technical or equipment expenses.

In order to access the fund, the Deputy Minister at DoJ and the RCMP Commissioner both need to agree that it would be appropriate to seek access to cover a given expenditure. The two officials would then write a joint letter to the Secretary of the Treasury Board to request the release of funds. The letter to the Secretary of the Treasury Board would need to demonstrate that the criteria for gaining access to the fund had been met. The RCMP and DoJ will account for their uses of the contingency fund through annual reports to the Treasury Board Secretariat.

If unspent, money in the fund lapses and is returned to the Consolidated Revenue Fund.

Reserve Fund

The reserve fund helps to defray exceptional provincial costs associated with the prosecutions of IMET-generated cases. If, after review, the DoJ approves a request for funding assistance, the province is required to sign a formal agreement with the Department specifying the terms and conditions for the funding including the date on which eligible expenditures would be reimbursed, the requirement for financial statements, etc.

The fund reoccurs annually, and if unspent, money in the fund lapses and is returned to the Consolidated Revenue Fund. The fund is held in the DoJ's reference levels.

3. Evaluation Methodology

3.1 Introduction

This chapter outlines the methodology that was adopted for the evaluation of the IMET initiative. It contains the key questions to be addressed, an overview of the data collection methodologies used, the limitations of the methodology and provides some context to situate the findings.

3.2 Evaluation Strategy

The evaluation indicators and methodologies identified in the RMAF guided the evaluation strategy. Based on the evaluation framework outlined in the RMAF (see Appendix A), the evaluation was to address seven main questions:

Rationale	
1.	Is there a need to expand the IMETs and prosecutorial capacity?
Design and Delivery	
2.	Is the IMET component carrying out the right activities in the way they were intended?
3.	Are the IMETs managed efficiently and effectively?
4.	Does the governance structure work as intended?
Success	
5.	Is the corporate community more aware of IMETs efforts to enforce and prosecute serious capital market fraud?
6.	Has the detection and targeting of major fraud cases improved?
7.	Have investigations improved?

A working group was struck in order to provide general oversight on the evaluation. The working group was comprised of representatives from the RCMP, DoJ, Department of Finance and PSEPC. The role of this working group was to provide direction to the evaluation team and facilitate the actual conduct of the evaluation. This included identifying interviewees, providing documentation including performance measurement information, reviewing and commenting on draft documents, circulating drafts for comment and consolidating feedback, and ensuring the evaluation team received the co-operation needed to complete the evaluation in a timely manner.

The evaluation commenced July 2005. Data collection was concluded, for the most part, in October 2005. This evaluation covers the period from the start of the initiative (June 2003) to October 31, 2005.

3.3 Data Collection Methodologies

The methodology used to collect data for the evaluation was based on the general premise that multiple lines of evidence would allow for a more rigorous and effective assessment of the program (i.e., triangulation of results). As a result, four methods were identified to collect data for the evaluation:

1. Document review
2. Interviews
3. Focus groups
4. Comparative case file analysis

Document Review

Foundational and operational documents were requested and reviewed as part of this evaluation. Foundational documents reviewed included the [*], the RMAF/RBAF, and special reports on capital market crimes. Operational documents reviewed included status reports, accountability framework reports, and other supporting documentation related to the implementation and operation of the initiative. In addition, samples of data produced from the various systems and files identified in the RMAF were reviewed in order to ascertain the data available to address the evaluation questions. The potential data sources of interest were administrative data (e.g. financial and personnel), the RCMP major case management system (MCMS) and PROOF reports, and IMET management reports. A list of documents reviewed during the course of this evaluation can be found in Appendix B.

Interviews

A total of 42 interviews were conducted, either in person or by telephone, with individuals involved in the IMET initiative. Interviews were conducted with members of the Executive Council; the Interdepartmental Working Group; RCMP IMET HQ staff; IMET Officers in Charge (OIC); DoJ legal advisors, team leaders and Regional FPS Directors; partner organizations; and, external stakeholders.

Six interview guides were developed to facilitate the data collection process and ensure consistency across interviews (see Appendix C).

Focus Groups

A total of six focus groups were conducted in five different locations with IMETs. The purpose of the focus groups was to capture the operational perspective of IMET members on issues of the formative evaluation. Participants in focus groups consisted of IMET members in each of the four permanent IMET units as well as the Quick Start team members. In total 49 individuals participated in the focus groups.

Comparative Data Analysis

The purpose of the comparative pre/post analysis of selected case files was to provide information on the timeliness of services and activities associated with major investigations pre/post introduction of the IMET initiative. The suggested approach included a review of file milestones of 'like' files with the possibility of a limited number of follow-up interviews to clarify and confirm our understanding. For the post IMET component it was suggested to possibly focus the analysis on a subset of four 'project-status' investigations out of the total population of the seven that were on-going at the start of the evaluation. However, access to the necessary data proved to be problematic and the comparative data analysis could not be pursued as planned (see 3.5 Limitations of the Methodology).

3.4 Analysis Methodology

The data from all the sources available was analyzed to answer the evaluation questions. To the extent possible, data from multiple sources was used to strengthen the analysis.

3.5 Limitations of the Methodology

As mentioned above, a comparative analysis of case files was not possible. All IMET cases are currently active and as a result, extra care was required to ensure that the disclosure of information to the evaluation team would not in any way compromise the on-going investigations. Given the sensitive nature of the data, the on-going nature of the investigations and the fact that only nine investigations are underway, our ability to ensure the confidentiality of information pertaining to individual cases could not be guaranteed. As a result, the data analysis was limited to aggregate data on active cases. In some instances where an analysis of quantitative data was critical in answering an evaluation question, confidential information was analyzed but is not reproduced in this report.

As a result of the sensitivity of the subject-matter, the analysis of certain evaluation questions is not as rigorous as originally intended and relies rather heavily on qualitative assessments.

A second limitation identified deals with the current status of the implementation of the IMET initiative. At the time of this evaluation, no charges had been laid in project-status investigations. Consequently, disclosure activities have not yet been undertaken, nor have there been any prosecutions of cases investigated using the team approach. As a result, outcomes related to prosecutions or completed investigations could not be assessed. The scope of the evaluation is therefore limited to outcomes that can currently be measured in the program's lifecycle.

3.6 Context

It is important to note that, during the course of the implementation of the IMET initiative, certain intervening factors came into play that resulted in adjustments being made to ensure the successful launch of the program. The most significant of these factors are identified below:

- Staffing of a Coordinator within the Federal Prosecution Service at the DoJ was delayed by the wage bill cap.¹²
- The government-imposed wage bill cap delayed the staffing of legal advisor positions within the DoJ. As a result, the Department had to reassign resources to provide necessary support to the IMETs until such a time as the cap was lifted. This resulted in a delay in assigning permanent DoJ resources to the IMETs, but did not impact on the provision of legal advice as such advice was provided by local offices. While the wage bill cap was also imposed on the RCMP, the RCMP decided to cash manage the implementation of the IMET initiative and assumed the risks associated with this approach.

¹² The Coordinator position was filled as of January 9, 2006.

4. RATIONALE

4.1. Expanded Need for IMET Investigative and Prosecutorial Capacity

4.1.1 Investigative capacity

Background

The original design of the initiative called for a phased-in approach to implementation. In 2003-2004, two teams were to be established in Toronto, and one in Vancouver, followed by the creation of teams in Calgary, in Montreal and a third team in Toronto in 2004-05. Based on results of the formative evaluation, the program was to be fully phased-in by 2005-06 with an additional team in Vancouver, Calgary and Montreal¹³. The findings presented in this section seek to identify whether there is a need to expand the IMETs capacity within the initiative. Although interviewees and focus group participants were not specifically prompted to do so, the concept of an expanded IMET investigative capacity can be viewed in two different ways:

- a) Whether to expand the current level of implementation (six teams) to the full initiative (nine teams); and
- b) Whether to expand the initiative beyond the nine teams.

The findings are primarily based on qualitative lines of evidence.

CONCLUSIONS

Interviewees strongly supported the expansion of the initiative to its full team complement from the current six teams to the planned nine teams. Specifically, interviewees suggested adding teams in Toronto and Montreal and to maintain or strengthen the Quick Start capacity. There was significantly less support for further expansion in the West (Calgary and Vancouver).

Support for an expansion beyond the full ramp up of the initiative is weak, largely based on the need to first see results from the current level of investment. The need for a potential expansion of IMET resources was only brought forward during discussions regarding the reconsideration of the current IMET mandate, and during discussions regarding the need for advisors and prosecutors on Quick Start projects.

¹³ Consulting and Audit Canada, Risk-based Audit and Results-based Management Accountability Framework for "A Strategy for Enhanced Protection of Canadian Capital Markets", March 2004, p. 5

Findings

With regard to the investigative capacity, the vast majority of interviewees, internal as well as external, expressed support for the full implementation of the initiative from the current six teams to the planned nine teams. The strongest support for full implementation of the initiative originated from members of the Interdepartmental Working Group (IWG), RCMP HQ and partner organizations, and to a lesser extent among Executive Council interviewees and legal advisors. Focus group participants in Toronto, Calgary and Halifax (Quick Start) echoed the need for full initiative implementation.

Interviewees identified Toronto and Montreal as the primary sites for additional teams with significantly less support for additional teams in the West. A number of interviewees suggested that the ramp-up should be needs based. There was some doubt expressed by partner organizations in particular, as to whether the type of market fraud occurring in Vancouver and Calgary needs to be addressed using the IMET approach or whether they should be handled by the RCMP Commercial Crime Units in those cities. Due to issues of confidentiality, an analysis of case backlogs, which would have provided a quantitative measure of need, could be not undertaken in this evaluation.

Primary reasons to ramp up to the planned nine teams included the need to take on more known cases in the short-term; the need to provide adequate investigator support during the prosecution phase without weakening the ongoing investigative capacity; and, to ensure adequate coverage across the country.

Although some interviewees across all interview groups suggested that there is more work than resources at this time, this observation did not lead to strong support for expansion beyond the currently planned nine teams. Expressed support for expanding beyond the scope of the current initiative's nine teams was limited to the RCMP HQ and the RCMP OICs as well as one partner organization. A number of interviewees from all groups, but particularly from the Executive Council level and partners, indicated that expansion beyond the currently planned resource level of nine teams would be dependant on demonstrated performance and achievement of results of the fully implemented initiative. Other, more isolated comments, suggested that increased resource levels may not necessarily translate into increased effectiveness, but rather result in merely taking on more cases. Another comment pertained to the need to control growth from an organizational perspective and to ensure that the current ramp-up has an opportunity to solidify before further expansion beyond the planned nine teams would occur.

The discussion of expanding the IMETs beyond the currently planned ramp-up frequently involved discussion of the current IMET mandate. Some interviewees felt that there was a need to adjust the current mandate of the IMET initiative to include more recent market fraud trends, or to go beyond publicly traded companies. In these cases, there was a recognition that such a mandate change would likely result in the need for additional teams. A number of partners expressed an interest in maintaining the current mandate for

the IMET initiative and focusing on achieving results within the current mandate prior to considering changes.

Interviewees and focus group participants expressed support for an expanded Quick Start capacity. Some interviewees suggested that the Quick Start is an asset to the investigative capacity and provides for broadened regional coverage by the initiative. However, the implementation of the Quick Start idea, from a RCMP HQ and IMET OIC perspective, has not been without challenges. It can be difficult to motivate IMET investigators to participate in Quick Start. There is also a potential impact on the ongoing investigations in the IMETs as Quick Start members are taken away from other active investigations.

RECOMMENDATIONS

IMET HQ should proceed with a ramp-up of the initiative from the current six teams to the nine teams as originally planned.

IMET HQ should re-assess the locations for the three additional teams to ensure compliance with the current IMET mandate and maximum impact on actual market place behaviour.

IMET HQ should assess the utility of establishing a permanent Quick Start team and identify whether this capacity should be centralized or decentralized. Such a capacity could also assist existing IMETs in managing their workflow throughout the project lifecycle.

4.1.2 Prosecutorial capacity

Background

The findings presented in this section seek to identify whether there is a need to expand the prosecutorial capacity within the initiative.

Provision for prosecutorial support within the initiative are twofold: 1) establishment of integrated prosecutorial teams at the federal level; and, 2) establishment of a reserve fund, administered by the DoJ, for “extraordinary prosecution costs” incurred by provincial Attorneys General.

The prosecutorial capacity within the initiative has been limited as a result of the funding structure established at the design phase. Federal prosecutors from the DoJ’s Federal Prosecution Service may be assigned to the prosecution of charges laid by the IMETs, either as part of a provincial prosecution team when invited or when the Crown assumes the conduct of an IMET prosecution. While the program provides funds for dedicated prosecution teams, the DoJ’s ability to undertake anticipatory staffing is limited by the provinces’ right of first refusal on prosecutions.

It should be noted that the findings in this section are primarily based on qualitative lines of evidence.

CONCLUSIONS

The findings are currently inconclusive due to initial limitations placed on the funding and structure of prosecutorial resources. As well, the natural lifecycle of project- status cases has not yet reached the prosecution stage, making an assessment as to the actual prosecutorial capacity difficult.

However, based primarily on interview and focus group findings, there was some suggestion that the current federal and provincial prosecutorial capacity may not be sufficient in some instances. Specifically, it was pointed out that the current arrangement lacks a provision with regard to federal/provincial prosecutorial arrangements in provinces other than the four where permanent IMETs are located and prosecution protocols have been negotiated (i.e., Quick Start).

The current provision of the reserve fund to partially cover extraordinary costs associated with the provincial prosecution of capital market fraud cases generated by the IMETs is deemed to be in need of change to better align it with the original goal of the Fund.

Findings

The vast majority of legal advisors and partners indicated that it is simply too early in the life of the initiative to have a sense of whether there is a need for additional prosecutorial capacity. A confounding factor is that the maturity of project-status cases has not yet reached the state of laying charges, thereby triggering the need for prosecution.

Even in cases where the current negotiated protocol provides for a right of first refusal by the province, there may be a residual need for federal prosecutorial support to the provincial prosecution, in the form of advice, participation in a provincial prosecution team if invited, and other assistance.

A number of interviewees at the Executive Committee, Interdepartmental Working Group levels and some at the legal advisor level suggested that there was a need for experienced prosecutorial capacity at the federal level and indicated that the existing complement at the DoJ may not be sufficient in taking on this role for these types of cases if the prosecution is led by the federal Crown. Other interviewees, particularly the legal advisors, pointed to existing tax (evasion) prosecution units as a source for federal expertise that could/would be drawn on for the federal prosecution of IMET cases. The IMET initiative did provide for additional resources to be hired by the DoJ to assist with prosecutions. However, given that the provinces retain the right of first refusal to prosecute IMET cases, coupled with the fact that charges have yet to be laid in any of the project-status investigations, the prosecutorial capacity at the DoJ has yet to be tested.

Some of the partner interviewees suggested that, in some jurisdictions, there may currently be an insufficient level of prosecutorial capacity for these types of cases at the provincial level. In particular, even with the provision for concurrent jurisdiction, interviewees identified a gap with regard to the prosecutorial capacity in locations where the IMET Quick Start approach is being used, as is the case in Nova Scotia. It has been pointed out that these provinces may accept federal prosecutorial involvement because they may not have the experience in prosecuting these types of cases.

It was suggested that there is a need for a timely ramp-up of the prosecutorial capacity, prior to cases having reached the state of having charges laid, so as to ensure that prosecutorial support is available at key points during the investigation. For example, one interviewee indicated that the need for prosecutorial advice usually arises when the case theory is first presented, usually at the time of submission of the first application for a search warrant. At that point in time, the opinion and advice of the prosecutor is thought to be instrumental in ensuring the case theory is sound. The dilemma resides in the fact that until the cases reach the prosecution stage, it is difficult to justify dedicated staffing, since these prosecutors may not carry a sufficient workload.

Others interviewees and members of focus groups suggested that the expertise to prosecute these types of cases exists within Canada but that access to these specialized prosecutors is difficult and that there may be a need to provide sufficient financial support to provinces to prosecute these cases. The reserve fund was established with the intent to provide up to 50% of extraordinary prosecution costs (relating only to exceptional disclosure costs, specialized contracts; or exceptional technical or equipments expenses) incurred by provincial Attorneys General who have entered into agreements with the Attorney General of Canada¹⁴. Although some interviewees and members of focus groups suggested that the reserve fund should be available to provinces to hire specialized prosecutors, the federal government did not intend to have the fund used to cover provincial prosecutors' salaries. The stated objective of the reserve fund is to encourage provincial Attorneys General to participate in the Strategy and to play a role in the prosecution of IMET-generated cases, by helping to defray the exceptional costs referred to above, subject to federal-provincial prosecution agreements and coordinating protocols.¹⁵ To date, the reserve fund has not been accessed. As was observed by some of the interviewees, the current provisions of the fund only provide for partial coverage of extraordinary costs associated with the prosecution of capital market fraud cases generated by the IMETs that meet the detailed criteria outlined in the Terms and Conditions to access the reserve fund.

RECOMMENDATIONS

The DoJ should ensure that bilateral negotiations for prosecution agreements occur with provinces that are not currently covered by such arrangements.

¹⁴ Department of Justice, Federal Prosecution Service, Integrated Market Enforcement Teams Initiative (IMETs): Status Report, March 16, 2005, p. 11.

¹⁵ Department of Justice Integrated Market Enforcement Teams (IMETs) Reserve Fund, Terms and Conditions, p. 1.

Now that prosecution protocols have been negotiated with the provinces where IMETs are located, the DoJ needs to plan for a timely ramp-up of experienced and qualified prosecution teams at the federal level to ensure their availability when required.

The DoJ, in consultation with partners, should review the Terms and Conditions for access to the reserve fund to provide enhanced assistance to defray extraordinary costs incurred in the provincial prosecution of IMET-generated cases.

5. DESIGN AND DELIVERY

5.1 Implementation of the IMET Initiative

Background

This section seeks to identify the extent to which implementation has followed the planned design and delivery of the initiative. This includes a review of :

- the nature and type of investigations undertaken;
- the adequacy and timeliness with which services and activities are delivered; and,
- the level of cooperation between the IMETs and stakeholders

The findings in this section are based on interview and focus group findings supplemented by quantitative data, where available.

5.1.1 Nature and type of investigations and prosecutions

CONCLUSION

The project-status investigations currently undertaken by the IMETs focus on capital market offences, which are considered to be of national significance, in keeping with the initiative's original mandate. Due to issues of confidentiality, it was not possible to confirm that all cases under investigation deal with publicly-traded companies and are of national significance, the other components of the original mandate.

Findings

The selection of cases for IMET investigation is done in consultation with the JCG, using among other tools, a prioritization system (PROOF)¹⁶ to assess where operational resources should be invested. Other considerations, such as the perceived degree to which an investigation may result in increased investor confidence and the importance of the case from a regional, national and international perspective also come into play in the decision-making process. It is important to note that the RCMP alone has the authority to select cases for investigation. Other partner organizations and stakeholders involved in the initiative provide input and advice but do not make the final decision.

Information on the nature of investigations was provided for the 54 cases selected to date by the IMETs for further review. The following table provides a breakdown of these cases by type and confirms that the investigations undertaken to date do in fact deal with capital market offences.

¹⁶ The PROOF (Priority Rating of Operational Files) acts as a guide to assist in establishing the priority of a case for investigation by assigning a weight to a number of specific criteria.

Type of investigation	Number of investigations
Securities fraud	21
Stock market related offences	12
Falsification of books/records	3
Theft over \$5,000	6
Fraud	10
Other frauds	2
TOTAL	54

Due to issues of confidentiality, it was not possible to confirm through quantitative data analysis, that the project-status investigations currently underway focus on publicly-traded companies and are national in scope.

Interviewees and focus group participants generally agree that the types of files that are taken on as project-status investigations are aligned with the initiative's mandate. Respondents agree that the complexity and nature of IMET files are appropriate and that these types of cases would likely have been difficult to investigate prior to the creation of IMET due to the limited availability of investigators.

5.1.2 Adequacy and timeliness of services and activities

CONCLUSION

Some IMET investigations did not achieve project-status but were undertaken in order to achieve early successes. These investigations do not appear to have impeded the progress of project-status investigations (with the exception of Vancouver). Available data suggests that, as project-status investigations were initiated, the number of hours dedicated to other investigations decreased.

The one year timeline for the completion of project-status investigations has not been met to date and may be considered overly optimistic, given the number of intervening factors that influence the progress of an investigation. In addition, due to the fact that the initiative is still currently in its implementation stage, logistical and administrative issues related to the start up of the initiative may have resulted in delays in starting investigations.

The Quick Start approach is seen as an effective means to investigate cases outside the four permanent IMET units. However, RCMP IMET HQ staff encountered some logistical difficulties in setting up the Quick Start team. In addition, the reporting structure for the team was not clearly defined at the outset, and as a result the roles and responsibilities of investigators were not always clear.

Findings

A majority of interviewees along with focus group participants agree that the IMETs are carrying out the right services and activities, in the way they were originally intended. The IMET initiative was designed with the intent that investigators would focus their efforts almost exclusively on large cases of national importance. A target of 90% of investigators' time was to be dedicated solely to IMET activities.¹⁷ For the period of January 2004 to June 2005, the percentage of time spent on IMET operations was 54%. Of the remaining time available, 31% was spent on general administration¹⁸. Given that the IMET initiative is currently in the final stages of implementation, it is anticipated that the percentage of time spent on IMET activities will increase as the implementation phase of the program winds down and teams are fully operational.

Of the total hours spent on operations, only 63% are currently spent on project-status investigations. The mandate of the IMET initiative is to focus on the most serious cases of capital market fraud, with the intent that each team would focus on one case. However, some interviewees and focus group participants also stated that it is difficult to work on large files at the outset and suggest that IMETs take on files of a smaller scope, which would allow investigators to gain valuable experience.

Using this argument, it would be logical to assume that the IMETs would take on smaller investigations in the beginning, but then would concentrate most of their efforts on project-status cases once they were initiated. As a result, the number of investigative hours spent on the project-status investigations should outweigh any time spent on other investigations undertaken since its start. Table 3 (following page) indicates the number of hours recorded against project-status investigations as of June 30, 2005, and the number of hours spent on non-project status investigations since the start of the project-status investigations.¹⁹ For Toronto and Vancouver, where more than one project-status case exists, hours were calculated for investigations that occurred between the start dates of the cases. It would be expected that, in the instance of Toronto where three teams are now operational, the time allotted to non-project status investigations would decrease as new major investigations were initiated.

¹⁷ Integrated Market Enforcement Teams, RCMP Implementation Report to Executive Council, March 16, 2005, page 9

¹⁸ Source: special data analysis provided by the RCMP IMET HQ, fall 2005.

¹⁹ Ibid.

Team	Time spent on “project-status investigation”	Time spent on non project status investigations (since project-status investigation” start date)
Montreal	149.5	167
Calgary	2,781	0
Vancouver – case 1	945	4,499.5
Vancouver – case 2	6,112	4,701.5
Toronto – case 1	18,542.5	3,284
Toronto – case 2	7,103	308.5
Toronto – case 3	2,071.3	183
Toronto – case 4	2,761.5	0

A few partner organizations have voiced their concerns that the western IMET units have taken on files that were inappropriate and non-consistent with the initiative’s mandate. In order to verify these concerns, an analysis was undertaken of available data on the number of hours spent on each investigation.²⁰ Based on this analysis, it would appear that the concerns raised with respect to the selection of cases for investigation in Vancouver were well founded. Unlike the other IMETs, the Vancouver location did not decrease its focus on more minor investigations once a project-status investigation was launched.

	Vancouver	Toronto	Calgary	Montreal
Hours spent - project-status investigation(s)	7,057	30,478.5	2,781	149.5
Hours spent - other investigation(s)	9,620.5	7424	418.5	262.5
Time spent project-status as a percentage of total investigative hours	42%	80%	87%	36%

In general, interviewees along with focus group participants agree that the services and activities carried out by IMETs are completed in a timely fashion. They commonly agree that investigations of this nature would take numerous years to complete in the Commercial Crime Branches. Although many recognize that the 10 persons/1 year rule²¹ is optimistic, they agree that having dedicated IMETs should accelerate the speed by which an investigation is completed. Furthermore, some voiced concerns that high expectations may have been created within Central Agencies (e.g. TBS, Department of Finance) as a result of this notional timeframe; expectations that are at times considered

²⁰ Data on hours spent per investigation were provided by the RCMP.

²¹ The 10 person/1 year rule was based on the notion that, given that traditionally one investigator may work on a file for a 10 year period, a team of 10 investigators should therefore be able to complete same amount of work in a one year period.

somewhat unrealistic. There was consensus that some turnaround times are beyond the IMETs control (e.g., procurement issues, challenges to the use of investigative tools such as production orders, etc.); therefore negatively impacting the timeliness of services and activities.

The following table provides an indication of the current length of on-going investigations for project-status cases, as of October 31, 2005.

Length of investigation	Number of investigations
Under 12 months	3
12 to 18 months	3
Over 18 to 21 months	3
Length is based on the date the project was first opened in the RCMP case management system	

When asked about the adequacy of services and activities provided by the Quick Start team, both RCMP HQ staff and IMET OICs provided input. In summary, respondents believe that the Quick Start concept is sound, as it provides an opportunity to jump start an investigation in any Canadian city.

Quick Start focus group participants indicated that there was some confusion with regards to who was supposed to take the lead in the investigation when Commercial Crimes Unit and Quick Start resources were working together on the case. These issues were easily dealt with and it was not felt that this impeded the investigation. In the future, however, participants felt it may be helpful to have discussions between RCMP HQ and the regional Commercial Crime Unit on roles and responsibilities during the creation of the operational plan for cases requiring a Quick Start response.

Those closely involved with the Quick Start initiative identified timeliness as an issue with regards to the establishment of the team. Finding available and experienced people to staff the Quick Start team, along with resolving numerous procurement issues, have impeded the ability to launch an investigation rapidly. While there is some question as to the speed at which these teams truly need to be established, the delays encountered in setting up the team currently working in Nova Scotia were deemed to be unacceptable by those closely involved in the logistics of the set-up. Interestingly, the degree of frustration felt by the RCMP HQ staff involved in the Quick Start initiative was not felt by the team itself. Focus group participants felt they were provided with support in a timely manner.

RECOMMENDATIONS

Time spent on operations and other activities should continue to be monitored in order to assess the degree to which the teams continue to focus on mandated activities.

5.1.3 Level of cooperation between IMETs and stakeholders

CONCLUSION:

The multidisciplinary approach to investigations is seen as key to the success of the initiative. While there is some debate as to the need for co-location, evidence suggests that the level of cooperation within the teams is good.

Cooperation between the IMETs and the Commercial Crime Units has improved since the outset of the initiative. On-going communication is required in order to foster these relationships.

On-going, systematic consultation and communication between IMETs will continue to be important to the success of the initiative (e.g. regular retreats; network/conference opportunities for legal advisors).

Findings

The assessment of whether the level of cooperation between IMET units and stakeholders were adequate and effective covered four (4) different levels: cooperation within the IMET units, cooperation between the units and RCMP headquarters, cooperation between IMET units and the Divisions, and cooperation between IMET units and stakeholders.

Cooperation Within the IMET Units

Overall, interviewees and focus group participants agree that the mix of contributing organizations is appropriate. They commonly agree that the cooperation and integrated nature of the IMET units largely contributes to the initiative's success. The creation of multidisciplinary teams allows all members to pull from each others' expertise and experience during investigations. Through secondments, it is possible to tap into the information of a wide range of regulatory and investigative bodies that contribute to the thoroughness of the investigation.

Many interviewees agreed that co-location expedites the investigative process and ensures synergy among team members. However, legal advisors in particular questioned the need for co-location, since, in some locations, advisors are not fully utilized and therefore continue to work on other files not related to the IMET initiative. In some cases, advisors are splitting their time between the IMET office and the regional FPS office. This is seen as a good compromise, particularly given that current technologies allow for almost instant access to advisors whenever required.

Cooperation Between the IMET Units and RCMP HQ

Communications between RCMP HQ and the IMET units are usually managed through the IMET OICs in each location. Monthly activity reports are prepared by each IMET

unit for RCMP HQ. Although RCMP HQ staff minimally participate in regional operations, they travel to the regions from time to time in order to provide advice and support to unit staff. During their travel, they will attend JCG meetings, when possible.

Cooperation Between IMETs and the RCMP Divisions

Interviewees and focus group participants agree that the level of cooperation between IMETs and the RCMP Divisions have greatly improved since the initiative's creation. At the outset, numerous IMET investigators recruited to the units were former Divisional employees which decreased the Divisions' human resource capacity significantly. Since the initiative's creation, the RCMP IMET OICs have made considerable efforts to build a working relationship with the Divisions. In Toronto and Calgary, the IMET unit is now providing all operational plans and briefing notes to the Division, which has greatly contributed to an increase in cooperation between the two organizations. Many persons consulted agree that personal relationships between IMET members and divisional staff are essential to ensuring continued cooperation.

The IMET units are able to obtain a variety of services from the Division (e.g. surveillance activities, undercover operations) when required. Although Divisions receive a dollar amount from the IMET initiative in exchange for services, some focus group participants believe that a formal agreement between IMET and the Divisions is required in order to solidify the partnership between the two groups.

Cooperation Between IMETs and Stakeholders

Both interviewees and focus group participants recognize the value of developing and maintaining relationships with stakeholders. There is a common understanding that the initiative must not limit itself to federal departments and agencies in order to be successful. Cooperation between IMETs and stakeholders is encouraged through a variety of mechanisms such as:

- Committees (e.g., Executive Council, Interdepartmental Working Group, Joint Consultative Groups);
- Team-building retreats (held for RCMP and DoJ representatives);
- Secondments to the IMET units; and
- MoUs and service agreements.

Relationships are still in development with some stakeholders but there is a common understanding that a need for continued cooperation and integration of stakeholders is required.

To date, secondments have been initiated in all IMET units (see Table 6). In addition, a MoU has been signed with PWGSC for the provision of accounting services. The Calgary and Montreal units have both accessed resources through this mechanism.

Source	Vancouver	Calgary	Toronto	Montreal
Canada Revenue Agency	X		X	
Local Police Department	X		X	
Securities Commission	X	X	X	
Other	X			X

5.2 Effective and Efficient Management of the IMETs

Background

The IMET initiative was structured in order to ensure that the operations undertaken would focus as much as possible on the investigation and prosecution of capital market offences of national importance. It was felt that a new approach was required in order to increase the likelihood of success in convicting wrong-doers. Specific characteristics of the initiative include:

- Centralized management by the RCMP of the IMET units. All four locations report directly to HQ in Ottawa rather than to the traditional Divisional structure.
- Funding was allocated specifically for the IMET initiative, thereby ensuring that resources would be available to undertake activities directly related to the investigation and prosecution of capital market offences.
- A new HR approach was used to recruit RCMP members into the IMETs, with the intent that this approach would result in identification and retention of skilled resources into the units.
- Two funds were created to provide extra resources for extraordinary expenses incurred during the investigation or prosecution of cases.

The approach taken in designing the IMET initiative was mentioned by a number of interviewees as necessary to ensuring its success. Many RCMP interviewees felt that without a centralized reporting structure and ‘fenced funding’, the IMETs would not be in a position to ensure their activities focus on the mandate of the initiative. Access to the contingency fund was also mentioned as a welcome addition to the initiative, ensuring that the investigations would not be slowed or compromised due to a lack of resources.

5.2.1 Adequacy of number and mix of resources

Background

The findings presented in this section seek to identify whether there is an appropriate number and mix of resources for the IMETs, and are based primarily on interview and focus group results, supplemented by quantitative data where available. Organizational charts approved on December 3rd, 2004 were also used as a baseline for planned capacity.²²

CONCLUSIONS

The organizational structure, number and mix of resources are generally considered to be appropriate and have evolved over time to respond to specific challenges that were not foreseen during the initial design stage of the initiative. However, there is one specific shortcoming as there is currently no provision in the initiative to resource legal advice or federal prosecutors in support of Quick Start teams. Some challenges have also been encountered in staffing and classifying existing RCMP positions (e.g., capital market experts), partly as a result of the specialized skill sets required. This issue will likely continue to be a challenge in the future.

Findings

Interviewees and focus group participants agree that the planned number and mix of resources of the IMET teams seems adequate. However, many of them recognize that teams will be called upon to expand and contract in size to accommodate the natural lifecycle of projects and that only experience will identify the optimum number and mix of resources at different stages in the lifecycle.

IMET Investigators

Several interviewees and focus group participants are concerned with the ability of teams to both assist with prosecutions and take on new projects. After charges are laid, it is expected that IMET resources will be required in assisting prosecutors. As a result, only partial teams will be available to undertake a new investigation. Many individuals consulted at RCMP HQ believe that a pool of resources should be developed and retained to work on Quick Start files while others suggested that such capacity could also be used to support the various IMETs during peak periods.

IMET Team Leaders

According to the original resourcing strategy, there was no Team Leader position identified for the Toronto Team #3 with the assumption that the functions associated with this position could be performed by the Toronto OIC. However, a project leader has been

²² While organizational charts created for the initiative are currently being amended, updated information was not available at the time of this evaluation.

assigned to the team to address day-to-day operational issues that could not be dealt with in a timely fashion.

Legal Advisors

In the initial design of the initiative, IMET units in Montreal, Calgary and Vancouver are each to have a dedicated legal advisor, and the Toronto unit is to have two legal advisors. Subsequently, organizational charts were developed and signed by the RCMP in December 2004, indicating one legal advisor position per IMET unit. However, the DoJ has not made any changes to its intended staffing for the IMET initiative, indicating that the December 2004 organizational charts may be inaccurate with respect to the legal advisor positions.

At this point in time, there is one legal advisor in Montreal, Calgary and Vancouver and two in Toronto. In Toronto, it is estimated that a third legal advisor will soon be required due to the increasing workload. In Calgary and Vancouver where IMETs have only recently taken on significant projects, legal advisors are not used on a full-time basis, but this is expected to change as projects progress. In addition, as cases move from the investigative stage to prosecution, legal advisors assigned to the IMETs could either become part of the prosecution team, or provide assistance to the prosecution teams. As a result, they may not be able to provide on-going legal advice to other investigations, resulting in a need to increase the number of legal advisors assigned to the initiative.

No funding for federal legal advisors for the Quick Start capacity was planned, nor is available. Several interviewees and focus group participants have identified this, as a potential risk to the success of investigations undertaken using the Quick Start approach.

Secondees

All regular IMETs have secondees from partner organizations. However, in some instances there are issues with information sharing and partner organizations question the need to assign full-time resources to the IMETs. In Calgary and Vancouver where teams have only recently taken on significant projects, partner organizations are concerned that, although they have been able to attract and recruit secondees, they may not be able to retain these individuals in IMETs, which may in turn make future recruitment of secondees from these partner organizations more difficult.

RCMP Headquarters Support

Interviewees at RCMP HQ identified additional requirements for resources to undertake specific activities. In most cases, these positions were not part of the original Human Resources plan for the initiative. These include:

- The hiring of a communications expert by the RCMP to develop and implement a national plan and ensure coordination of communications among partner organizations. This position has recently been staffed.

- Contracting with an expert [*]. This individual [*]. It is anticipated that the work being done by this individual will greatly assist in the investigation of future cases.
- An internal arrangement within the RCMP to have a procurement officer assigned specifically to respond to IMET requests. The procurement officer's salary is funded through the initiative's budget on a temporary basis in order to facilitate the procurement process during the start up phase of the initiative.

While these positions were recently staffed, other resources were identified as being required in order to ensure the efficiency of the initiative. These include:

- The addition of two investigative analysts within RCMP HQ to assist with compiling and analyzing data required for performance monitoring and reporting.
- An additional resource at the Sergeant level to assist with the logistics when setting up Quick Start teams.
- A full-time national training co-ordinator. At the moment, this role is being filled on a half-time basis by the Quick Start Coordinator, who is being assisted by an investigative analyst who has a background in training.

RECOMMENDATIONS

All departments involved in the initiative should consider how to redesign the program to provide for legal advice and federal prosecutors, if requested, to Quick Start teams within the initiative.

The RCMP should review the current number and mix of resources in order to ensure that both HQ and operational requirements are met. In the case of HQ requirements, the focus should be on identifying and filling current needs, while in the case of operational requirements, the focus should be on ensuring the sustainability of the teams over time.

5.2.2 Appropriateness and timeliness of Human Resources (HR) activities and processes

Background

In support of the IMET initiative, a new HR policy has been piloted by the RCMP. This policy applies competency-based human resources management principles throughout the staffing process. The selection process has been tailor-made for IMETs and a unique protocol is used for merit-based promotions. This new approach to RCMP staffing introduces a new values-based process. Decisions must not only respect the policy but

the selection process has to be – and be seen to be – based on values of fairness, equity and transparency.²³

The findings presented in this section seek to identify whether HR activities and processes that were put in place for the IMET initiative are appropriate and timely. The findings in this section are based on qualitative data provided through interviews and focus groups.

CONCLUSIONS

Several interviewees and focus group participants agree that the RCMP's competency-based HR Regime has allowed the IMETs to seek out the best candidates. It was often cited as a definite success of the IMET initiative.

There have been delays with regard to classification, particularly with regard to civilian positions but the majority of positions are now classified.

The vast majority of interviewees and focus group participants stated that there are no issues with the nature and timeliness of secondment agreements.

Some positions remain to be staffed and there are concerns that, as the IMETs grow, it will become difficult to find sufficient numbers of qualified resources such as investigators.

Findings also reveal that filling several investigator positions with understudies may be weakening teams because there are finite investigative positions per team and understudy positions occupy investigative positions.

There have been issues in deploying resources to the Quick Start capacity in part as a result of the limited ability of regular IMETs to spare investigators.

Findings

Competency-based RCMP HR Regime and Promotion Scheme

Several interviewees and focus group participants agree that the competency-based HR Regime at the RCMP has allowed the initiative to seek out the best candidates. It was often cited as a definite success of the IMETs. However, some focus group participants suggested that this Regime should also include the commissioned officers assigned to IMET units, i.e., the IMET managers.

Although it is recognized that this pilot has raised some questions in some other parts of the RCMP with respect to the use of a fast track for promotions, most interviewees and focus group participants feel that it would be a mistake to revert to the previous system.

²³ DCO Broadcast – HR Innovations, July 25, 2003

On the contrary, they would recommend an extension of this HR pilot, which some have dubbed revolutionary, to other areas of the RCMP.

That said, many interviewees and focus group participants observed that the minimum selection criteria set for the IMET investigators are too high and that, as the program grows, it may become difficult to find appropriate resources if the pool of potential candidates is quickly exhausted. Although the understudy program has been initiated in order to address this issue (see Section 5.2.3), some interviewees and focus group participants have stated that this is not necessarily a viable option. It should be noted as well that some focus group participants expressed concern at filling investigator positions with understudies. Since the number of investigator positions is finite, they feel this practice weakens the team by reducing the overall investigative capacity and by requiring that some of the investigators' time be diverted to coaching.

RCMP: Classification

Several interviewees and focus group participants expressed their frustration with the classification process. Investigative analyst positions, for example, have taken a long time to be classified and most were hired on renewable contracts in the interim. This has created an administrative burden and uncertainty for the contractors. However, it is important to note that this position has now been classified.

Department of Justice: Staffing

The government-wide wage bill cap delayed the staffing process within the DoJ. However, while there may have been some delay in staffing the legal advisor positions in the various IMET units and the International Assistance position at HQ, advice was provided by the local FPS Office and HQ respectively, when required.²⁴

As of October 31, 2005, the FPS Coordinator position remains to be appointed.²⁵ Pending the arrival of the Coordinator, the Director of Criminal Law Section and one Legal Counsel in the unit have been fulfilling this role on a part-time basis.

RCMP: Staffing

Experts

Some interviewees stated that there are difficulties in attracting and retaining specialized expertise such as market analysts. Based on interviews, the salary range determined for these positions does not seem to be sufficient and consequently the RCMP has had to resort to contracting via MERX. This slows down the staffing process considerably and, according to some respondents, even the contracting may not enable the RCMP to resource these expert positions. At the time of the evaluation, standing offers were being put in place for forensic accountants and market experts in the hope that this would in part resolve the recruitment issue.

²⁴ Department of Justice, Federal Prosecution Service, Integrated Market Enforcement Teams Initiative (IMETs): Status Report, March 16, 2005.

²⁵ The FPS Coordinator has since been hired and has assumed his duties as of January 9, 2006.

Support

Focus group participants and some interviewees identified the need for additional resources for the RCMP to help manage the Major Case Management system. Given that IMET cases generally include the review of significant volumes of documentation, most of which become critical during the disclosure and prosecutorial phases of the case, it is generally felt that additional resources will be required over time as the IMETs progress in their investigations.

RCMP Secondments

All interviewees and focus group participants stated that secondment agreements are in place and working well and that there are no issues with the nature and timeliness of secondment agreements.

Quick Start Capacity

Several interviewees and focus group participants highlighted issues with the deployment of the Quick Start capacity. To date there has been one Quick Start response. While this first Quick Start team was staffed using existing resources from other teams, some interviewees felt that this process could not be used should two or more Quick Start teams be required at the same time due to the limited number of resources available.

As mentioned in the previous section, the lack of a provision for the allocation of a federal legal advisor resource to a Quick Start team has been identified as a significant issue.

RECOMMENDATION

The RCMP IMET HQ should validate the findings regarding the pool of available competent candidates for investigator positions by reviewing data pertaining to selection processes and the number of qualified candidates.

5.2.3 Adequacy and appropriateness of training activities for the RCMP

Background

One individual in RCMP HQ has been assigned the duties of a National Training Coordinator. Each region also has assigned a training coordinator to monitor core courses that are applicable to all members of the RCMP. As well, the RCMP has budgeted \$5,000 per person for training in recognition of the complexity of capital market investigations.

The findings presented in this section seek to identify whether training activities are appropriate. They are based on qualitative data generated through interviews and focus groups.

CONCLUSIONS

Functional guidance on training within the RCMP for the IMET initiative is currently under-resourced. It would appear that there are various views on the requirements to maintain and upgrade skill sets of current IMET members.

Findings

As mentioned previously, the National Training Coordinator position at RCMP is currently being filled on a part-time basis by the Quick Start Coordinator, assisted by an investigative analyst who works on this file on an ad hoc basis.

Several interviewees have stated that, although they have been able to recruit highly trained individuals, remaining current will likely be a challenge. There were conflicting views as to whether existing external training is adequate or whether there is a need to develop IMET-specific training material.

Some interviewees and several focus group participants stated that there may be a need for additional courses, above and beyond the regular curriculum, for IMET investigators (e.g. Securities Courses, CMA courses).

In addition to training courses, some focus group participants and interviewees expressed the need to have mechanisms to exchange experiences and share best practices (e.g. conferences). In this context, interviewees and focus group participants from the RCMP and the DoJ identified the Vancouver retreat held in May 2005 as a best practice that merits repetition.

RECOMMENDATION

The RCMP IMET HQ should conduct a training needs analysis and develop a national training strategy for the IMET initiative.

5.2.4 Appropriateness of the Understudy and Internship Programs

Background

On April 11th, 2005, the RCMP Senior Executive Council met, considered and approved a number of substantial updates and amendments to the IMET HR Policy. These amendments include the creation of an IMET Internship Program and IMET Understudy Program.²⁶

Understudy Program

A candidate who applies for but does not meet the minimum requirements for the IMET investigative position may be recommended for the IMET Understudy Program. As an

²⁶ RCMP Career Management Manual, Chapter 11.

understudy, the candidate is given the opportunity to enhance his/her competencies over a period of time to subsequently be appointed as an investigator. A candidate selected for the IMET Understudy Program will not be promoted or paid acting Sergeant wages until he or she has completed the program.²⁷

Internship Program

The purpose of the Internship Program is to allow the initiative to develop its own investigators. Once accepted into the Internship Program (which can last for a period of up to eighteen months), the performance of an intern is assessed based on the successful completion of certain tasks which are listed in the Internship Training Guide. After completing three years as an Intern CM in the IMET initiative, the IMET Program Manager may offer Regular Member employment based on satisfactory performance. Should an intern successfully complete the Cadet training program, they will be required to complete an appropriate field coaching program. Upon successful completion of the field coaching program, they would then be permitted, at the earliest available opportunity, to enter into the IMET Understudy Program.

HR indicated that, at the request of IMET managers, they now place interns and understudies in positions that they are eventually meant to occupy in order to reassure these individuals that upon ramp up they will have a position within the IMET initiative.

The findings presented in this section seek to identify whether the developmental programs (Internship and Understudy programs) are appropriate. They are based on qualitative data generated through focus group discussions and interviews.

CONCLUSIONS

Several interviewees and focus group participants feel that there may be limited interest in the Understudy Program.

The details surrounding the implementation of the Internship Program were recently finalized. Several focus group participants, some of whom are interns, had several outstanding questions with regard to this program.

Findings

Understudy Program

Although the purpose of the Understudy Program is to allow those candidates that still need to upgrade certain competencies to join the IMET, some interviewees and focus group participants suggested that this may not necessarily be a viable option for some staff. According to those respondents, RCMP Regular Members may have limited interest in occupying positions for which they feel they are not appropriately remunerated. Others suggested that there may also be a stigma attached to the notion of being an understudy especially for those candidates with several years of experience.

²⁷ RCMP Career Management Manual, Chapter 11.

Internship Program

It is estimated that approximately thirty intern positions have been created over the past two months. It would appear that most investigative assistants are interns in the program. Several focus group participants (including some interns) stated that at this time, there seems to be confusion as to the career path possible for interns in the program. Since some of the policy decisions surrounding the Internship Program were made in early September 2005²⁸, it is understandable that there may be some confusion surrounding the program.

RECOMMENDATIONS:

The RCMP IMET HQ should validate impressions regarding the limited interest in the Understudy Program by monitoring the number of candidates that qualify and actually accept understudy positions.

The RCMP IMET HQ should ensure that recently approved details surrounding the Internship Program are communicated.

5.2.5 Adequacy and timeliness of investigative tools

Background

The assessment of whether the current investigative tools were both adequate and timely covered a wide range of subjects:

- Production orders;
- MLAT requests;
- Investigative tools provided by the Divisions;
- [*];
- Major Case Management System;
- [*];
- PROOF scoring system; and,
- Memoranda of Understanding (MoUs).

This section is based on interview and focus group findings, supported by some background research and quantitative data, where possible.

CONCLUSION

Overall, a majority of those consulted as part of this evaluation believe that the appropriate investigative tools are currently being used by IMET. These tools are available to law enforcement agencies in a wide range of criminal investigations. Although satisfactory, some state that the processes associated with the use of

²⁸ Powerpoint presentation to the SEC HR Sub-Committee, Excellence in Action – IMET Policy Changes, September 2nd, 2005.

current investigative tools could be streamlined further (e.g. production orders, MLATs) in order to make them less cumbersome.

Mixed comments were received with regards to the timeliness of investigative tools. The PROOF scoring system, along with the profiling system, were generally perceived as timely and efficient. Although not specific to IMETs, the inherent time limitations in the use of other investigative tools such as MLATs at times leads investigators to view the process as slow and overly-bureaucratic.

As for the timeliness of the Major Case Management System (MCMS), participants suggested that the tool is effective but that the number of resources available to support and manage this system is inadequate, which creates backlogs and time inefficiencies.

MoUs are considered to be essential to good collaboration and the participation of partner organizations in the IMET initiative. However, some individuals involved in the initiative are not satisfied with the timeliness of MoU development and suggested that these agreements should have been completed prior to the establishment of the IMET units.

Findings

Adequacy and Timeliness of Production Orders (POs)

According to background documentation, “a production order is a court authorized document that requires those who hold certain types of information or documents to deliver this material to the police within a specified time period. This information is to be used as evidence in most cases. While POs would be issued in circumstances similar to those under which search warrants are issued, production orders should be less time consuming to execute for the police and less disruptive for the keeper of the documents or data.”²⁹ To date, it is confirmed that the test for obtaining the proposed production order is the same as a search warrant; in both instances, a judge or justice must be satisfied that there are reasonable grounds to believe an offence has been committed. “At this time, the production order can be used instead of a search warrant when it is more practical to have the holder of the documents retrieve the evidence him or herself.”³⁰

Mixed comments were received with regards to the adequacy and timeliness of POs. Some interviewees stated that production orders were working well whereas others questioned their necessity because, in their opinion, they basically entail the same amount of work as a search warrant. They believe that the threshold of evidence required in order to complete a PO is quite extensive and question the benefits of using this tool instead of a search warrant. Furthermore, respondents mentioned that exemption provisions exist which can lead to delays, a situation that the introduction of the production order tool was intended to address. Believing that organizations and

²⁹ New Measures to deter Capital Markets Fraud, Consolidated Qs & As, June 11, 2003, pages 7 & 8

³⁰ *ibid.*, page 8

individuals can easily challenge this investigative tool, some interviewees suggested that a legislative amendment to POs may be required.

Although legislative changes to this tool are recognized as perhaps being warranted, some stated that the use of POs has provided IMETs greater flexibility in their choice of tools. As well, as a result of heightened awareness among third parties of the tools available, some respondents agree that this investigative tool has helped them obtain increased participation in the voluntary provision of documents.

A review of data on the use of POs by IMETs provides an indication as to their level of use, versus the more traditional search warrant tool (see Tables 7 and 8).

Year	Vancouver	Toronto	Quick Start	Calgary	Montreal
2004	0	2	1	0	0
2005	1	6	13	3	0

Year	Vancouver	Toronto	Quick Start	Calgary	Montreal
2004	19	8	3	0	0
2005	1	11	3	4	9

Given the relatively recent introduction of the production order tool, it is difficult to arrive at a firm conclusion on its adequacy. Several factors, including changes in behaviours and attitudes on the part of third parties, growing familiarity by investigators on the use of production orders, and the nature of the investigations undertaken will, over time, influence the degree to which production orders replace and/or complement search warrants as an investigative tool for capital market cases.

Adequacy and Timeliness of Mutual Legal Assistance Treaty Requests (MLATs)

Both interviewees and focus group participants conclude that MLATs are adequate but that requests made often take a lot of time to be concluded. In essence, they agree that the MLAT is a good way of requesting assistance from another country. However, the effort required to prepare and complete the MLAT is considered extensive, recognizing that this tool is quite bureaucratic and involves a lot of process elements. Also, knowing that MLATs involve international exchanges, delays can be encountered that are beyond the control of the IMETs.

To date, two MLATs have been prepared and sent. In the current IMET structure, all MLAT requests should be sent through the International Liaison Coordinator at RCMP HQ in Ottawa. This individual is tasked with coordinating the request with their counterpart at the DoJ. It does not appear that this procedure was used for either MLAT request submitted to date by the IMETs, resulting in some confusion as to the current status of these requests among some IMET investigators.

Interview and focus group participants reveal some resistance towards the current process of funneling requests through a RCMP Coordinator. According to those respondents, MLATs take months to process at RCMP HQ and many perceive this additional step as bureaucratic and inefficient. The Coordinator position was in fact created to expedite the process. Furthermore, some persons interviewed did not know about the International Liaison Coordinator and/or his role.

To summarize, it is difficult to assess the adequacy and timeliness of the requests made to date, given that they were both undertaken using a different procedure than what was originally intended.

Adequacy and Timeliness of Investigative Tools Provided Through the Division

RCMP Divisions are responsible for providing the IMET units with a range of investigative tools which include: [*] and [*]. According to interviewees, these investigative tools are adequate and respond to IMETs needs. Funds have been transferred from IMET to the Divisions in exchange for this support. Although the Divisions demonstrate a willingness to assist the IMET units, respondents agree that the Divisions are saturated with requests and do not always have the ability to service IMETs in a timely fashion.

[*]

Adequacy and Timeliness of the RCMP Major Case Management System (MCMS)

Overall, both interviewees and focus group participants agree that the Major Case Management System (MCMS) is required in order to manage large files. In their view, this system allows the IMET units to better manage complex cases electronically and is a useful investigative tool for electronic disclosures to the Court. Even though respondents agree that the system is adequate, they have identified numerous issues with MCMS, including:

- technical glitches with the system;
- delays in getting the system up and running due to on-going discussions with respect to the software that should be used to run the system;
- insufficient human resource capacity within the units to scan documents and enter data into the system, which creates backlogs and time inefficiencies;
- limited and/or inappropriate training on MCMS; and,
- insufficient IT support from the Divisions.

In response to these issues, the RCMP has undertaken to decentralize the system so that each IMET unit will have responsibility for its own database. RCMP HQ will assume an oversight role for the system, focusing on audits and review at the national level.³¹

[*].

Adequacy and Timeliness of the PROOF Scoring System

Overall, respondents did not raise timeliness issues or concerns when questioned about the PROOF scoring system, but mixed opinions were voiced regarding the system's adequacy. Some agree that the PROOF scoring system is aligned with the initiative's strategic priorities and that retained files are of national importance, while others believe that the current criteria are too restrictive. These individuals mentioned that other financial crimes (e.g., market intermediaries, hedge funds, private markets) should be taken into consideration when choosing cases and that this should be reflected in the PROOF criteria. This potential increase in scope generated concerns by other respondents who felt that broadening the PROOF scoring criteria could generate false expectations that IMETs would investigate any large financial crime file. Furthermore, if the criteria becomes less restrictive, both IMET managers and some regional staff believe that the number of IMET personnel will need to be increased accordingly in order to handle the resulting increase in workload.

Adequacy and Timeliness of Memoranda of Understanding (MoUs) and Other Agreements

Since the creation of the initiative, a series of MoUs and other agreements have been developed. Current agreements³² include:

- Prosecution protocols between DoJ and the prosecution authorities of BC, AB, ON have been put into writing while an agreement with the prosecution authority of QC has been reached in principle.
- Agreement between RCMP and the Forensic Audit and Accounting Branch (FAMG) of PWGSC signed by both parties in the spring of 2005.
- Agreement between RCMP and CRA that identifies the terms and conditions that bind both organizations.
- Agreement between RCMP and the Ontario Securities Commission for secondments to the IMET unit.
- Agreement between RCMP and the London City Police for secondments to the IMET unit.
- Information Sharing Agreement between RCMP and the Securities Exchange Commission (US). This agreement defines how information will be exchanged when both organizations are conducting parallel investigations on the same case.

³¹ RCMP Integrated Market Enforcement Accountability Framework, for period April 1, 2005 to June 30, 2005.

³² In the following section, the term agreement will include all types of arrangements, including: Memoranda of Understanding (MoUs), Assignment Agreements, Terms of Reference and Information Sharing Agreements.

Knowing that agreements between the Department of Justice and the four key provinces are complete, both interviewees and focus group participants agree that there is a need to negotiate agreements with all provinces that do not have a prosecution protocol in place. These additional agreements are expected to facilitate decision-making in other jurisdictions when a Quick Start investigation is launched.

At this time, agreements for employee exchanges between the RCMP and regulatory bodies have been established. However, a handful of interviewees mentioned that formal agreements should be prepared and signed by both entities. They believe that these agreements should include the following elements:

- roles and responsibilities;
- the nature and level of cooperation and integration;
- how information will be exchanged; and,
- how provincial privacy laws will be addressed.

RECOMMENDATIONS

A more thorough analysis of the use of production orders should be undertaken as part of the summative evaluation of the IMET initiative.

The International Liaison coordinators at the DoJ and RCMP HQ should work together to thoroughly educate IMET units on the procedure to submit and process a MLAT request.

The RCMP should undertake an assessment of the nature and extent of backlogs that currently exist in the MCMS in order to implement solutions to ensure they do not impede the progress of investigations.

5.3 Appropriateness of the IMET Governance Structure

Background

The findings presented in this section assess the effectiveness of the IMET governance structure. The IMET governance structure consists of an Executive Council (EC) and Joint Consultative Groups (JCGs). Although not part of the formal governance structure, an Interdepartmental Working Group (IWG) has also been established to support the EC. The findings in this section are based on interviews and document review and to a lesser extent on focus group findings. Frequently, interviewees most directly involved with a given aspect of the governance structure commented on that piece. For example, with regard to the Executive Council, interviews with members of the Executive Council and members of the Interdepartmental Working Group constituted the primary source of information in addition to the review of the Terms of Reference and the meeting minutes.

CONCLUSIONS

Overall, the elements of the governance structure were assessed as functioning well, and were sufficiently streamlined and clear.

Issues raised with regard to possible improvements were focused on optimizing the Executive Council and Interdepartmental Working Group to further the initiative. Joint Consultative Groups were seen as useful, timely, inclusive and effective.

Findings

5.3.1 Executive Council (EC)

Role

The Executive Council's role is to provide leadership and guidance to the initiative as a whole. According to the draft Terms of Reference, the Council is to provide "national coordination and strategic direction with regard to the initiative".³³ Interviewees at the EC indicated that the role of the EC is to ensure that the mandate of the initiative is being respected and that accountability is demonstrated through regular reporting. A second aspect of the EC's role is to "provide a forum to network with stakeholder and non-partners, including securities industry representatives and provincial officials".³⁴ Representatives of external partners, who commented on their participation in the Executive Council meeting in April 2005, suggested that it was a 'best practice' and a valuable opportunity to strengthen joint organizational interests and objectives.

Membership and Attendance

Chaired by PSEPC, membership on the Council consists of senior level representatives (i.e. Assistant Deputy Ministers) from DoJ, Finance Canada, PSEPC and the RCMP. There was widespread agreement among EC and IWG interviewees that the appropriate organizations are represented at the EC. As well, interviewees suggested that the membership is at an adequate level, enabling timely decision-making and furthering the initiative at a strategic level.

Frequency of Meetings

The draft Terms of Reference indicate that the Council is to meet at least every six months, although this has since been changed to twice per year. Since implementation of the initiative and up to October 31, 2005, the Executive Council has met a total of three times.³⁵ Two of these meetings were within five weeks of each other to facilitate a meeting with representatives of the Securities Commissions. Interviewees from both the EC and IWG indicated that there are sufficient issues to be discussed to warrant more frequent meetings. Suggestions ranged from the status quo (i.e., meeting every six

³³ Terms of Reference: Integrated Market Enforcement Teams, Executive Council, Draft, June 2005

³⁴ Consulting and Audit Canada, Risk-based Audit and Results-based Management Accountability Framework for "A Strategy for Enhanced Protection of Canadian Capital Markets", March 2004, p.10.

³⁵ Based on Executive Council Meeting minutes, meetings were held on: April 20, 2004; March 16, 2005 and April 22, 2005.

months) to meeting four times a year. As well, it was suggested that these meetings should occur in the regions. Some interviewees suggested that EC meetings are slow in being scheduled. A comparison of planned versus actual meetings based on meeting minutes confirms slippage in the timeline for EC meetings.³⁶

Appropriateness of Content

Interviewees from most of the participating departments particularly at the EC level felt that these meetings provide valuable opportunities to discuss and examine real issues. However, currently, the meetings appear to be primarily used to provide information and present status reports on implementation issues. In addition, updates are provided separately by each member department/agency rather in an integrated fashion which would allow for a better understanding of the activities undertaken jointly by partner organizations. While the initiative is currently in the implementation phase, some EC interviewees felt that opportunities to discuss more strategic issues were not being pursued.

³⁶ At the April 20, 2004 meeting there was agreement to meet in September of 2004, however, the next EC meeting did not occur until March 2005. Similarly, at the March 2005 meeting, it was agreed to meet again in September of 2005. The next EC meeting is currently tentatively scheduled for December 2005.

Follow-up

In the view of the majority of partners at the EC and to a lesser extent at the IWG, follow-up on EC action items identified in EC meetings appears to be slow. Issues raised at the first EC meeting continue to be dealt with and have not yet been finalized. Some of these items are of a complex nature and less within the direct control of partner departments (i.e. funding challenges impacting DoJ); however, others are within the control of the partner departments (i.e. Terms of Reference for the EC).

RECOMMENDATIONS

The EC should continue the good practice of annual meetings with external partner organizations.

Federal partner departments should exploit the opportunity, during EC meetings, to engage in discussions of relevant issues and strategies to further the intent of the initiative.

As chairperson of the EC and IWG, PSEPC should ensure that the frequency of meetings is in line with the stated intent and meets the needs of partner departments.

5.3.2 Interdepartmental Working Group (IWG)

Composition

While not originally included in the planned governance structure of the IMET initiative, the IWG was created to support the Executive Council by preparing meeting agendas and materials and following-up on decisions made at the Executive Council level.

Members of the Executive Council assessed the IWG as a useful mechanism in bringing items to the attention of the EC. IWG members expressed that meetings present valuable opportunities to obtain partner perspectives and engage in the collaborative pursuit of common goals. That said, some members suggested that the IWG could be optimized through the development of a more formalized approach.

RECOMMENDATION

The IWG should consider formalizing its activities in order to fully optimize its role in supporting the Executive Council.

5.3.3 Joint Consultative Groups (JCGs)

Structure

The IMET units (with the exception of the Quick Start) are coordinated at the operational level by a Joint Consultative Group³⁷ in each of the four cities.

Role

The role of the JCGs in the four IMET units is to provide advice and guidance with respect to case selection and issues surrounding investigations and prosecutions. The JCGs also provide input into regularly-produced summary reports for the EC.³⁸ As the name for these groups suggest, the emphasis is on providing advice—not on managing the local IMETs. Decision-making on aspects such as which cases are to be elevated to project-status reside with the RCMP. Based on interviews and focus groups, this distinction of advising rather than managing, is still evolving but appears to be increasingly clear.

Functioning

Overall, the JCGs were assessed as functioning well, being well structured and serving their intended purpose. Most RCMP interviewees identified the JCG as the manifestation of the collaborative model of the IMETs, facilitating the development of good working relationships with DoJ and external partners, and functioning as an open forum for productive and focused discussion. A number of interviewees identified the JCG as a valuable vehicle in screening potential files and ensuring that these files meet the IMET mandate. However, some interviewees identified the primary activity at the JCG to be an information sharing session where the RCMP updates its partners on the work being done. The exception to this general assessment is in Quebec. The JCG in Montreal is seen as existing in name only, not yet having been able to establish the necessary relationships with partners.

Interviewees in Toronto, Calgary and Vancouver pointed out that there are other fora in these cities that overlap in membership and aspects of the JCG mandate, such as the Securities Enforcement Review Committee (SERC) in Toronto. Similar enforcement committees led by the Securities Commissions exist in the other locales as well. Comments ranged from emphasizing the importance of IMETs linking to these other fora to discussing overlap of the JCG with these enforcement committees. In some cases such as the SERC, overlap has been resolved by adding the JCG as a standing agenda item for that Committee.

³⁷ The Joint Consultative Groups were previously referred to as the Joint Management Teams.

³⁸ Consulting and Audit Canada, Risk-based Audit and Results-based Management Accountability Framework for "A Strategy for Enhanced Protection of Canadian Capital Markets", March 2004, p.10.

Membership and Attendance

Membership on the JCGs consists of the IMET OICs and occasional RCMP HQ representation; a representative from the DoJ and one representative per organization that has provided an IMET resource (e.g. Security Commissions, Investment Dealers Association). Many interviewees including external partners confirmed having attended and participated in the JCGs across the different cities.

There have been concerns voiced by almost all legal advisors with respect to the appropriateness of their participation in the JCGs. These individuals feel their participation may compromise their independence—blurring the line between the investigation and advisory roles. Conversely, others have suggested the addition of members to the JCG, even though they have not provided a resource to the teams (e.g., participation from the Autorité des marchés in Montreal, a representative from the provincial Crown in Vancouver).

RECOMMENDATION

The IWG should review the participation of certain individuals and groups in the JCG and provide recommendations to the EC, as required.

6. SUCCESS TO DATE

Background

The logic model developed for the IMET initiative identifies the immediate outcome of the IMET initiative to be improved detection and targeting of major fraud cases. In the intermediate term, the expected outcomes are: improved investigations and prosecutions; deterrence to serious market fraud; and reduced occurrence of serious market fraud. These efforts are expected to contribute to the ultimate outcome: Canadians' and investors' increased confidence in the integrity of Canada's capital markets.

For the purposes of this formative evaluation, success is being assessed against the immediate and intermediate outcomes, to the extent possible.

Limitations

It is important to note that this formative evaluation is being conducted in the early stages of the development of the IMET initiative. As of October 31, 2005, no charges had been laid in project-status investigations undertaken by the IMETs. Without charges having been laid, there have been no activities undertaken with respect to disclosure or prosecution, which would provide input into the assessment of early successes in these two areas.

As a result of these limitations, only the following outcome measures have been assessed as part of this evaluation:

1. Improved detection and targeting of major fraud cases
2. Improved investigations
3. Deterrence to serious market fraud

6.1 Improved detection and targeting of major fraud cases

Background

Improved detection and targeting of serious market fraud cases, according to the program logic, is expected to allow investigative resources to be focused on the most serious cases. The team approach and expertise brought to bear through the IMET approach would in turn result in improved investigations as manifested by shortened investigation time, better evidence to support prosecution, and improved disclosure.

In order to provide an in-depth analysis of the level of improvement in investigations, the evaluation team sought to undertake a more detailed comparative analysis of cases conducted both prior to and subsequent to the establishment of the IMET initiative. It was hoped that this analysis would provide an indication of improvements or challenges with various specific aspects of the investigative process (e.g. [*], collection of evidence, provision of legal advice). However, given the current status of IMET project-

status cases and the need to ensure that disclosure of information does not compromise the on-going criminal investigations, a decision was made to postpone this analysis to the summative evaluation. For the purposes of this formative evaluation, efforts have been made to provide information on the achievement of early successes, where possible.

CONCLUSIONS

While it is early in the implementation of the IMET initiative, there are indications that the cases targeted for investigations are those that meet the mandate of the organization. The PROOF criteria, although currently under debate, have contributed to ensuring the right choices are made with respect to investigations.

To date, about one-third of the substantive leads pursued by the IMETs (those which resulted in an investigative action) were generated either through the JCG or were self-generated. Based on this limited information, there is some indication that detection has improved somewhat, although it is not clear to what extent these leads would not have been uncovered had the IMETs not been in existence.

Findings

Detection

Detection of serious market fraud within the Canadian capital markets is a shared responsibility. There is no single entity that has been identified as the lead in undertaking detection activities. This is evidenced through the vast array of referral points used to identify potential cases.

Referrals into the IMETs are being tracked by the RCMP. As of March 31, 2005, a total of 84 leads had been referred to the IMET initiative that warranted some form of investigative action. Of these, just over one-third had been generated internally (either by the IMETs themselves or through the JCG), while just over another third were generated by the public and the remainder were from other law enforcement or regulatory bodies.

Year	Number
2003	N/A
2004	59
2005	25

Origin	Number
Joint Intelligence Units	0
Self Generated	15
Joint Consultative Group	15
CCS	8
Public	33
Other Police Forces/ Regulators	13
TOTAL	84

Targeting

Targeting of serious capital market fraud cases is facilitated by the use of the PROOF criteria. The criteria developed specifically for the IMET initiative are weighted in such a way as to ensure that those cases that better meet the mandate of the initiative are investigated.

Stakeholders interviewed felt that the PROOF criteria are a useful tool to assess cases. Those most closely involved in the process, however, did caution that the PROOF criteria are but one factor in selecting cases for review. This is particularly important with respect to the choice of investigations for project-status. Interviewees explained that, given regional differences and priorities, a case with a certain PROOF score may be rejected in one jurisdiction but accepted in another. As a result, there is no established minimum score below which cases are rejected for investigation. That being said, PROOF scores remain a useful indicator of the degree to which cases chosen for investigation adhere to the mandate of the IMET initiative.

A review of scores attributed to project-status investigations³⁹ and interviews with stakeholders revealed that the cases chosen for project-status investigations are considered to be appropriate. In addition to the PROOF score, the JCG provides input into the selection of cases. The final decision, however, rests with headquarters at the RCMP HQ and their experience and expertise is relied upon to ensure the cases chosen meet the mandate of the organization. Operational plans, briefing notes and budget estimates are used by the RCMP to further inform their decisions on case selection.

While the focus of the IMETs is on the investigation of serious capital market fraud cases, as mentioned above, other investigations have been undertaken since the beginning of the initiative. A review of the PROOF data revealed that the average score of these 35 investigations was lower than the average recorded for project-status investigations.

Of the 35 other investigations undertaken, half (17) were in Vancouver, while between 4 and 7 were undertaken in each of the other IMET units (see Table 11). Some

³⁹ Due to the confidential nature of the PROOF criteria, data is not presented in this report.

interviewees justified the time spent on these cases as being a critical component in moving along the learning curve for many investigators or as a means of creating a positive work environment through the achievement of “early wins”. That said, the focus of activities undertaken in the Vancouver IMET unit was identified as an issue early in the implementation and corrective actions were taken.

Location	Number of Investigations
Vancouver	17
Calgary	5
Toronto	7
Montreal	4

6.2 Improved Investigations

CONCLUSIONS

Improvements in investigations, as measured by increased timeliness and improved quality, are not supported by the evidence gathered to date. While IMET members feel the right conditions have now been established to allow for improvements to occur (see Section 5.1.2), they have not yet been translated into measurable results.

Since no project-status investigations have been concluded to date, it is not possible to determine whether the investigations have improved in terms of better evidence and improved disclosure.

Timeliness, as measured by a decrease in the overall length of investigations have not met the target of 12 months in six of the nine project-status cases. The other three have been underway for only less than 12 months; however, based on comments by interviewees, they are also not likely to meet the one year target.

Many interviewees believe the one year target was not realistic for these types of investigations. There was no consensus on a more appropriate target, although 18 months was mentioned by some as being more realistic. Using this timeline, three investigations have not met the target.

At a very basic level, project-status investigations should, at a minimum, be more timely than comparable major investigations undertaken prior to the IMET initiative. While no baseline has been identified, using a “typical case” as a proxy, the investigation of project-status cases should at a minimum be completed (charges laid or investigations closed) in less than four years (the length of time of the investigation into the Livent case, considered to be a good proxy).

Findings

Improved Timeliness

Based on the program logic, improved timeliness, as measured by shortened investigation time, was expected to be a key outcome of the establishment of the IMET initiative. A baseline was not established at the outset of the initiative; however, interviewees estimated that similar cases investigated in the past took several years. In the absence of an established baseline, a “typical” case can be used as a proxy measure. When asked, IMET investigators identified the Livent case, which is still before the courts, as a good example of an “IMET type” case. The length of this investigation was four years.

The goal established for an IMET investigation is one year from its start to the laying of charges. Several IMET investigators interviewed for this evaluation as well as some representatives of partner organizations cautioned that the one year timeline was very optimistic. Individuals who were most closely involved in the IMET initiative felt that it was generally understood within the initiative that the goal was to increase the timeliness of investigations and improve the quality. However, some cautioned that those not as familiar with the program may assume that the one year goal was an achievable target and may feel the IMET initiative was not achieving its purpose should it not be met on every investigation undertaken. Some mentioned a more realistic timeframe would be 18 months, barring any unforeseen delays.

To date, no IMET project-status investigations have been completed. Of the nine investigations, six have exceeded the target of one year, and three have exceeded the 18 month timeline.

Quality of the Investigations

The second main consideration with respect to improvements in investigations is related to quality issues, namely the collection of better evidence to support prosecution and improved disclosure.

It was expected that the extraordinary expenses associated with the gathering of evidence would be reduced by access to the contingency fund, which was designed to assist in defraying exceptional federal investigative expenses related to travel, disclosure, specialized contracts, technical and/or equipment expenses. To date, the RCMP has put forward a request for \$1.375 Million to cover extraordinary costs (mostly forensic accounting costs) for three projects underway in Toronto. The end result of having this fund in place can only be analyzed once the cases have been completed and an assessment is made regarding the potential for a successful prosecution.

In addition to the introduction of the contingency fund, another factor that was expected to contribute to improvements in the quality of investigations was the early involvement of dedicated legal advisors providing advice and guidance to IMET investigators and facilitating the necessary legal processes (e.g., preparation of search warrants [*] for

gathering evidence). While legal advisors are in place and have been providing services to the IMET investigators, it is too early to assess the results of their efforts.

6.3 Deterrence of serious market fraud

Background

According to the program logic⁴⁰, improved investigations and prosecutions are expected to have a general deterrence effect on potential market fraud. In addition, because less serious cases are not ignored but are pursued in other ways (e.g., by the various securities commissions or RCMP “knock and talk”⁴¹ activities) they are less likely to escalate. The deterrent effect of the initiative is also linked to improved investigations that result in more enforcement activity.

CONCLUSION

A first step towards general deterrence which can be measured at this point in time is increased awareness of the actions being taken through the IMET initiative. Interviewees for the most part believe that awareness has increased, although some limit the increased public awareness to those more closely involved with the initiative (e.g., Securities Commissions, associations). Activities that were public in nature were seen to have made the biggest contribution to awareness.

Findings

A successful IMET case can be defined as one which restores public confidence in Canada’s capital markets. Confidence can be gained by awareness of the IMET initiative, charges being laid, production orders or search warrants being obtained and executed, timely investigations, prosecutions, guilty pleas, and significant sentences. All of these factors have a deterrent effect on actual and potential capital market fraud offenders. That being said, there is also a feeling among some interviewees that a certain minimum number of successful prosecutions need to be realized in order to deem the IMET initiative to be a success. This assessment of the inclusion of convictions as a measure of success of the IMET initiative is not accepted by all partners (see Addendum below).

ADDENDUM: In assessing whether to prosecute a case, FPS counsel apply a two-fold test: 1) whether there is a reasonable prospect of conviction; and 2) whether it is in the public interest to prosecute. The role of the Prosecutor is not to win a case at all costs – his or her role is to present all relevant evidence before the Court once a decision to prosecute has been made. For this reason, the Department of Justice strongly opposes the inclusion of a conviction as a measure of the IMET program’s success.

⁴⁰ Consulting and Audit Canada, Risk-based Audit and Results-based Management Accountability Framework for “A Strategy for Enhanced Protection of Canadian Capital Markets”, March 2004, p.10.

⁴¹ “Knock and talk” activities are contacts (either in writing, by telephone or in person) made by the RCMP to impart information and extend an offer to individuals to discuss any issues that they feel are of importance.

In addition, there may be a number of factors that may affect whether a conviction is registered. For example, the complexity and relative rarity of these cases, the capacity within the court system to deal with these types of cases, and the strength of the defense must be taken into consideration. Given these factors, a conviction is in no way guaranteed.

At this point in time, awareness is a preliminary measure that could potentially lead to general deterrence. Interviewees felt that, overall, awareness has been raised with respect to the IMET initiative, although some limited this awareness to those most closely involved in the initiative (e.g., Securities Commission, associations). The two main factors mentioned as having an effect on deterrence include outreach activities (e.g., speeches by IMET OICs at conferences, “knock and talks”) and increased media attention on the issue of capital market fraud or on the progress of specific cases. The media attention resulting from the search warrant issued on the Bank of Nova Scotia and the very public display of the IMET’s presence on Bay Street (i.e., the “van”) was identified by almost half of all interviewees as having contributed to awareness of the IMET initiative.

RECOMMENDATIONS

PSEPC, in consultation with partner departments/agencies, should create the Terms of Reference for the implementation of the RMAF/RBAF, including the assignment of responsibility for data collection activities to the key partners (PSEPC, RCMP, DoJ, Department of Finance). This would include the development of a system to track the outcomes of prosecutions undertaken within either the provincial or federal jurisdictions, and regular collection of public opinion data on investor confidence in Canada’s capital markets⁴² in preparation for the summative evaluation.

The evaluation strategy developed for the IMET initiative calls for an analysis of case files in order to determine the degree to which improvements have been made in the investigative and legal processes undertaken to address cases of capital market fraud. There is a strong possibility that there will not be data available to conduct this type of analysis by the target date of December 31, 2007. Currently, all project-status investigations are on-going and no charges have been laid. It is probable that the investigative phase for at least some cases will be completed by the target date. However, in order to thoroughly evaluate the initiative, cases will also have had to progress through the court system. Based on other similar cases, this would appear to be an overly optimistic expectation. For example, the Livent Case, considered to be a good example of a pre-IMET major capital market fraud case, is expected to go to trial in 2007, approximately five years after charges were originally laid.

⁴² Issues of attribution of these results should be addressed during the summative evaluation. This may require a review of the underlying program theory to ensure the linkages between intermediate and ultimate outcomes remain valid and are supported by research.

As a result of these timelines, it would appear that sufficient data would not be available to undertake a comparative analysis of cases within the context of the summative evaluation.

It is, therefore, recommended that the summative evaluation of the IMET initiative be postponed to a later date in order to ensure that data is available to fully evaluate the initiative's impact on Canadian capital markets.

Appendix A: Evaluation Framework

Evaluation Question	Indicator	Data source / Collection Method	Timing / Frequency of Analysis	
			Formative 2004/05	Summative 2006/07
Evaluation Issue : Relevance				
Is there a continued need for the IMETs component in furthering the Strategy for Enhanced Protection of Canadian Capital Markets?	<ul style="list-style-type: none"> ▪ # leads/referrals received ▪ # of cases selected by investigation type 	<ul style="list-style-type: none"> ▪ Trend Analysis using MIS report data 		√
	<ul style="list-style-type: none"> ▪ # and nature of cases prosecuted (both with and without Justice Canada involvement) 	<ul style="list-style-type: none"> ▪ Justice Canada ICase Report review ▪ IMET officer testifying/review of RCMP case files 		√
	<ul style="list-style-type: none"> ▪ Stakeholders' perception of trend in # serious major fraud cases ▪ Majority of stakeholders perceive a continued need for IMET's 	<ul style="list-style-type: none"> ▪ Justice Canada ICase ▪ IMET officer testifying/review of RCMP case files ▪ Interviews with stakeholders (Business community; Regulatory partners; IMET staff; JMT and Executive Council) 		√
Is there a need to expand the IMETs and prosecutorial capacity? <ul style="list-style-type: none"> o Major capital market fraud cases exceed investigative and prosecutorial capacity 	Investigative capacity by location: <ul style="list-style-type: none"> ▪ # of IMETs ▪ Analysis of trends of # and type of leads processed, investigations conducted, charges laid ▪ Analysis of trends of # hrs dedicated to investigation, intelligence & communication ▪ allocated vs actual expenditures ▪ # and type of resources ▪ Perception of stakeholder need for additional units or additional capacity 	<ul style="list-style-type: none"> ▪ Trend Analysis using MIS report data ▪ IMET case files ▪ RCMP Financial records ▪ Workload analysis by IMET location ▪ Interviews with IMET managers and investigators; JMT and partners (Law Enforcement; Regulatory). 	√	√
	Prosecutorial capacity: <ul style="list-style-type: none"> ▪ # and nature of prosecutions ▪ Pre-trial delays ▪ # and type of resources ▪ Perception of stakeholder need for additional units and additional capacity 	<ul style="list-style-type: none"> ▪ Trend analysis using Justice Canada ICase Review ▪ Justice Canada Financial records ▪ Review of RCMP case files ▪ Interviews with prosecutors; IMET investigators 	√	√
To what extent do the objectives of the IMETs component continue to be relevant (<i>i.e.</i> deter major capital market fraud; maintain/ strengthen integrity of Cdn capital markets)	<ul style="list-style-type: none"> ▪ Stakeholders perceive that IMETs objectives continue to be relevant 	<ul style="list-style-type: none"> ▪ Interviews with stakeholders (JMTs; Executive Council; Department of Finance; Regulatory partners; Business community) 		√

Evaluation Question	Indicator	Data source / Collection Method	Timing / Frequency of Analysis	
			Formative 2004/05	Summative 2006/07
Is the IMET component carrying out the right services/activities in the way they were intended?	Right services/activities are delivered: <ul style="list-style-type: none"> # [*] /intelligence reports produced # cases referred # cases selected for investigation # "knock and talks" # of cases where investigations are completed # of national evidence gathering applications # of international evidence gathering applications 	<ul style="list-style-type: none"> MIS report review PROOF reports IMET documentation Justice Canada – IAG for MLAT requests 	√	
	<ul style="list-style-type: none"> # and type of charges laid # and nature of cases prosecuted with Justice Canada involvement # and nature of cases prosecuted without Justice Canada involvement 	<ul style="list-style-type: none"> Justice Canada ICase report review IMET officer testifying/review of RCMP case files 	(√)	√
	Timeliness of services/activities: <ul style="list-style-type: none"> Turnaround time [*] Turnaround time for evidence gathering applications Shortened investigation time Pre-trial delays 	<ul style="list-style-type: none"> IMET [*] /intelligence report review Justice Canada– IAG for MLAT Case study using IMET files Review of RCMP case files 	√	√
	Quality of services/activities <ul style="list-style-type: none"> Relevancy of [*] /intelligence reports PROOF rating for cases referred out PROOF rating of cases selected for investigated (by type, by location) # of leads/cases referred out to stakeholders that result in active investigation 	<ul style="list-style-type: none"> IMET [*] /intelligence report review PROOF reports Interview with partners to whom cases have been referred; and IMET managers 	√	√

Evaluation Question	Indicator	Data source / Collection Method	Timing / Frequency of Analysis	
			Formative 2004/05	Summative 2006/07
	Level of cooperation between IMETs and stakeholders as indicated by: <ul style="list-style-type: none"> ▪ # & nature of secondments ▪ mix of contributing organizations ▪ # and type of mechanisms in place to support cooperation (MOUs, secondment agreements, etc) ▪ Team approach is perceived to add value (enhanced expertise, more thorough assessment, etc) ▪ Extent to which each IMET investigations reflect national objectives and priorities of the strategy 	<ul style="list-style-type: none"> ▪ IMET documentation review ▪ Interviews with IMET managers and staff and contributing organizations ▪ Interviews with the Director of National IMET Program, JMT and Executive Council 	√	√
Are the IMETs managed efficiently and effectively? What, if any, changes are necessary?	Adequate number and mix of resources are in place (by location) <ul style="list-style-type: none"> ▪ # and nature of resources and secondments ▪ Allocated vs actual expenditure by O&M, Salary, start up costs ▪ Knowledge, skills & experience of resources ▪ # of times the contingency fund was accessed; by whom; for what purpose; for amount of money ▪ sufficiency of the funds and the related controls in place 	<ul style="list-style-type: none"> ▪ Review IMET records ▪ Interviews with IMET managers ▪ RCMP and Justice Canada financial records ▪ Re: Funds: justification and approval decision records (RCMP & Justice Canada) 	√	√
	Resources are used appropriately <ul style="list-style-type: none"> ▪ Hrs dedicated to investigation, intelligence & communication in relation to total available hours/year (1189) ▪ # of hrs dedicated to 'knock and talk' ▪ Resources are dedicated to the highest priorities (by location), i.e. 80% of time spent on the top 20% of cases 	<ul style="list-style-type: none"> ▪ MIS Report review 	√	√
	Availability of experienced prosecution teams to respond to serious market fraud cases <ul style="list-style-type: none"> ▪ Adequate number of dedicated prosecutors ▪ Experience with similar cases ▪ Identified early in the process (prior to prosecution) ▪ # of times the contingency and reserve funds were accessed; by whom; for what purpose; for amount of money 	<ul style="list-style-type: none"> ▪ Interviews with IMET managers; prosecutors ▪ Review of financial records; justification and approval decision records (RCMP & Justice Canada) 	√	√

Evaluation Question	Indicator	Data source / Collection Method	Timing / Frequency of Analysis	
			Formative 2004/05	Summative 2006/07
	Adequacy of investigative tools <ul style="list-style-type: none"> ▪ Stakeholder perceive PROOF criteria to be appropriate, i.e. cases are filtered appropriately ▪ Use of investigative tools, i.e. # of production orders; wire taps; MLATs etc. 	<ul style="list-style-type: none"> ▪ Interviews with Executive Council, JMT, IMET managers/staff, Director of National IMET Program ▪ IMET documentation and MIS report review and trend analysis ▪ Justice Canada– IAG for MLAT requests files and report review 	√	
	Adequacy of legislative tools <ul style="list-style-type: none"> ▪ concurrent jurisdiction established ▪ # prosecution protocols ▪ # MOUs with provinces ▪ Stakeholder perception that tools are being used and are working as they should 	<ul style="list-style-type: none"> ▪ Interviews with Justice Canada - FPS; Criminal Law Policy; prosecutors ▪ Review of prosecution protocols 	√	
	<ul style="list-style-type: none"> ▪ RMAF/RBAF is implemented and used in partner departments 	<ul style="list-style-type: none"> ▪ Document review ▪ Interviews with IMET managers; JMT and Executive Council members 	√	
Does the governance structure work as intended?	<ul style="list-style-type: none"> ▪ Executive Council provides adequate, timely guidance and decisions to JMT, Director of IMETs and IMETs as demonstrated by <ul style="list-style-type: none"> ▪ Nature of issues on the agenda ▪ Involvement in strategic issues vs operational issues ▪ Nature of decisions made ▪ Timeliness of decisions ▪ Networking as shown by: invitees to meetings; events attended by Executive Council members (e.g. Chamber of Commerce meetings); speaking engagements ▪ JMT and IMET members perceive that they have sufficient direction from Executive Council to proceed 	<ul style="list-style-type: none"> ▪ Review of JMT and Executive Council minutes, events agendas, etc ▪ Interviews with JMT members and IMETs manager 	√	
	<ul style="list-style-type: none"> ▪ JMTs provide adequate, timely guidance and decisions to IMETs on operational issues including: <ul style="list-style-type: none"> ▪ case selection ▪ investigations ▪ prosecutions ▪ IMET members and OIC of IMETs perceive that they have sufficient direction from JMTs 	<ul style="list-style-type: none"> ▪ Review of JMT and Executive Council minutes ▪ Interviews with IMET members and Director of National IMETs Program 	√	

Evaluation Question	Indicator	Data source / Collection Method	Timing / Frequency of Analysis	
			Formative 2004/05	Summative 2006/07
	<ul style="list-style-type: none"> Governance bodies (JMT and Executive Council) are well supported, receive appropriate performance information and regular reports identifying trends and issues 	<ul style="list-style-type: none"> Interviews with JMT and Executive Council Members Review of the Director of National IMET Programs reports to Executive Council and JMTs 	√	
Evaluation Issue : Success				
Is the corporate community more aware of IMETs efforts to enforce and prosecute serious capital market fraud?	<ul style="list-style-type: none"> Stakeholders perceive a higher risk of detection of serious market fraud Perception of stakeholders that increasing number of senior level people in the corporate community are aware of IMETs 	<ul style="list-style-type: none"> Interview with Regulators; Associations, Securities Commissions 	√	√
Have investigations improved?	Improved timeliness as indicated by analysis of: <ul style="list-style-type: none"> Shortened investigation time % of cases investigated in one year Timeliness of disclosure at time of charge 	<ul style="list-style-type: none"> Trend analysis using MIS reporting data Review of IMET case files 	√	√
	Improved quality as indicated by: <ul style="list-style-type: none"> Selection of serious market fraud cases has improved over time. (Number and type of serious market fraud cases detected over time) Improved organization, comprehension and accessibility of disclosure material Ratio of leads/investigations conducted/charges laid 	<ul style="list-style-type: none"> Review of IMET cases selected against PROOF criteria MIS report review Interviews with prosecutors 	√	√
	<ul style="list-style-type: none"> Prosecutors perceive court briefs to be better prepared Investigators perceive legal advice to be of value added to the investigation 	<ul style="list-style-type: none"> Interviews with prosecutors, IMET members 	√	√
	<ul style="list-style-type: none"> Strengthened admissibility of the evidence 	<ul style="list-style-type: none"> Review of IMET case files Interview with prosecutors 	√	√
Have prosecutions improved?	% cases in which court disposition is obtained.	<ul style="list-style-type: none"> ICase (where FPS prosecutor is involved pursuant to a protocol to be developed) Review of RCMP case files (for exclusively provincial/foreign prosecutions) 		√
	% cases where no charges are prosecuted. (charges withdrawn, stayed)	<ul style="list-style-type: none"> ICase (where FPS prosecutor is involved pursuant to a protocol to be developed) Review of RCMP case files (for exclusively provincial/foreign prosecutions) 		√
	Trend in disposition (guilty pleas, convictions)	<ul style="list-style-type: none"> ICase (where FPS prosecutor is involved pursuant to a protocol to be developed) Review of RCMP case files (for exclusively provincial/foreign prosecutions) 		√
	Pre trial delays (Time of Court brief presented to Crown to first court appearance)	<ul style="list-style-type: none"> Review of RCMP case file 	(√)	√

Evaluation Question	Indicator	Data source / Collection Method	Timing / Frequency of Analysis	
			Formative 2004/05	Summative 2006/07
	<ul style="list-style-type: none"> Federal and provincial prosecutors agree that there is value added through cooperation and dedicated teams 	<ul style="list-style-type: none"> Interviews with prosecutors 	(√)	√
Has the IMETs component increased deterrence of serious market fraud?	<ul style="list-style-type: none"> Stakeholders perceive that unlawful activity in capital markets is detected, investigated, prosecuted and results in consequences 	<ul style="list-style-type: none"> Interview with Business Community, Regulatory Bodies, IMET officers, prosecutors 		√
	<ul style="list-style-type: none"> Penalties imposed (jail time; fines) Penalties in relation to charges 	<ul style="list-style-type: none"> MIS report review Review a sample of IMET cases that have been prosecuted 		√
To what extent does the IMETs component reduce occurrences of serious markets fraud?	<ul style="list-style-type: none"> Stakeholder perception of trend in # serious market fraud cases 	<ul style="list-style-type: none"> Interview with Business Community, Regulatory Bodies, IMET officers, prosecutors 		√
	<ul style="list-style-type: none"> Trends of leads and active investigations 	<ul style="list-style-type: none"> Trend analysis using MIS report data Trend analysis using ICase and MIS 		√
Does the IMETs component contribute to Canadians and investors having confidence in the integrity of Canada's capital markets?	Investor Confidence survey: <ul style="list-style-type: none"> % of Canadians who perceive that the market institutions function as intended % of Canadians who do not perceive fraud as a deterrent to investment 	<ul style="list-style-type: none"> Omnibus polling of Canadians 		√
	<ul style="list-style-type: none"> Stakeholders perceives that there are consequences to fraudulent behaviors Stakeholders perceive that corporate governance transparency has increased 	<ul style="list-style-type: none"> Interviews business community, Regulators, Associations and Government Agencies 		√
	<ul style="list-style-type: none"> Proportion of capitalization value⁴³ of companies under investigation by IMET compared to overall Canadian market 	<ul style="list-style-type: none"> Review of stockmarket data 		√

⁴³ Share value at the moment the investigation started

Evaluation Question	Indicator	Data source / Collection Method	Timing / Frequency of Analysis	
			Formative 2004/05	Summative 2006/07
	<ul style="list-style-type: none"> ▪ Investors' confidence survey (the following are examples of survey questions that may provide trend information on investor confidence): <ul style="list-style-type: none"> – % of Canadians' who agree/disagree with the statement: "I have lost confidence in the stock market and would rather put my money into other things such as real estate or gold"; – % of Canadians who own stocks in any publicly traded companies, either through a mutual fund, RRSPs or directly; – % of Canadians who intend to invest in stocks or mutual funds over the next six month; and intended level of investments; – Canadians' perception on interest rate trend in the future; – Canadians' rating of economic growth; unemployment; performance of the stock markets and inflation over the next twelve months. 	Public opinion surveys: <ul style="list-style-type: none"> ▪ Ipsos-Reid Investor Confidence Index ▪ Compas Investor Confidence Index (www.compas.com) ▪ Monthly UBS/Gallup Index of Investor Optimism survey (www.ubs.com/investoroptimism) ▪ Semi-annually Yale Schools of Management Stock Market Confidence Indexes (www.icf.com.yale.edu). 		√
Evaluation Issue: Alternative				
Are there more effective ways of achieving the initiative objectives (cost, design, impact)	<ul style="list-style-type: none"> • Stakeholders perceive IMETs as the most appropriate intervention • Comparison with other jurisdictions does not yield a more effective approach 	<ul style="list-style-type: none"> • Stakeholder interviews • Literature Review • Interview other jurisdictions 		√

Appendix B: List of Documents Reviewed

RCMP Integrated Market Enforcement Accountability Framework, for period April 1, 2004 to January 31, 2005.

IMET, RCMP Implementation Report to Executive Council, March 16, 2005.

Risk-based Audit and Results-based Management and Accountability Framework, Consulting and Audit Canada, March 2004.

New Measures to Deter Capital Markets Fraud, Consolidated Qs & As (Solicitor General, RCMP, Finance, Justice, DRAFT 6, June 11/03

Integrated Market Enforcement Teams Initiative (IMETs), Status Report, Federal Prosecution Service, Department of Justice, March 16, 2005.

Terms of Reference, Integrated Market Enforcement Teams, Executive Council, Draft: May 2004.

Summary of April 20, 2004 Meeting, Executive Council, IMETs.

Record of Decisions, Executive Council, IMETs, April 22, 2005.

Gazette, Royal Canadian Mounted Police, Vol. 67, No. 2, 2005.

Federal & International Operations Directorate Organizational Chart, November 29, 2004.

[*].

Data Analysis - Allocated vs actual expenditures, RCMP, 2005.

Websites:

http://www.justice.gc.ca/en/news/nr/2004/doc_31150.html

http://www.justice.gc.ca/en/news/sp/2003/doc_30930.html

http://www.justice.gc.ca/en/news/nr/2004/doc_31224.html

http://www.rcmp-grc.gc.ca/news/2003/n_0350_e.htm

http://www.rcmp.ca/fio/imets-faq_e.htm

http://www.rcmp-grc.gc.ca/news/2003/n_0351_e.htm#Integrated

<http://www.osc.gov.on.ca/About/AnnualRpt/2004/er.html>

http://www.psepc-sppcc.gc.ca/publications/news/20031128_e.asp

Appendix C: Data Collection Instruments

PSEPC – INTEGRATED MARKET ENFORCEMENT TEAMS (IMET) COMPONENT

Interview Guide for IMET Executive Council Members

The September 30, 2002 Speech from the Throne committed the government of Canada to bolster enforcement of serious corporate fraud. This was followed by the federal budget in February 2003, which pledged up to \$30 million per year for five years for a strategy to enhance protection of Canada's capital markets, which would include the creation of IMETs. The budget also announced planned legislative amendments to strengthen corporate fraud offences, evidence gathering, and sentencing, and to establish concurrent jurisdiction to prosecute fraud offences federally.

At this point, PSEPC is conducting a formative evaluation of the IMETs component and has engaged Consulting and Audit Canada to assess implementation, management and governance of the initiative including any requirements for change as well as the achievement of early results. The results of the evaluation will provide input into the full implementation decision for the IMETs component.

The formative evaluation includes interviews with a range of stakeholders as well as staff from the RCMP and Justice Canada at the national and regional levels. This interview guide helps to structure our conversation with you and we hope that you will find it useful in preparing for the interview.

DESIGN AND DELIVERY

1. What is the role of the Executive Council?
2. Is the governance structure working well, as intended? What improvements are needed?
3. Is the IMET component carrying out the right services/activities in the way they were originally intended?
4. Are the IMETs managed efficiently and effectively?

SUCCESS

5. Is the corporate community more aware of IMETs efforts to enforce and prosecute serious capital market fraud? What in your opinion may have contributed most to the awareness?
6. Have the IMETS achieved any of their intended results:
 - improved detection and targeting of major capital crime cases

- improved investigations
- improved prosecutions
- deterrence to serious market fraud

RELEVANCE

7. Is there a need to expand the IMETs and the prosecutorial capacity? How?
8. Based on your experience, what do you see as the key priorities for the IMETs in the short, medium and longer-term?

CONCLUSION

9. Is there anything else that you would like to add in the context of this evaluation?

**PSEPC – INTEGRATED MARKET ENFORCEMENT TEAMS (IMET)
COMPONENT
Interview Guide for IWG members**

The September 30, 2002 Speech from the Throne committed the government of Canada to bolster enforcement of serious corporate fraud. This was followed by the federal budget in February 2003, which pledged up to \$30 million per year for five years for a strategy to enhance protection of Canada's capital markets, which would include the creation of IMETs. The budget also announced planned legislative amendments to strengthen corporate fraud offences, evidence gathering, and sentencing, and to establish concurrent jurisdiction to prosecute fraud offences federally.

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The formative evaluation includes interviews with a range of stakeholders as well as staff from the RCMP and Justice Canada at the national and regional levels. This interview guide helps to structure our conversation with you and we hope that you will find it useful in preparing for the interview.

DESIGN AND DELIVERY

1. What is the role of the IMET IWG?
2. Is the governance structure working well, as intended? What improvements are needed?
3. Is the IMET component carrying out the right services/activities in the way they were originally intended?
4. How do the IMET investigations support the objectives of your organization?
5. Are the IMETs managed efficiently and effectively?
 - tools are appropriate (i.e. production orders, *l * J*, MLATs, etc.)
 - PROOF criteria are appropriate (i.e. cases are filtered appropriately)
 - IMET in your city is adequately resourced (financial and non-financial)
 - appropriate mechanisms are in place to support cooperation between IMETs and stakeholders (i.e. MoUs, secondment agreements, etc.)
 - experienced prosecution teams are available to respond to serious market fraud cases
6. To what extent has the RMAF/RBAF been implemented within your organization?

7. What works well in the IMETs and what could be improved in the IMETs?

SUCCESS

8. Is the corporate community more aware of IMETs efforts to enforce and prosecute serious capital market fraud? What in your opinion may have contributed most to the awareness?
9. Have the IMETs achieved any of their intended results:
- improved detection and targeting of major capital crime cases
 - improved investigations
 - improved prosecutions
 - deterrence to serious market fraud
10. Based on your experience, are there any risks to achieving the objectives of the IMETs component?

RELEVANCE

11. Is there a need to expand the IMETs and prosecutorial capacity? If so, why and how?
12. Based on your experience, what do you see as the key priorities for the IMETs in the short, medium and longer-term?

CONCLUSION

13. Is there anything else that you would like to add in the context of this evaluation?

**PSEPC – INTEGRATED MARKET ENFORCEMENT TEAMS (IMET)
COMPONENT
Interview Guide for JCG Members**

The September 30, 2002 Speech from the Throne committed the government of Canada to bolster enforcement of serious corporate fraud. This was followed by the federal budget in February 2003, which pledged up to \$30 million per year for five years for a strategy to enhance protection of Canada's capital markets, which would include the creation of IMETs. The budget also announced planned legislative amendments to strengthen corporate fraud offences, evidence gathering, and sentencing, and to establish concurrent jurisdiction to prosecute fraud offences federally.

At this point, PSEPC is conducting a formative evaluation of the IMETs component and has engaged Consulting and Audit Canada to assess implementation, management and governance of the initiative including any requirements for change as well as the achievement of early results. The results of the evaluation will provide input into the full implementation decision for the IMETs component.

The formative evaluation includes interviews with a range of stakeholders as well as staff from the RCMP and Justice Canada at the national and regional levels. This interview guide helps to structure our conversation with you and we hope that you will find it useful in preparing for the interview.

DESIGN AND DELIVERY

1. What is the role of the JCG? What kind of advice does the JCG provide and how often?
2. Is the governance structure working well, as intended? What improvements are needed?
3. Is the IMET component carrying out the right services/activities in the way they were originally intended?
4. Are the IMETs managed efficiently and effectively?
 - tools are appropriate (i.e. production orders, [*], MLATs, etc.)
 - PROOF criteria are appropriate (i.e. cases are filtered appropriately)
 - IMET in your city is adequately resourced (financial and non-financial)
 - experienced prosecution teams are available to respond to serious market fraud cases

SUCCESS

5. Is the corporate community more aware of IMETs efforts to enforce and prosecute serious capital market fraud? What in your opinion may have contributed most to the awareness?
6. Have the IMETs achieved any of their intended results:
 - improved detection and targeting of major capital crime cases
 - improved investigations
 - improved prosecutions
 - deterrence to serious market fraud
7. Based on your experience, are there any risks to achieving the objectives of the IMETs component?

RELEVANCE

8. In your view, is there a need to expand the IMETs and prosecutorial capacity? If so, why and how?
9. Based on your experience, what do you see as the key priorities for the IMETs in the short, medium and longer-term?

CONCLUSION

10. Is there anything else that you would like to add in the context of this evaluation?

**PSEPC – INTEGRATED MARKET ENFORCEMENT TEAMS (IMET)
COMPONENT
Interview Guide for Legal Advisors**

The September 30, 2002 Speech from the Throne committed the government of Canada to bolster enforcement of serious corporate fraud. This was followed by the federal budget in February 2003, which pledged up to \$30 million per year for five years for a strategy to enhance protection of Canada's capital markets, which would include the creation of IMETs. The budget also announced planned legislative amendments to strengthen corporate fraud offences, evidence gathering, and sentencing, and to establish concurrent jurisdiction to prosecute fraud offences federally.

At this point, PSEPC is conducting a formative evaluation of the IMETs component and has engaged Consulting and Audit Canada to assess implementation, management and governance of the initiative including any requirements for change as well as the achievement of early results. The results of the evaluation will provide input into the full implementation decision for the IMETs component.

The formative evaluation includes interviews with a range of stakeholders as well as staff from the RCMP and Justice Canada at the national and regional levels. This interview guide helps to structure our conversation with you and we hope that you will find it useful in preparing for the interview.

BACKGROUND

1. What is your role?
2. How long have you been involved with the IMETs?

DESIGN AND DELIVERY

11. In general, do you consider that the IMET component is carrying out the right services/activities in the way they were originally intended?
12. Does the governance structure works as intended and is the governance structure appropriate in supporting the IMETs component?
13. Are the IMETs managed efficiently and effectively?
 - tools are appropriate (i.e. production orders, [*], MLATs, etc.)
 - PROOF criteria are appropriate (i.e. cases are filtered appropriately)
 - IMET in your city is adequately resourced (financial and non-financial)
 - appropriate mechanisms are in place to support cooperation between IMETs and stakeholders (i.e. MoUs, secondment agreements, etc.)
 - experienced prosecution teams are available to respond to serious market fraud cases

14. Do you believe that the team approach adds value? If so, how? (i.e. enhanced expertise, more thorough assessment, etc.)

15. What works well in the IMETs and what could be improved in the IMETs?

SUCCESS

16. Is the corporate community more aware of IMETs efforts to enforce and prosecute serious capital market fraud? What in your opinion may have contributed most to the awareness?

17. Have the IMETs achieved any of their intended results:

- improved detection and targeting of major capital crime cases
- improved investigations (material well organized; proper disclosure; strengthened admissibility of evidence; etc.)
- improved prosecutions
- deterrence to serious market fraud

18. Based on your experience, are there any risks to achieving the objectives of the IMETs component?

RELEVANCE

19. Is there a need to expand the IMETs and the prosecutorial capacity? If so, why and how?

20. Based on your experience, what do you see as the key priorities for the IMETs in the short, medium and longer-term?

CONCLUSION

21. Is there anything else that you would like to add in the context of this evaluation?

PSEPC – INTEGRATED MARKET ENFORCEMENT TEAMS (IMET) COMPONENT

Interview Guide for IMET Managers and IMET Director

The September 30, 2002 Speech from the Throne committed the government of Canada to bolster enforcement of serious corporate fraud. This was followed by the federal budget in February 2003, which pledged up to \$30 million per year for five years for a strategy to enhance protection of Canada's capital markets, which would include the creation of IMETs. The budget also announced planned legislative amendments to strengthen corporate fraud offences, evidence gathering, and sentencing, and to establish concurrent jurisdiction to prosecute fraud offences federally.

At this point, PSEPC is conducting a formative evaluation of the IMETs component and has engaged Consulting and Audit Canada to assess implementation, management and governance of the initiative including any requirements for change as well as the achievement of early results. The results of the evaluation will provide input into the full implementation decision for the IMETs component.

The formative evaluation includes interviews with a range of stakeholders as well as staff from the RCMP and Justice Canada at the national and regional levels. This interview guide helps to structure our conversation with you and we hope that you will find it useful in preparing for the interview.

DESIGN AND DELIVERY

1. What is the role of the IMET manager/director?
2. Is the governance structure working well, as intended? What improvements are needed?
3. Do you consider that you receive adequate, timely guidance and directions from the Director of IMETs/ the JMTs/ from the Executive Council? Can you please provide examples?
4. Is the IMET component carrying out the right services/activities in the way they were originally intended?
5. Based on your involvement, are there any issues with regard to the timeliness and/or quality of IMET services/activities? ([*]; evidence gathering applications; investigation times, [*]; etc.)
6. Are the IMETs managed efficiently and effectively?
 - tools are appropriate (i.e. production orders, [*], MLATs, etc.)
 - PROOF criteria are appropriate (i.e. cases are filtered appropriately)
 - IMET in your city is adequately resourced (financial and non-financial)

- appropriate mechanisms are in place to support cooperation between IMETs and stakeholders (i.e. MoUs, secondment agreements, etc.)
 - experienced prosecution teams are available to respond to serious market fraud cases
7. Do you believe that the team approach adds value? If so, how? (i.e. enhanced expertise, more thorough assessment, etc.)
 8. Did your team access the contingency fund? If so, for what purpose and for how much? Is the fund sufficient for your needs?
 9. To what extent has the RMAF/RBAF been implemented within your organization?
 10. What works well in the IMETs and what could be improved in the IMETs?

SUCCESS

11. Is the corporate community more aware of IMETs efforts to enforce and prosecute serious capital market fraud? What in your opinion may have contributed most to the awareness?
12. Have the IMETs achieved any of their intended results:
 - improved detection and targeting of major capital crime cases
 - improved investigations
 - improved prosecutions
 - deterrence to serious market fraud
13. Based on your experience, are there any risks to achieving the objectives of the IMETs component?

RELEVANCE

14. Is there a need to expand the IMETs and prosecutorial capacity? If so, why and how?
15. Based on your experience, what do you see as the key priorities for the IMETs in the short, medium and longer-term?

CONCLUSION

16. Is there anything else that you would like to add in the context of this evaluation?

**PSEPC – INTEGRATED MARKET ENFORCEMENT TEAMS (IMET)
COMPONENT
Interview Guide for Partners**

The September 30, 2002 Speech from the Throne committed the government of Canada to bolster enforcement of serious corporate fraud. This was followed by the federal budget in February 2003, which pledged up to \$30 million per year for five years for a strategy to enhance protection of Canada's capital markets, which would include the creation of IMETs. The budget also announced planned legislative amendments to strengthen corporate fraud offences, evidence gathering, and sentencing, and to establish concurrent jurisdiction to prosecute fraud offences federally.

At this point, PSEPC is conducting a formative evaluation of the IMETs component and has engaged Consulting and Audit Canada to assess implementation, management and governance of the initiative including any requirements for change as well as the achievement of early results. The results of the evaluation will provide input into the full implementation decision for the IMETs component.

The formative evaluation includes interviews with a range of stakeholders as well as staff from the RCMP and Justice Canada at the national and regional levels. This interview guide helps to structure our conversation with you and we hope that you will find it useful in preparing for the interview.

BACKGROUND

1. What is your role in the IMETs?

DESIGN AND DELIVERY

2. Is the IMET component carrying out the right services/activities in the way they were originally intended?
3. How do the IMET investigations support the objectives of your organization?
4. Are you aware of IMET cases referred to your organization? If so, were these referrals reasonable, appropriate? Did that referral result in an active investigation? Did that referral result in charges having been laid?
5. Has your organization referred cases to the IMETs? If so, were these referral handled in a timely, appropriate manner?
6. Are the IMETs managed efficiently and effectively?
 - tools are appropriate (i.e. production orders, [*], MLATs, etc.)
 - PROOF criteria are appropriate (i.e. cases are filtered appropriately)
 - IMET in your city is adequately resourced (financial and non-financial)

- appropriate mechanisms are in place to support cooperation between IMETs and stakeholders (i.e. MoUs, secondment agreements, etc.)
- experienced prosecution teams are available to respond to serious market fraud cases

7. What works well in the IMETs and what could be improved in the IMETs?

SUCCESS

8. Is the corporate community, and your organization in particular, more aware of IMETs efforts to enforce and prosecute serious capital market fraud? What in your opinion may have contributed most to the awareness?
9. Have the IMETs achieved any of their intended results:
- improved detection and targeting of major capital crime cases
 - improved investigations
 - improved prosecutions
 - deterrence to serious market fraud
10. Based on your experience, are there any risks to achieving the objectives of the IMETs component?

RELEVANCE

11. In your view, is there a need to expand the IMETs and prosecutorial capacity? If so, why and how?
12. Based on your experience, what do you see as the key priorities for the IMETs in the short, medium and longer-term?

CONCLUSION

13. Is there anything else that you would like to add in the context of this evaluation?

Appendix D: Recommendations

Recommendations	Management Response
4. Rationale	
4.1 Expanded Need	
IMET should proceed with ramp-up of the initiative from the current six teams to the nine teams as originally planned.	
IMET should re-assess the locations for the three additional teams to ensure compliance with the current IMET mandate and maximum impact on actual market place behaviour.	
IMET should assess the utility of establishing a permanent Quick Start team and identify whether this capacity should be centralized or decentralized.	
The DoJ should ensure that bilateral negotiations for prosecution agreements occur with provinces that are not currently covered by such arrangements.	
Now that prosecution protocols have been negotiated with the provinces where IMETs are located, the DoJ needs to plan for a ramp-up of experienced and qualified prosecution teams at the federal level to ensure their availability when required.	
The Department of Justice Canada, in consultation with partners, should review the Terms and Conditions for access to the reserve fund to provide enhanced assistance to defray extraordinary costs incurred in the provincial prosecution of IMET-generated cases.	
5. Design and Delivery	
5.1 Implementation of IMET Initiative	
Time spent on operations and other activities should continue to be monitored in order to assess the degree to which the teams continue to focus on mandated activities.	

5.2 Effective and Efficient Management of the IMETs	
The RCMP IMET HQ should review the current number and mix of resources in order to ensure that both HQ and operational requirements are met. In the case of HQ requirements, the focus should be on identifying and filling current needs, while in the case of operational requirements, the focus should be on ensuring the sustainability of the teams over time.	
The RCMP IMET HQ should validate the findings regarding the pool of available competent candidates for investigator positions by reviewing data pertaining to selection processes and the number of qualified candidates.	
The RCMP IMET HQ should conduct a training needs analysis and develop a national training strategy for the IMET initiative.	
The RCMP IMET HQ should validate impressions regarding the limited interest in the understudy program by monitoring the number of candidates that qualify and actually accept understudy positions.	
The RCMP IMET HQ should ensure that recently approved details surrounding the Internship Program are communicated.	
All partners should identify ways to provide legal advice and prosecutorial support to Quick Start teams within the initiative.	
The International Liaison coordinators at the Department of Justice and RCMP HQ should work together to thoroughly educate IMET units on the procedure to submit and process a MLAT request.	
The RCMP should undertake an assessment of the nature and extent of backlogs that currently exist in the MCMS in order to implement solutions to ensure they do not impede the progress of investigations.	
5.3 Appropriateness of Governance Structure	
Federal partner departments should exploit the opportunity to engage in discussions of relevant issues and strategies to further the intent of the initiative during Executive Council meetings.	
As chairperson of the EC and IWG, PSEPC should ensure that the	

frequency of meetings is in line with the stated intent and meets the needs of partner departments.	
The EC should continue the good practice of annual meetings with external partner organizations.	
The IWG should consider formalizing its activities in order to fully optimize its role in supporting the EC.	
The IWG should review the participation of certain individuals and groups in the JCG and provide recommendations to the EC, as required.	
6. Success	
6.1 Recommendations with Respect to the Summative Evaluation	
A more thorough analysis of the use of production orders should be undertaken as part of the summative evaluation of the IMET initiative.	
PSEPC, in consultation with partner departments/agencies, should create the Terms of Reference for the implementation of the RMAF/RBAF, including the assignment of responsibility for key data collection activities to the key partners (PSEPC, RCMP, DoJ, DoF). This would include the development of a system to track the outcomes of prosecutions undertaken within either the provincial or federal jurisdictions, and regular collection of public opinion data on investor confidence in Canada's capital markets.	
It is recommended that the summative evaluation of the IMET initiative be postponed to a later date in order to ensure that data is available to fully evaluate the initiative's impact on Canadian capital markets.	