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*A Safe and Resilient Canada*



**Final Report**

**2009-2010 Evaluation of the  
Integrated Market Enforcement Team Initiative**

**Evaluation Directorate  
Public Safety Canada**

**2010-05-28**

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## Executive Summary

The Integrated Market Enforcement Team (IMET) initiative involves the following federal departments and agencies: Department of Justice Canada; Finance Canada; Public Prosecution Service of Canada (PPSC); Public Safety Canada and the Royal Canadian Mounted Police (RCMP).

The purpose of IMET is to effectively enforce the law against serious criminal capital market fraud offences in Canada, and ultimately to contribute to improved Canadian and international investor confidence in the integrity of Canada's capital markets. IMET initiative activities include the prevention, investigation and prosecution of serious criminal capital market fraud offences.

IMET teams are groups of highly specialized investigators and subject matter experts responsible for capital market fraud investigations. IMET teams operate in Calgary, Montreal, Toronto and Vancouver. Each team is comprised of dedicated RCMP regular and civilian members, other police investigators, PPSC legal advisors, forensic accountants, subject matter experts and specialist technical support. In general, IMET prosecutions are conducted by Provincial Attorneys General offices, sometimes in conjunction with the PPSC.

IMET's governance body is an Executive Council comprised of representatives of the five federal partner organizations, co-chaired by Finance Canada and the RCMP. Total IMET funding for the fiscal years 2008-09 and 2009-10 was respectively \$38.75 million and \$40 million. Forecasted allocation for 2010-11 through 2012-13 is \$40 million per year. Part of the funding includes a \$2.25 million fund to assist provincial Attorneys General conduct prosecutions related to IMET investigations.

Public Safety Canada conducted the evaluation between November 2009 and March 2010 in consultation with the IMET Evaluation Advisory Group that included representatives of IMET personnel and of the evaluation units of the five federal IMET departments and agencies. This Evaluation was conducted in conformity with the Treasury Board's *Policy on Evaluation*. Its objective is to provide an evidence-based, neutral assessment of the relevance and performance of the IMET initiative.

Evaluation methodologies included the conduct of: a document review and analysis of IMET performance and other reports; interviews with IMET personnel, Attorneys General offices, Securities Commission personnel and others; focus groups with IMET team members in Vancouver, Calgary, Toronto and Montreal; and, completion of a questionnaire by IMET team members.

The evaluation found that:

1) *Concerning Relevance*

- there exists an ongoing need to prevent, investigate and prosecute serious capital market fraud in Canada, and doing so falls within the purview of federal government mandates and the missions and objectives of the five federal IMET partners. Also, there exist strong arguments for maintaining this function within the national police force given the current context and existing infrastructures;
- IMET appears to have reached a practical balance between its focus on cases of national significance while allowing for the pursuit of cases of regional significance as required so that it remains relevant in the regions.

2) *Concerning Performance – Effectiveness*

- This evaluation observes that IMET initiative has endured considerable criticism since 2003 for not producing expected results as quickly as had been predicted. However, following a slow start, IMET is now making progress. This report has documented a number of ongoing and concluded cases;
- IMET has also shown that through the commissioning of the report entitled *Enhanced Integrated Market Enforcement Teams, Achieving Results in Fighting Capital Markets Crime* by Nick Le Pan, Special Advisor to the RCMP Commissioner, and with the seriousness and thoroughness with which the Le Pan recommendations have been addressed, it is capable of addressing important operational issues. Considerable, sustained effort will still be required by the RCMP and the PPSC to address current and projected human resource issues of attraction and retention in a creative and pro-active manner to meet operational requirements, but much has been accomplished in the relatively short period since additional funding was made available in January 2009.
- Some groundwork has now been completed in the development and documentation of methods and data collection practices to monitor the progress of investigations and prosecutions, and to identify the reasons for extraordinary delays.
- The Executive Council—having overseen the initiation of IMET during its early years, and in continuing to monitor the implementation of the Le Pan recommendations to strengthen IMET’s operational capacity—should continue to actively reinforce its leadership, oversight, and contribution to policy development roles. Its challenge is to increase its profile by debating, developing and communicating an integrated IMET initiative position on key issues relevant to combating serious capital market fraud—first, to the IMET teams on the ground where policy positions can have a positive effect on assuring consistent delivery from region to region and from case to case, and second, to external

forums attended by IMET Executive Council members where an IMET articulated position may be relevant to the debates taking place on important, broad policy issues. This will be the joint work to be accomplished by the IMET Executive Council, facilitated by Public Safety Canada and supported by the IMET Working Group.

### *3) Concerning Performance – Economy and Efficiency*

- The evaluation confirms that IMET would benefit from developing, over time, assurances (and accompanying self-monitoring mechanisms) that all its resources are focused on and devoted to activities that contribute to the achievement of investigation and prosecution outcomes in an economic and efficient manner.
- Interviews, focus groups and document review demonstrated that establishing a recommended size and scope for the IMET initiative is an elusive goal, as no consensus opinion was forthcoming about how large or small the problem of serious capital market fraud is in Canada. Furthermore, it was fully recognized that other players and forces also combat serious market fraud, and that they have a strong impact on IMET case outcomes. The evaluation confirms that it appears that no large gaps in coverage exist and that regional IMET offices are adapting to their regional IMET needs.
- IMET has demonstrated that it possesses the tools to assure that its expenditures are committed and reported on in a responsible fashion. However, some inconsistencies in financial reporting have been noted during this evaluation.

The evaluation recommends that:

1. under the leadership of the Executive Council, action plans that address the outstanding recommendations of the Le Pan Report and the Benchmarking Study be developed, tracked and reported by the lead organizations.
2. the RCMP and PPSC continue to expend necessary efforts to address and resolve current and anticipated recruitment, retention and capacity issues specific to IMET.
3. the Executive Council continue to contribute to an enhanced central policy capacity while respecting the individual responsibilities of each partner organisation and to an ability to communicate with a concerted voice to teams, partners and stakeholders, on issues of IMET performance, as outlined in the conclusion section of this report.
4. based on environmental factors discussed in this evaluation and the evolving Canadian context, the Executive Council periodically review the appropriateness of IMET goals and expectations.

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Each IMET department and agency has accepted and approved the final draft evaluation report and, where required, has contributed to its combined management response and action plan, which was presented to the Public Safety Canada Evaluation Committee for consideration and recommendation to the Deputy Minister of Public Safety Canada, for final approval.

<b>Departmental Management Response and Action Plan</b>	<b>Target Date</b>
<b>Department of Justice Canada</b> fully accepts and supports the recommendations of this evaluation.	
<p>Management Action Plan:</p> <ul style="list-style-type: none"> <li>The Department of Justice Canada will continue to contribute to the central policy capacity and periodically review IMET goals and expectations. The Department of Justice Canada is also fully committed to working with other federal partners in ensuring that the IMET Executive Council is as effective as it can be.</li> </ul>	Ongoing.
<b>Finance Canada</b> accepts the recommendations of this evaluation.	
<p>Management Action Plan:</p> <ul style="list-style-type: none"> <li>Finance Canada will continue to monitor progress in response to addressing the outstanding recommendations of the Le Pan Report and the Benchmarking Study through its role on the Executive Council, with a view to ensuring that the recommendations are materially implemented in a timely manner and lead to improvements in the initiative's effectiveness, the timeliness of investigations and prosecutions, and the setting of realistic performance expectations.</li> </ul>	Ongoing.
<ul style="list-style-type: none"> <li>Finance Canada will support efforts to advance the Executive Council as a forum to contribute to the development of policy on matters of importance related to the administration of the IMET initiative, while respecting the responsibilities and reporting lines of partner organizations.</li> </ul>	Ongoing.
<ul style="list-style-type: none"> <li>Finance Canada will work with the Executive Council to periodically review the objectives and expectations of the IMET program, to ensure that they are properly aligned with the environment in which it operates, and maximize the initiative's contribution to effective enforcement of the law against serious criminal capital offences</li> </ul>	Ongoing.

<p>in Canada and investor confidence in the integrity of Canada’s capital markets.</p>	
<p><b>Public Prosecution Service of Canada</b> agrees with the recommendation of this evaluation.</p>	
<p>Management Action Plan:</p> <ul style="list-style-type: none"> <li>• (Recommendation 1): In order to address concerns stemming from perceived delays in the handover of investigations to the PPSC or provincial AGs, as well as concerns regarding the accuracy and reliability of current benchmarking data, the PPSC will work with the RCMP to develop complementary strategies to systematically document the progress of IMET investigations and prosecutions over time, as well as the factors that may contribute to the timeliness of, or extraordinary delays in the resolution of IMET cases.</li> </ul>	<p>A joint RCMP-PPSC Benchmarking Study action plan will be submitted to the Executive Council by fall 2010. The Le Pan recommendations action plan will be submitted to the Executive Council on or before November 15, 2010. <u>OPI</u><sup>1</sup>: IMET Coordinator; Principal Researcher, Strategic Planning and Performance Management Division</p>
<ul style="list-style-type: none"> <li>• (Recommendation 2): In order to respond to ongoing training needs and further develop federal expertise and capacity in IMET and economic crime prosecutions, the PPSC will establish an inventory of training courses and opportunities that address the skill sets that IMET legal advisors and prosecutors require. In addition, the PPSC will promote both formal and informal training, including on-the-job learning opportunities such as job shadowing and mentoring.</li> </ul>	<p>Updates on HR issues and actions to be provided to the Executive Council on a quarterly basis. <u>OPI</u>: DG, Regulatory and Economic Prosecutions; IMET Coordinator; Chief Federal Prosecutors</p>
<ul style="list-style-type: none"> <li>• (Recommendation 3): The PPSC will support the Executive Council in further developing a central policy capacity through its active participation in the Council and in the IMET Working Group, as well as its previously mentioned commitment to implement the outstanding recommendations of the Le Pan Report and the Benchmarking Study.</li> </ul>	<p>Ongoing. <u>OPI</u>: A/Deputy Director, Regulatory and Economic Prosecutions and Management Branch; IMET Coordinator</p>
<ul style="list-style-type: none"> <li>• (Recommendation 4): The PPSC will support the Executive Council in its leadership role by actively participating in the IMET Working group and co-chairing the Securities Fraud and Economic Crime Prosecutors Affiliation tasked with studying best practices</li> </ul>	<p>Ongoing. <u>OPI</u>: A/Deputy Director, Regulatory and Economic Prosecutions and</p>

<sup>1</sup> OPI: Office of Primary Interest

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in prosecution approaches.	Management Branch; IMET Coordinator
<b>Public Safety Canada</b> accepts and fully supports the recommendations of this evaluation.	
Management Action Plan: Public Safety Canada will continue to work with its governmental partners to strengthen the IMET Executive Council leadership on horizontal policy issues.	Ongoing.
<b>Royal Canadian Mounted Police</b> accepts this evaluation and the recommendations made herein.	
Management Action Plan: <ul style="list-style-type: none"> <li>The RCMP is currently in the process of developing the Action Plan to address the recommendations of the Benchmarking Study and expect to have that finalized in June 2010. As for how the recommendations of that study will be addressed, reporting processes between National headquarters and the field will be amended to obtain timeline estimates and key operational variables identified in that study. Additionally, the RCMP will adopt a more formalized approach to the sharing of best practices across the program.</li> </ul>	A joint RCMP-PPSC Benchmarking Study action plan will be submitted to the Executive Council by fall 2010. The Le Pan recommendations action plan will be submitted to the Executive Council on or before November 15, 2010.
<ul style="list-style-type: none"> <li>Clearly, this evaluation also places strong emphasis on the importance of continuing to treat HR and capacity issues with the highest priority. The RCMP supports this theme. The RCMP has already fully implemented the HR related recommendations of the Le Pan Report. The Strategic IMET Human Resources Manager (a position whose establishment itself was a Le Pan recommendation), staff at RCMP National headquarters and management in the IMET locales is continually looking at what steps can be taken to ensure that a complement of fully competent resources is available.</li> </ul>	Updates on HR issues and actions to be provided to the Executive Council on a quarterly basis.
<ul style="list-style-type: none"> <li>The RCMP is also committed to working with other federal partners in ensuring that the IMET Executive Council is as effective as it can be.</li> </ul>	Ongoing.

## 1. Introduction

This report presents the findings, conclusions and recommendations of the Evaluation of the Integrated Market Enforcement Team (IMET) initiative.

Evaluation assesses the extent to which a program, policy or initiative addresses a demonstrable need, is appropriate to the federal government, and is responsive to the needs of Canadians. It also studies the extent to which effectiveness, efficiency and economy have been achieved by a program, policy or initiative.

IMET is a horizontal initiative that includes the participation of the Department of Justice Canada, Finance Canada, the Public Prosecution Service of Canada (PPSC), Public Safety Canada, and the Royal Canadian Mounted Police (RCMP). The purpose of IMET is to effectively enforce the law against serious criminal capital market fraud offences in Canada, and ultimately to contribute to improved Canadian and international investor confidence in the integrity of Canada's capital markets.

The evaluation was conducted in response to Treasury Board requirements and in keeping with the prescriptions of the Treasury Board's *Policy on Evaluation* to provide an evidence-based, neutral assessment of the relevance and performance of the initiative.

## 2. Profile

### 2.1 Background

The Integrated Market Enforcement Team (IMET) initiative involves the following federal departments and agencies:

- Department of Justice Canada
- Finance Canada
- Public Prosecution Service of Canada (PPSC)<sup>2</sup>
- Public Safety Canada
- Royal Canadian Mounted Police (RCMP)

### Integrated Market Enforcement Teams

In the September 30, 2002 Speech from the Throne, the Government of Canada committed to strengthen enforcement of serious corporate fraud offences to ensure the continuity of confidence in Canada's capital markets.

The Government of Canada created IMET in 2003. This horizontal initiative was originally mandated to investigate serious *Criminal Code* capital market fraud offences of national significance involving actions of publicly-traded companies with sufficient market capitalization to pose a genuine threat to investor confidence and economic stability in Canada.

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<sup>2</sup> As per the *Director of Public Prosecutions Act*, PPSC's legal name is the Office of the Director of Public Prosecutions (ODPP).

In 2007, IMET's mandate was broadened to include capital market fraud offences of regional significance where investor confidence or economic stability was threatened. Its mandate was also extended beyond publicly-traded companies to include other entities that could impact investors (e.g. mutual investment funds). Furthermore, the 2007 federal budget pledged an additional \$10 million annually (to the \$30 million per year base funding) to IMET areas requiring improvement to achieve more effective and timely investigations, as identified in the report *Enhanced Integrated Market Enforcement Teams, Achieving Results in Fighting Capital Markets Crime*. This report, herein referred to as the Le Pan Report, was submitted to the Commissioner of the RCMP by Nick Le Pan, Special Advisor to the Commissioner, on October 25, 2007.<sup>3</sup>

IMET teams are groups of highly specialised investigators and subject matter experts responsible for capital market fraud investigations. Each team is structured as an integrated unit, comprised of dedicated RCMP regular and civilian members, other police investigators, PPSC legal advisors, forensic accountants, subject matter experts and specialist technical support.

Six IMET teams were originally created: three in 2003-04 and three in 2004-05. Three teams were added in 2005-06. Ten teams now operate in four Canadian financial centres: Calgary (2 teams), Montreal (2 teams), Toronto (4 teams) and Vancouver (2 teams). An ad-hoc team (known as Quick Start) is headquartered in Ottawa. It is available for rapid deployment if an investigation needs to be launched in a location other than Toronto, Montreal, Calgary or Vancouver. Quick Start is designed to develop the necessary operational plan, establish infrastructure and commence the investigation. When appropriate, a Quick Start investigation will be assumed by local investigators, supported by counsel, support staff, and IMET personnel, including those from RCMP Headquarters and other IMET teams.

## 2.2 Resources

Total funding for the five federal government partner organizations, as per initiative inception documents, including personnel, capital allocation, operations and maintenance, employee benefit programs and accommodation for the fiscal years 2008-09 and 2009-10 was respectively \$38.75 million and \$40 million. Forecast allocations for 2010-11 through 2012-13 are \$40 million per year.

The two tables below identify how funding has been allocated, as per initiative inception documents of 2003 and realignment documents of 2007. Table 1 presents the annual funding distribution by federal partner for 2008-09 and 2009-10.

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<sup>3</sup> The full report can be found at <http://www.rcmp-grc.gc.ca/imet-eipmf/lepan-eng.htm>

**Table 1: IMET Funding by Organization by Fiscal Year (rounded in millions \$) from 2008-09 to 2009-10**

<b>Organization</b>	<b>2008-09</b>	<b>2009-10</b>
Department of Justice Canada	\$1.35*	\$2.60*
Finance Canada	\$0.18	\$0.17
Public Prosecution Service of Canada	\$5.85	\$5.85
Public Safety Canada	\$0.41	\$0.66
Royal Canadian Mounted Police	\$30.96	\$30.72
<b>TOTAL</b>	<b>\$38.75</b>	<b>\$40.00</b>

\* Includes \$1 million reserve fund for 2008-09 and \$2.25 million reserve fund for 2009-10

Table 2 presents the annual funding distribution for 2003-04 to 2007-08.

**Table 2: IMET Funding by Organization by Fiscal Year (rounded in millions \$) from 2003-04 to 2007-08**

<b>Organization</b>	<b>2003-04</b>	<b>2004-05</b>	<b>2005-06</b>	<b>2006-07</b>	<b>2007-08</b>
Department of Justice Canada (legal advisors and IAG counsel)*	\$0.69	\$2.19	\$4.70	\$4.70	\$0
Department of Justice Canada (Reserve Fund)	n/a	\$2.20	\$3.75	\$3.75	\$3.75
PPSC	n/a	n/a	n/a	n/a	\$4.70
Finance Canada	\$0	\$0	\$0	\$0	\$0
Public Safety Canada	\$0.22	\$0.22	\$0.22	\$0.22	\$0.22
Royal Canadian Mounted Police	\$8.09	\$13.19	\$17.58	\$17.58	\$17.58
Royal Canadian Mounted Police (Vote 35, Operating Expenditures)	<b>\$1.00</b>	<b>\$2.20</b>	<b>\$3.75</b>	<b>\$3.75</b>	<b>\$3.75</b>
<b>TOTAL</b>	<b>\$10.00</b>	<b>\$20.00</b>	<b>\$30.00</b>	<b>\$30.00</b>	<b>\$30.00</b>

\* Includes funding allocated to Department of Justice Canada before PPSC was created in December 2006

The federal prosecution function was assumed by the Federal Prosecution Service (FPS) of the Department of Justice Canada until December 2006. In December 2006, the FPS was replaced by the Public Prosecution Service of Canada (PPSC), which was created as an independent prosecution service with the coming into force of the *Director of Public Prosecutions Act*.

In the 2007 funding, each of the \$3.75 million reserve fund and the \$3.75 million contingency fund were reallocated as follows: the \$3.75 million Contingency Fund was rolled into the RCMP's regular funding, and the Department of Justice Canada's Reserve Fund was set at \$2.25 million starting in 2009-10<sup>4</sup>. The remaining \$1.5 million was added to the PPSC's operation and maintenance costs to defray extraordinary costs that could arise in IMET-related prosecutions. In any fiscal year in which there are unused portions of that fund, the balance is retained by the Receiver General.

<sup>4</sup> The reserve fund was set at one million dollars for 2008-09.

## 2.3 Federal Roles and Responsibilities

Capital market enforcement in Canada involves criminal investigators from the RCMP, provincial and municipal police forces (e.g. Sûreté du Québec and Toronto Police Service), the securities regulators and self-regulatory organizations, the federal and provincial prosecutors, as well as the federal and provincial court systems.

1. IMET: Federal horizontal initiative to investigate and prosecute alleged capital market provisions of the Criminal Code through the criminal justice system.
2. RCMP Commercial Crime Sections: These sections house the securities fraud mandate within the RCMP. IMET is an extension of that mandate.
3. Police forces of local jurisdiction: Provincial and municipal police forces have the mandate to enforce the *Criminal Code*, including those provisions related to capital markets.
4. Securities Commissions: Provincial regulatory bodies responsible for regulating provincial capital markets in accordance with a mandate established by provincial parliaments. Some securities commissions (e.g. Ontario and Alberta) have authority to prosecute alleged breaches of securities law in the courts.<sup>5</sup>
5. Self-Regulatory Organizations (SROs): Set and enforce regulatory and industry standards. These organizations carry out their regulatory obligations through enforcement investigations of members.

The Government of Canada's role in capital market enforcement is to ensure criminal capital market enforcement enhances capital market integrity and promote investor confidence in the market.

The five federal department and agency partners involved in IMET have specific roles and responsibilities, as summarised in this section. At the working level, the principal interactions take place between the RCMP and the PPSC. The relationship is based on a memorandum of understanding, dated October 28, 2008, that defines respective roles and responsibilities.

Federal partner roles and responsibilities are summarized as follows:

### Department of Justice Canada

- Manages the IMET Reserve Fund, a \$2.25 million per year fund to assist provincial Attorneys General in conducting prosecutions related to IMET investigations;
- Coordinates and assists in the preparation of mutual legal assistance requests in criminal matters with foreign governments; and
- Provides strategic policy advice on law, criminal law policy and procedure relating to IMET, including policy advice with respect to legal issues relevant to IMET investigations and prosecutions, e.g. compelled questioning of witnesses.

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<sup>5</sup> Some securities commissions have concluded arrangements with provincial Attorneys General (AGs) whereby commission counsel are appointed as AG agents to prosecute regulatory offences in provincial courts. Other commissions retain the services of AG prosecutors to prosecute the offences.

### **Finance Canada**

- Provides strategic direction to the IMET program that reflects the Government of Canada's broader agenda on capital markets issues;
- Plays a leadership role in engaging external stakeholders in efforts to enhance program performance; and
- Co-Chairs the IMET Executive Council, the Assistant Deputy Minister-level body that oversees the IMET program, and Co-Chairs the IMET Interdepartmental Working Group, which supports the work of the Executive Council.

### **Public Prosecution Service of Canada**

- Provides counsel to IMET teams: one each in Calgary, Toronto and Vancouver, and two in Montreal. In accordance with the MOUs between PPSC and the provincial Attorneys General, PPSC counsel provides pre-charge and general legal advice and support to IMET teams, e.g. preparation of search warrants. It may also support or participate in provincial prosecutions. Where provinces in the exercise of first refusal, choose to not assume responsibility for a case, the PPSC may assume carriage of the prosecution;
- Coordinates PPSC input into the IMET initiative. The Ottawa-based IMET coordinator ensures consistent advice is provided by dedicated counsel in each IMET location in accordance with the MOUs between PPSC and the provincial Attorneys General;
- Acts as national liaison between federal and provincial prosecution bodies to ensure maximum provincial participation in cases, and a smooth and timely transition between the IMET investigation and prosecution bodies; and
- Addresses IMET-related prosecution policy issues through the Federal/Provincial/Territorial Heads of Prosecutions Committee.

### **Public Safety Canada**

- Provides briefing and logistical support to IMET's governance body, the Executive Council (see section 2.5 below); and
- Provides oversight, and policy coordination and development.

### **Royal Canadian Mounted Police**

- The RCMP, in its role as the federal police force, provides the investigative infrastructure and resources, and conducts IMET investigations;
- Each IMET team is responsible for the investigation component of each project;
- Each IMET unit participates in intelligence gathering and prevention actions through Securities Intelligence Units (SIUs) or Joint Securities Intelligence Units (JSIUs) with securities administrators, regulators and other police agencies; and
- IMET Headquarters provides national leadership, oversight functions and shared corporate services used by IMET teams, e.g. human resources management, communications, intelligence gathering and coordination of Mutual Legal Assistance Treaty (MLAT) requests to Department of Justice.

## 2.4 Non-federal Organizations

Key non-federal participants in IMET<sup>6</sup> include provincial Attorneys General, provincial capital market regulatory bodies—i.e. the Securities Commissions in Alberta, British Columbia, Ontario and Quebec—, provincial and municipal law enforcement agencies, self-regulatory organizations, e.g. the Investment Industry Regulatory Organization of Canada (IIROC).

The significant working level interactions between IMET and non-federal participants occur on two fronts: firstly, with the provincial Attorneys General offices and, secondly, with the provincial capital markets regulatory bodies (securities commissions).

Significant working level interaction is required with the four provincial Crowns responsible for IMET prosecutions, i.e. Alberta, British Columbia, Ontario and Quebec. The respective roles and responsibilities of PPSC and provincial Crowns are defined by Memorandum of Understanding between the PPSC and three of the four provinces. An agreement-in-principle governs the relationship between the PPSC and Quebec.

The agreements between PPSC and the four provincial Crowns define the respective roles of provincial and federal counsels with regard to jurisdictional principles relating to the *Criminal Code*—first, the provincial right of first refusal to prosecute and second, the provincial retention of the right to provide pre-charge advice for ongoing cases.

Securities commissions are mandated by provincial legislation to regulate provincial capital markets. Securities commissions authorize self-regulatory organizations, pursuant to a recognition order, to undertake certain regulatory activities in relation to their members, including compliance and enforcement activities. Self-regulatory organizations are self-funded organizations and have a national presence.

## 2.5 Horizontal Governance

### Executive Council

IMET's governance body is an Executive Council co-chaired by the Assistant Deputy Minister, Financial Sector Policy Branch, Finance Canada and the Deputy Commissioner, Federal Policing, RCMP. The other Council members represent the Public Prosecution Service of Canada, the Department of Justice Canada and Public Safety Canada. The Council was established to oversee the ongoing implementation of the IMET initiative and its related activities, to provide overarching governance and to identify performance and policy issues.

### Interdepartmental Working Group

The Executive Council is supported by an interdepartmental working group comprised of key members from each of the five federal partner departments and agencies. The Working Group meets more frequently than the Council and supports it by researching

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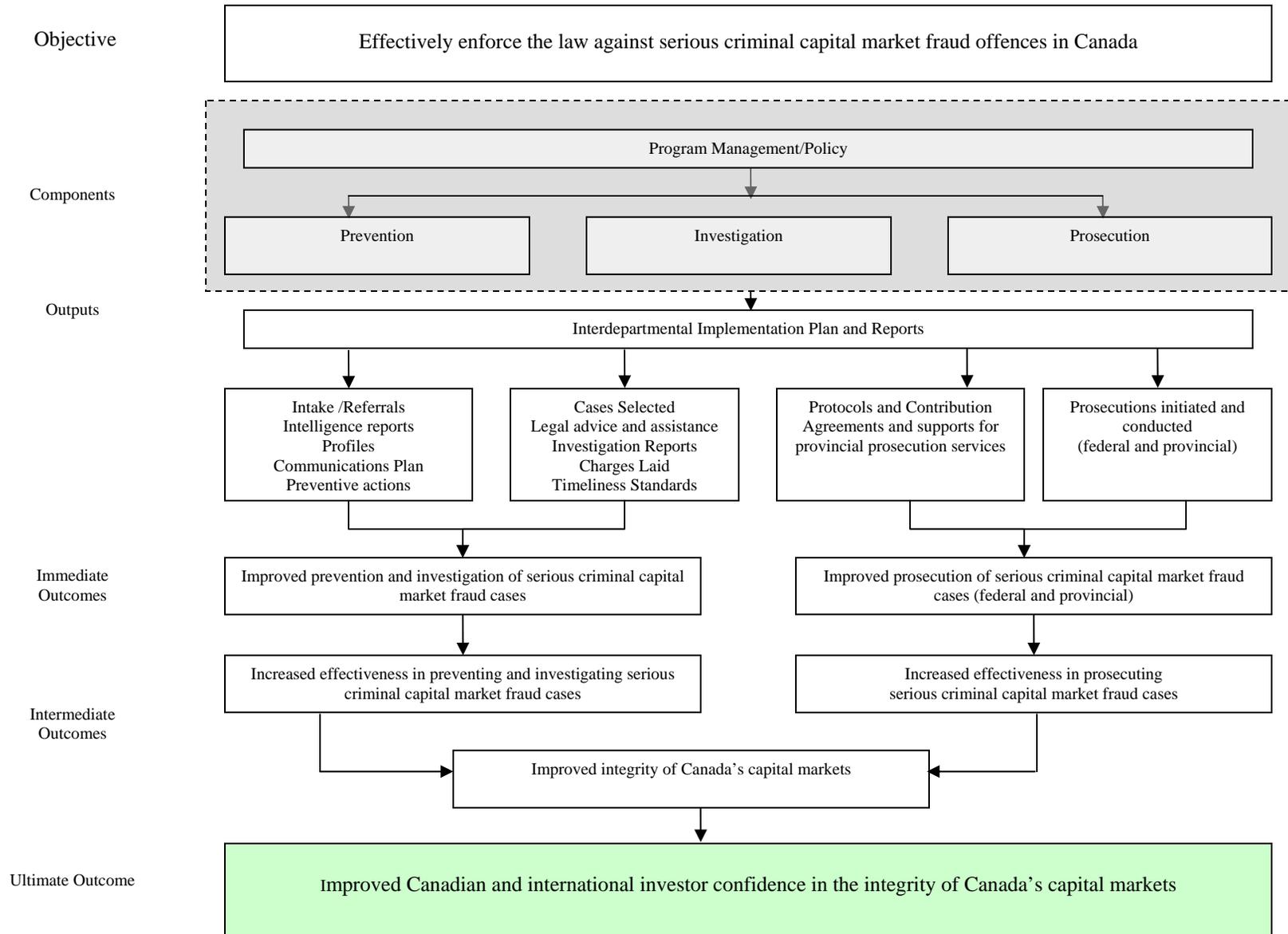
<sup>6</sup> These parties are referred to as “participants in IMET” because although not funded by IMET, they often play an active role as participants/partners in IMET- lead actions of prevention, investigation and prosecution of capital market crime, making contributions to outcomes beyond that of ordinary “stakeholders”.

issues, developing options and leading the implementation of action plans arising from the Council's work.

## **2.6 Logic Model**

The logic model for the IMET initiative is presented in Exhibit 1. It is a visual representation that links the initiative's activities, outputs and outcomes, provides a systematic and visual method of illustrating the theory of the IMET initiative and shows the logic of how IMET is expected to achieve its objectives. It also provides the basis for developing performance measurement and evaluation strategies. The logic model was developed with full participation of the IMET Working Group, as part of the IMET Results-based Management and Accountability Framework, approved in September 2008 by the federal IMET partners.

**Exhibit 1: Logic Model: Integrated Market Enforcement Team (IMET) Initiative**



## 3. About the Evaluation

### 3.1 Objective

Based on the Treasury Board's *Policy on Evaluation*, the objective of this evaluation is to provide an evidence-based, neutral assessment of the relevance and performance of the IMET initiative.

### 3.2 Scope and Context of the Evaluation

Public Safety Canada conducted this evaluation between November 2009 and March 2010 in consultation with the IMET Evaluation Advisory Group that included representatives of the evaluation units of the five federal IMET departments and agencies.

The evaluation was conducted in response to the 2007 Treasury Board requirement and the 2008 IMET Results-Based Management Accountability Framework (RMAF) that stipulated that following reception of new funding from Treasury Board, an evaluation of IMET focusing on progress toward goal achievement was to be conducted by the end of the 2009-10 fiscal year. The evaluation assessed the IMET initiative as a whole, and did not focus on detailed operational processes and structures. The evaluation covers the period from 2003 to the beginning of 2010 with emphasis on the period from December 2008, when funding for implementation of the Le Pan Report recommendations was approved.

To provide the appropriate contextual perspective, an informed discussion of IMET activities requires mention of broader capital market structures and relevant jurisdictional processes. Where such references are made in the text of this document, care has been taken to distinguish between elements that are under direct federal IMET control, those that are not, and those that are shared.

### 3.3 Evaluation Issues and Questions

The development of evaluation issues and questions was informed by the content of the IMET Results-Based Management Accountability Framework, which also served as a basis for data collection. The evaluation matrix of evaluation issues and questions and data collection methods is included as Appendix D.

The evaluation issues considered included:

#### Relevance

- Is there a continuing need for IMET?
- To what extent is the IMET program aligned with federal roles and responsibilities?
- To what extent is the IMET program aligned with government priorities?

## **Performance**

- To what extent has progress been made toward expected outcomes and to what extent have IMET outputs contributed to these outcomes?
- Has the capacity for prevention, investigation and prosecution of capital market fraud activity improved?

## **Design and Implementation**

- To what extent have the recommendations of the Le Pan Report been implemented?

### **3.4 Evaluation Methodology**

The evaluation was conducted in accordance with the TBS Standard on Evaluation for the Government of Canada. To assess the evaluation issues and questions the following lines of evidence were used:

#### **Document Review**

A comprehensive document review, including program inception documents, federal IMET partner Departmental Performance Reports (DPRs), Reports on Plans and Priorities (RPPs), internal IMET program performance reports, agendas, reports and minutes of meetings were reviewed. A list of the principal documents consulted is contained in Appendix C.

The Final Report of the Expert Panel on Securities Regulation, and the 73 written submissions made by interested parties (including academics, securities commissions, industry representatives, investors and investment groups, financial institutions and others) to the Expert Panel during its consultations, were reviewed to understand the views of investors and other stakeholders in relation to capital market enforcement. The Final Report was submitted to the Minister of Finance and the provincial and territorial Ministers responsible for securities regulation in January 2009.

Extensive use was made of the Le Pan Report and the accompanying IMET reports on implementation of recommendations<sup>7</sup>. The IMET Benchmarking Study of 2009 was examined in detail.

#### **Interviews**

Interviews with 53 interviewees were conducted using interview guides tailored to particular perspectives. Interviewees were selected based on their extensive knowledge of their domain or their experience of IMET, and their level of interaction with IMET. RCMP IMET management staff at headquarters and local IMET team personnel provided input for the development of the interviewee list.

Interviewees represented three streams i) core IMET representatives and Executive Council members from the federal departments and agency partners in Ottawa; ii) IMET

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<sup>7</sup> Interdepartmental Implementation Plan to Improve the Effectiveness of the IMETs (April 2008) and IMET Working Group table on the status of implementation of Le Pan recommendations

delivery representatives in Vancouver, Calgary, Toronto and Montreal and iii) others, including representatives from provincial Attorneys General and Securities Commissions, self-regulatory organizations, and provincial and local police. Interviewees included management, program participants, senior and mid-level regulatory and legal IMET participants/partners, specialized service providers, subject matter experts. Interview participant distribution is shown in Table 3 below.

**Table 3: List of Interviewees**

<b>Organization</b>	<b>Number Interviewees</b>
Department of Justice Canada (HQ)	5
Finance Canada (HQ)	3
PPSC (HQ)	5
PPSC (Regional Counsels)	6
Public Safety Canada (HQ)	3
RCMP (HQ)	7
RCMP (four regional offices)	9
Provincial AG/Counsel	4
Securities Commissions	6
Self-Regulatory Organizations	3
Others*	2
<b>TOTAL</b>	<b>53</b>

\* identified to the evaluation team by IMET regional delivery offices personnel as having significant interaction with the IMET team

### **Focus Groups**

Five focus groups with IMET team members, including Regular and Civilian RCMP members, Public Service employees, PPSC legal advisors, other IMET members, and seconded personnel from non-federal participants were conducted in Vancouver, Calgary, Toronto (two focus groups) and Montreal using a tailored focus group discussion guide.

All IMET team members were invited and encouraged to participate in the focus groups and express their viewpoints. The composition of the focus groups was mixed and included RCMP investigators, PPSC legal advisors, forensic accountants, support staff and employees on secondment from other participant organizations. The anonymity of responses and feedback was assured. In addition, the evaluation team made itself available for confidential, personal interviews with all focus group attendees, upon request, and follow-up interviews with team members (e.g. investigators and accountants) were conducted. Focus group participants were also asked to complete a short confidential questionnaire to help quantify the opinions expressed.

Focus group participant distribution is shown in Table 4 below.

**Table 4: IMET Team Focus Group Participants**

<b>Location</b>	<b>Number Participants</b>
Calgary	18
Montreal	19
Toronto (two focus groups)	29
Vancouver	17
<b>Total</b>	<b>83</b>

### **Focus Group Questionnaire**

A questionnaire on IMET effectiveness was completed and returned during the focus group sessions by 75 of the 83 participants in the following categories: 33 regular members, 21 civilian members, 12 public servants, one member of another law enforcement agency, three members from regulatory organizations, four members from federal government organizations and one member from a provincial government organization. Results were analyzed and tabulated, and used as evaluation evidence for this report.

### **3.5 Limitations of the Methodology and of the Evaluation Findings**

The evaluation methodology and evaluation findings are limited in the following ways:

- A detailed examination of the roles and responsibilities of non-federal participants involved in serious market crime prevention, investigation and prosecution was beyond the scope of this evaluation. The evaluation limited its examination of these entities (e.g., securities commissions, attorneys general offices) to their interactions with IMET.
- A number of issues that impact IMET's performance are of broad importance to policy areas beyond serious market crime enforcement (e.g. the establishment of a Canadian securities regulator, compelled questioning in Canada's justice system). Some of these have implications for Federal/Provincial/Territorial relations. They all continue to be examined by various federal and inter-governmental working groups. Where relevant, these issues are noted and explained, but it was beyond the scope of this evaluation to assess the state of deliberations on these issues or the potential impact of their various outcomes on IMET in detail.
- In keeping with the stipulation of the IMET Results-based Management Accountability Framework, and in light of the relatively short period of IMET activity since the release of the Le Pan Report and the subsequent reception by IMET of supplementary funding, the evaluation of the degree to which final outcomes have been achieved, is limited.

- The evaluation found some discrepancies on the interpretation and the definition of some indicators between the RCMP and PPSC data. These could have an impact on the precise number of project investigations and prosecutions undertaken, their status and their length. Parties intend on clarifying these issues consistent with the Le Pan recommendations.

### **3.6 Evaluation Protocols**

#### *Engagement and Consultation*

An interdepartmental advisory group was created to support the planning and conduct of this evaluation. Each IMET partner department/agency provided representatives for the two components of this advisory group - the policy/program management stream and the evaluation function stream. Public Safety Canada, as lead for the IMET evaluation, chaired this dual-discipline advisory group.

The advisory group forum was used to provide input to evaluation planning and data collection tools and to identify key stakeholders and interviewees. The advisory group membership reviewed the draft report and provided factual feedback to the evaluation group at Public Safety Canada, and steered the report to the evaluation committees in the respective organizations for their approval and formulation of action plan in response to the recommendations.

#### *Approvals*

Each department and agency has accepted and approved the final draft evaluation report and, where required, has contributed to its combined management response and action plan, which was presented to the Public Safety Canada Evaluation Committee for consideration and recommendation to the Deputy Minister of Public Safety Canada, for final approval.

## **4. Findings**

The sub-sections that follow present key findings related to the relevance and performance of the IMET initiative.

### **4.1 Relevance**

#### **4.1.1 Ongoing need for IMET**

##### *How Big A Problem Is Serious Capital Market Crime In Canada?*

The literature and document review revealed that there exists no definitive, reliable, empirical measure or consensus on the size or extent of serious capital market crime in Canada. The difficulty rests on a general inability to provide measures for estimates of fraud when these have been neither definitively identified nor proven. An example of statements issued regarding such estimates includes the following from the Insider

Trading Task Force<sup>8</sup> in 2003 that recognized that “due to data limitations, it is currently very difficult to establish accurately the extent of insider trading, much less ‘illegal’ insider trading that occurs on Canadian markets.”

Nevertheless, there do exist a number of measurements that can be used as indicators and from which it can be deduced that the scope of the problem is significant. In addition, some measures of the effect that a low level of confidence in market enforcement has on investment also exist. Several measurements and statements are presented below.

- The 2008-09 IMET Annual Report estimates the loss to investors for all IMET cases that had been investigated and resulted in charges laid against individuals since the first charges were laid in 2003-04 at \$ 627.1 million.
- The Canadian Securities Administrators 2009 Annual Enforcement Report<sup>9</sup> states that 141 cases (under provincial Securities Acts) were concluded in 2009 in Canada. These resulted in the levy of fines of \$153.7 million, costs ordered of \$5.6 million and restitution, compensation and disgorgement orders of \$92.2 million.
- A 2009 Ipsos Reid survey of approximately 6,000 Canadians indicates that 11% say that they have invested money in what turned out to be a fraudulent investment.<sup>10</sup>
- Over the last three years, Canada’s rating on the Financial Market Integrity Index<sup>11</sup>—which measures the perceptions of in-market and out-of-market investment professionals on the integrity of major financial service markets—has remained stable as “somewhat effective”. Nonetheless, respondents continue to advocate for a more streamlined regulatory model and stronger enforcement practices. The likelihood of in-market professionals to recommend investing in Canada went down from 79% in 2008 to 72% in 2009.
- David Dodge, outgoing Bank of Canada governor noted in his final public speech in December 2007 that securities enforcement must improve. He said: “Markets work more efficiently when they operate under clear, transparent and reasonable rules and principles, which are enforced and are seen by all as being enforced.”<sup>12</sup>

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<sup>8</sup> Canada’s securities regulators responsible for regulating insider trading jointly formed the Insider Trading Task Force in September 2002 with the objective of evaluating how best to address illegal insider trading in Canadian capital markets. See: <http://www.spsc.gov.sk.ca/ssc/files/nat-noti/insidertradingtaskforcereport-nov11-2003.pdf>

<sup>9</sup> See [http://www.securities-administrators.ca/uploadedFiles/General/pdfs/CSARreportENG09\[FA\].pdf](http://www.securities-administrators.ca/uploadedFiles/General/pdfs/CSARreportENG09[FA].pdf)

<sup>10</sup> CSA 2009 Investor Index Study, September 30, 2009. (Note: The survey did not specify the nature and extent of investment frauds.)

<sup>11</sup> CFA Institute 2009 Financial Market Integrity Index Canada;  
<http://www.cfapubs.org/toc/ccb/2009/2009/6?cookieSet=1>

<sup>12</sup> Investment Executive, January 2008;

<http://www.investmentexecutive.com/client/En/News/DetailNews.asp?IdPub=157&Id=42486&cat=27&IdSection=27&PageMem=&nbNews=>

- Cornerstone Research publishes an annual Securities Class Action Filings Report that compiles data on class action suits concerning securities markets in the United States. Its 2009 report lists 169 federal securities fraud class action filings, and estimates the total maximum dollar loss of these cases at US \$634 billion.<sup>13</sup>

*Is IMET the Most Appropriate Tool To Combat Serious Capital Market Crime?*

It is recognized that effective enforcement entails coordination among authorities, an appropriate choice of administrative, civil and criminal remedies, and timely investigation and prosecution of capital market infractions.

Jurisdiction to investigate serious capital market fraud is not restricted to the RCMP's IMET initiative. Provincial and municipal law enforcement agencies also have the power to conduct these types of investigations. However, interviewees and focus group participants have reported that local police forces and indeed, some of the larger municipal and provincial services have limited resources to conduct the complex, long-term and resource-intensive investigations that capital market frauds represent.

In addition, whereas local and provincial police forces have restricted jurisdictions in which to conduct investigations, capital market frauds are not restricted by provincial boundaries. Similarly, most investigations have an international component that requires a national police force to correspond with foreign counterparts, and the federal Department of Justice to coordinate mutual legal assistance requests with other countries to obtain evidence.

At the federal level, new legislation was introduced through the *Criminal Code* in 2004 to modernize offences (including insider trading), permit targeted evidence-gathering (e.g. production orders), and signal the seriousness of corporate fraud offences through tailored sentencing structures. The *Criminal Code* was also modified to extend the ability to prosecute capital market frauds to the federal Attorney General—formerly limited to provincial Attorneys General.

Although no interviewee from any group was able to cite authoritative sources of a measure of the size and scope of serious market fraud in Canada, a majority were of the opinion that a strong, well-resourced, national investigation and prosecution capability was necessary to combat complex cases and to be seen to be effective in doing so. In many cases this opinion was backed up by numerous years of experience in the field.

The deterrent effect of the very existence of IMET was viewed by some, in particular those involved in prosecution services or from the securities commission environment, as part of a market fraud prevention function. However, in general, the prevention function receives considerably less attention than the investigation and prosecution functions from IMET practitioners in the field. No quantifiable measures of prevention activity

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<sup>13</sup> Securities Class Action Filings—2009: A Year in Review, Cornerstone Research, <http://securities.cornerstone.com> (Note: Similar figures for the Canadian context were unavailable.)

demonstrated that IMET was an indispensable vehicle for serious market fraud prevention, although the evaluation turned up no obvious, strong alternatives.

#### **4.1.2 Basis for the Role of the Federal Government in this Policy Area**

The role of the federal government with respect to criminal law enforcement and prosecution is based on its authorities under the *Constitution Act* (1867) and on its exclusive and shared legislated authorities. The legislative authorities of primary relevance to the IMET initiative are:

- *Criminal Code of Canada*

Departmental legislative authorities of relevance include:

- *Department of Justice Act*
- *Department of Public Safety and Emergency Preparedness Act*
- *Director of Public Prosecutions Act*
- *Financial Administration Act*
- *Royal Canadian Mounted Police Act*

##### *Relevance of IMET Reserve Fund*

The question of which level of government (federal or provincial) will prosecute a particular offence will depend on many factors, including resource availability and the practical working relationship between the federal and provincial prosecution services. Provinces have primary jurisdiction for prosecuting many offences under the *Criminal Code*.

Given the high cost of many of IMET prosecutions and the limited resources available to many provincial prosecution functions, the IMET Reserve Fund was established to facilitate provincial prosecution. The Reserve Fund was created in 2004 to help defray exceptional costs associated with IMET prosecutions incurred by provincial prosecution services. Funding of \$3.75 million per year was initially allocated to the Reserve Fund, which is managed by the Department of Justice. In 2008, it was determined that there was a need to increase the flexibility of the assistance available to both federal and provincial prosecutions of IMET cases. This needed flexibility was determined to be best achieved by transferring \$1.5 million per year from the Reserve Fund to the PPSC IMET operating and maintenance budget, leaving \$2.25 million in the Reserve Fund<sup>14</sup>. For a contribution to be made from the Reserve Fund to support a provincial prosecution, expenses must fall within the categories of disclosure costs, specialized contracts or technical or equipment expenses. The Reserve Fund is a transfer payment mechanism that cannot be used to defray the cost of services procured by the PPSC.

The evaluation found that the Reserve Fund is seen as a contributing factor in supporting provincial prosecutions under the IMET program. Due to the complexity and length of capital market fraud investigations and the limited number of cases that have proceeded

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<sup>14</sup> The reserve fund was set at \$2.25 million starting in 2009-10. For 2008-09, \$ 1 million was allocated for the reserve fund.

to trial, the Reserve Fund was not accessed until 2009. As further discussed in section 4.2.5, Department of Justice Canada officials have since received and responded to inquiries from Ontario, Alberta, and British Columbia with respect to the Reserve Fund.

#### **4.1.3 Alignment of IMET with Federal Government Priorities**

The federal government's ongoing priority to combat serious capital market offences is demonstrated as early as September 30, 2002, when the Speech from the Throne committed the Government of Canada to bolster enforcement to ensure the integrity of Canada's capital markets.

The February 2003 federal budget pledged up to \$30 million per year for the "Strategy to Enhance Protection of Canada's Capital Markets". This strategy included the introduction of Bill C-13, *An Act to Amend the Criminal Code* (Capital Markets Fraud and Evidence Gathering) which proposed various legislative amendments to strengthen provisions regarding corporate fraud offences, evidence gathering, and sentencing and to establish concurrent jurisdiction to prosecute capital market fraud offences federally. The strategy also included the creation of Integrated Market Enforcement Teams (IMETs), which were announced by the Solicitor General of Canada and the Minister of Justice Canada and Attorney General of Canada on June 12, 2003.

In Budget 2007, the Government of Canada presented a plan to create a Canadian advantage in global capital markets (the Capital Markets Plan). The Capital Markets Plan identified effective capital markets enforcement as a key component of strengthening market integrity and noted that to attract domestic and foreign capital and foster investor confidence, Canada's governments must work together to bolster enforcement. In response to the Plan, Budget 2007 provided an additional \$10 million per year to the IMET program to enable it to achieve more effective and timely investigations in support of this goal.

In Budget 2010<sup>15</sup>, reference is made to the need for improved regulatory and criminal enforcement to better fight white-collar crime. To this end, the Government is moving forward with the majority of provinces and territories to establish a Canadian securities regulator.

#### **4.1.4 IMET Links to Departmental Priorities and Program Activity Architectures**

IMET is linked to participating departmental policy priorities in the following ways:

Department of Justice: IMET is linked to departmental program activities regarding policies, laws and programs and to the departmental priority to develop law reform proposals in support of safe and secure communities and strengthen the law in key areas.<sup>16</sup>

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<sup>15</sup> Budget 2010 Chapter 3.3, Strengthening the Financial Sector

<sup>16</sup> 2009-10 Department of Justice Report on Plans and Priorities

Finance Canada: IMET is linked to the departmental strategic outcome of promoting a strong and sustainable economy. IMET’s enforcement activities help to provide a healthy, stable financial sector, which is a component of a strong and sustainable economy.<sup>17</sup>

PPSC: IMET is linked to the organization’s statutory responsibilities, which include the prosecution of offences under federal jurisdiction, and the provision of prosecution-related legal advice to law enforcement agencies over the course of investigations that may lead to such prosecutions. It is also linked to one of its two program activities, namely the regulatory offences and economic crime prosecution program.<sup>18</sup>

Public Safety Canada: IMET is linked to the departmental priority to advance national efforts to combat serious and organized crime.<sup>19</sup>

RCMP: IMET is linked to the RCMP strategic and operational priority of contributing to the confidence in Canada’s economic integrity through crime reduction. It is also linked to four of the RCMP’s strategic objectives, namely prevention and education, intelligence, investigation and enforcement.<sup>20</sup>

The IMET initiative is linked to 2009-10 departmental program activity architectures in the following ways:

<b>Organization</b>	<b>Link to Program Activity Architectures</b>
Department of Justice	Program activity related to justice policies, laws and programs, more specifically the criminal justice program sub-activity.
Finance Canada	The program is linked to the department’s financial sector policy activities, which support a healthy, stable financial sector and promote a strong and sustainable economy.
PPSC	Program activity related to the prosecution of regulatory offences and economic crime.
Public Safety	A safe and resilient Canada through the law enforcement program activity.
RCMP	Quality federal policing that ensures the safety and security of Canadians and their institutions, domestically and globally through intelligence-based prevention, detection, investigation and enforcement activity

<sup>17</sup> 2009-10 Department of Finance Report on Plans and Priorities

<sup>18</sup> 2009-10 Public Prosecution Service of Canada (PPSC) Report on Plans and Priorities

<sup>19</sup> 2009-10 Public Safety and Emergency Preparedness Canada (PSEPC) Report on Plans and Priorities

<sup>20</sup> 2009-10 RCMP Report on Plans and Priorities

## 4.2 Performance—Effectiveness

### 4.2.1 Environmental Factors that Influence IMET Performance

During the course of a document review<sup>21</sup> and interviews conducted with IMET participants, it became clear that several factors beyond the direct or indirect control of the IMET program affect IMET outputs, and that these can impose constraints on the potential effectiveness and efficiency of IMET performance. The four factors of highest importance are shared jurisdiction for enforcement, limits to information sharing, the inability to obtain information through compelled questioning and disclosure requirements. These are discussed below.

#### *Shared Jurisdiction for Enforcement*

Jurisdiction over the investigation and prosecution of capital market offences in Canada is divided among regulatory bodies and provincial and federal police and prosecution services. IMET shares jurisdiction over the enforcement of capital market fraud with provincial and municipal law enforcement agencies, which may conduct their own investigations, and provincial Attorneys General.

Overlapping responsibilities can complicate the effective investigation and prosecution of securities offences, obscure accountabilities, and dilute expertise essential to effective enforcement.<sup>22</sup>

An example of complexity that can have a negative effect on efforts to establish clear lines of accountability and an efficient work environment is that, in each province, the securities regulator has jurisdiction to prosecute regulatory matters, while the federal government has jurisdiction over criminal law and procedure and over *Criminal Code* offences. However, the provincial Attorneys General have jurisdiction over the administration of justice, including the prosecution of criminal offences.

In addition, most Securities Commission and IMET interviewees did not seem to find the distinction between regulatory and criminal capital market offences conceptually difficult to make. However, probing the issue revealed that many believe there exists an overlapping “grey area” made up of more serious regulatory offences of greater magnitude and less serious criminal offences of lesser magnitude. Where best to place the investigation of these regulatory versus criminal cases is a subject of interest to securities commissions and IMET personnel. This is especially true following the broadening of IMET’s mandate in 2007 to include market offences of regional significance. Several interviewees from securities commissions have raised a concern about investigating cases which may be better suited to criminal enforcement.

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<sup>21</sup> See *Critical Issues in Enforcement* by The Hon. Peter de C. Cory and Marilyn L. Pilkington, September 2006, Commissioned by the Task Force to Modernize Securities Legislation in Canada. This study has informed much of the discussion presented in this section of the Evaluation Report.

<sup>22</sup> *Ibid*, p.221

### ***Limits to Information Sharing***

Evaluators were repeatedly told in interviews with representatives from securities commissions and provincial Attorneys General as well as during focus groups, and document review confirms<sup>23</sup>, that information-sharing between securities regulators and IMET investigators can be impeded by issues concerning investigation processes, confidentiality and the protection of constitutional rights.

In particular, RCMP, PPSC and securities regulators are concerned that information obtained through regulatory processes, if provided to IMET, may not be admissible in criminal proceedings and if used, may have serious consequences on case outcomes. It was recognized that this problem arises in many regulatory contexts. In criminal securities cases, it can pose challenges to smooth operations, and as was reported, can hamper IMET efforts to obtain information efficiently and quickly and complete an investigation expeditiously.

### ***Inability to Obtain Information Through Compelled Questioning***

Important distinctions are made in law between what is permissible in conducting regulatory investigations and criminal investigations. These have serious implications for the methods used to complete IMET investigations with the assurance that cases can proceed without detrimental technical challenges during the prosecution stage.

During a criminal investigation, the investigators must respect all Charter rights of the individual or risk the rejection of the evidence gathered as a result of Charter breaches. Third parties who may have relevant information to supply to investigators cannot be compelled to respond to questions asked by IMET investigators. As a result, investigators must use other methods to obtain the information they seek.

It was perceived, mostly by non-IMET practitioners interviewees that state Attorneys General in the United States are generally more aggressive and successful in conducting criminal investigations and prosecutions in securities matters than is the case in Canada. This was possible, in part, it was felt, because the grand jury system in the United States can compel and introduce evidence unobtainable in Canada.

The issue of compelled questioning is of long standing interest to the administration of criminal justice.

### ***Disclosure Requirements***

A recent court ruling in an IMET case has confirmed that the prosecution is required to provide the defence with all paper and electronic documents handled during the investigation. In any IMET case, millions of documents may be involved. The ruling required that all documents be provided in a searchable, collated, organized and indexed

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<sup>23</sup> Includes the Le Pan Report, documents from the Group of Senior Officials on Enforcement in Capital Markets and Securities Fraud Enforcement Working Group

database, in a mirror image of what the prosecution team has reviewed, including even those not used in case preparation. During the course of this evaluation, IMET team members made it abundantly clear that disclosure obligations continue to add a substantial administrative burden to IMET investigations. In some cases, IMET investigators, officers and legal counsels suggested that disclosure obligations have introduced delays that may affect prosecution outcomes. In other instances, it was reported that IMET teams are adapting well to disclosure requirements, especially when appropriate tools are in place and procedures followed from the beginning of the investigation stage. The IMET Reserve Fund was established to help provincial Attorneys General in defraying certain exceptional expenses arising from IMET prosecutions, including disclosure costs.

#### **4.2.2 “Top Line” Results: Prevention, Investigation and Prosecution**

##### *Prevention*

Two Joint Securities Intelligence Units (JSIUs) staffed by RCMP and provincial securities commission representatives operate in Montreal and Toronto and two Securities Intelligence Units (SIU) staffed exclusively by RCMP members operate in Vancouver and Calgary to conduct prevention and intelligence-gathering activities.

“Preventions” refer to direct actions taken by law enforcement or regulators to disrupt or stop a suspicious group or individual from advancing their scheme. The RCMP IMET Accountability Report for fiscal year 2008-09 states that 21 “preventions” were taken by the Securities Intelligence Units. From April 1, 2009 to September 30, 2009, four “preventions” were reported.

“Knock and talk” actions were mentioned by IMET team members and securities commission personnel as a principal prevention activity. They take place when JSIU intelligence is pursued by provincial securities commission enforcement and IMET officials to prevent or reduce potential instances of fraud. Securities commission representatives indicated IMET participation in these activities generated a stronger deterrent effect. Reference was made to a JSIU project that assisted in preventing a fraudulent Initial Public Offering (IPO) prospectus being put forth by identified individuals. In this instance, JSIU material was used by the securities commission to challenge and prevent the listing<sup>24</sup>.

Interviewees from IMET teams and focus group participants were asked about other types of prevention activities being conducted. Mention of holding public awareness sessions and having an IMET presence at some public or university events were made. Data on numbers of events and attendees, content and measures of impact of those activities were not available. Public awareness and prevention were identified as a key RCMP priority for the upcoming fiscal year. However, at this time none of the four

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<sup>24</sup> Source RCMP IMET Annual Strategic Intelligence Report 2007-2008

IMET regions have a formal, coordinated national prevention program establishing IMET prevention program priorities and determining roles and responsibilities of federal partners and non-federal participants.

The 2007 program renewal documents state the mandate of the IMET program is to enforce the criminal law against capital market crime. All federal and non-federal IMET participants have a role in intelligence, prevention and educational activities. In the absence of a formal prevention program, it is difficult to coordinate the role of multiple participants, account for regional priorities or determine the effectiveness of resource allocation.

The Le Pan Report found that JSIUs are a useful cooperative structure and tool for IMET intelligence and prevention activity. Comments received during this evaluation confirm this observation. JSIUs are used by the RCMP, securities commissions, self-regulatory organizations and other law enforcement agencies for economic profiles<sup>25</sup> and intelligence requests. The securities commissions and self-regulatory organizations also describe a part of their role as protecting investors from fraud and other illegal activity by providing educational tools to help investors protect themselves against fraud.<sup>26</sup>

#### *Investigations*

The first IMET project investigation was launched on March 4, 2004. Project investigations (major investigations) are referred to within the RCMP as those involving cases of national significance and serious capital market offences (including market capitalization and loss to investors). As of January 2010, 28 project investigations have been initiated<sup>27</sup>. Investigations status is illustrated below.

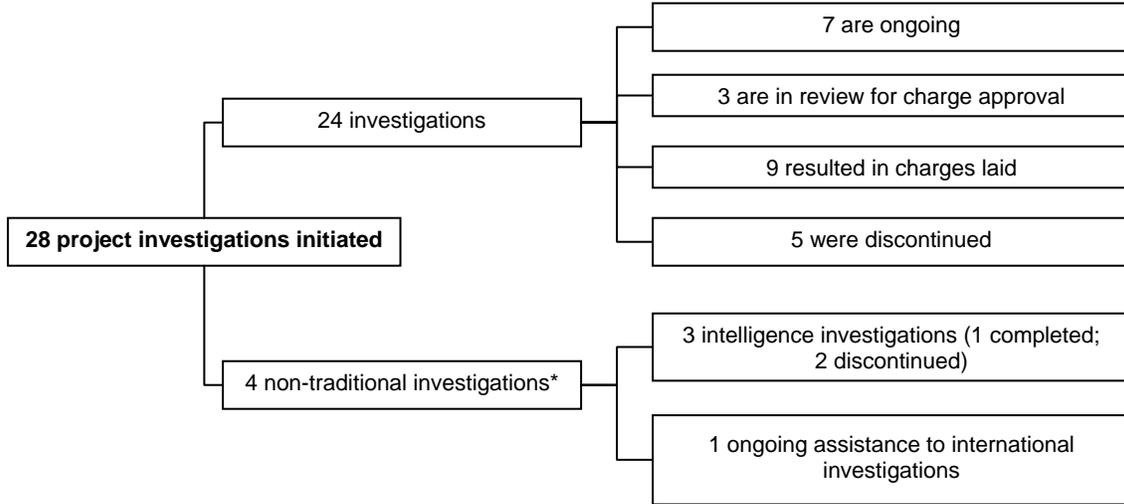
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<sup>25</sup> Economic profiles are research, open source intelligence products prepared to support investigations. They may also be used to inform prevention activities.

<sup>26</sup>[http://www.osc.gov.on.ca/en/Investors\\_protect-yourself\\_index.htm](http://www.osc.gov.on.ca/en/Investors_protect-yourself_index.htm)

<sup>27</sup> Also refer to section 3.5 on the limitations of the methodology

**Exhibit 2: Status of initiated project investigations from 2003-04 to 2009-10**



\* The evaluation has considered non-traditional investigations as those that are not specifically intended to result in the laying of charges.

*Annual Investigative Workload*

On average, four investigations have been initiated each year, while three are either completed or discontinued. However, due to the investigations that are carried over from year to year, IMET teams have worked on an average 11 investigations per year since 2003-04. In the last five years, the annual average is 14. The total number of project investigations completed per year is presented in the following table:

**Table 4: Annual Investigative Workload<sup>28</sup>**

	# of project investigations initiated	# of project investigations carried over from previous year(s)	# of project investigations completed <sup>29</sup>	# of project investigations discontinued	Total project investigations worked on during the year
<b>2003-04</b>	1	0	0	0	1
<b>2004-05</b>	7	1	0	0	8
<b>2005-06</b>	4	6	0	2	12
<b>2006-07</b>	4	8	2	0	14
<b>2007-08</b>	4	8	3	1	16
<b>2008-09</b>	3	4	6	2	15
<b>2009-10</b>	5	4	2	2	12
<b>Total</b>	28	n/a	13	7	Avg.=11

In addition to these project investigations, the program also conducts non-project investigations<sup>30</sup> (non-major investigations). These are generally smaller, less complex and often of regional significance. They include preventative activities and information type visits to market participants that may not result in charges being laid. Approximately 25% of investigation time is spent on non-project investigations in the four IMET locations<sup>31</sup>. Since September 30, 2008, 62 non-project investigations have been active. Approximately half of those have been concluded. Seven were “upgraded” to project investigation status.

#### *Outcome of Investigations*

Generally, the main objective of any investigation is to determine whether a given behaviour contravenes the law and, if so, to lay charges against the individual(s) concerned where there is sufficient evidence. The prosecution function is to review the charges to determine whether there is a reasonable prospect of conviction based on the evidence and whether it is in the public interest to prosecute, while the charging decision rests with the investigators. Therefore, in support of other performance indicators, the proportion of investigations that result in charges being laid could serve as a complementary indicator.

<sup>28</sup> Detailed RCMP data on the progress of investigations was only available for project investigations. Therefore, non-project investigations are not included in this table. Non-project investigations are discussed in a separate paragraph below table 4.

<sup>29</sup> In this context, the RCMP defines completed investigations are those for which a draft Report to Crown Counsel has been submitted for charge approval, those for which charges were laid, and one completed intelligence investigation. However, it should be noted that the Crown may require additional information in order to determine whether charges are appropriate in some of the cases in which a draft RTCC has been submitted.

<sup>30</sup> They usually do not meet project investigation criteria, e.g. low market capitalization.

<sup>31</sup> Based on person-hours from April 1, 2008 to September 30, 2009

As illustrated in Exhibit 2, nine project investigations have been completed and resulted in charges being laid, while five<sup>32</sup> could have resulted in charges being laid but were discontinued—either because the evidence required could not be obtained (3) or because the charges presented to the Crown were not approved (2). This may serve as a baseline for future studies. The evaluation recognizes that not all investigations should or will result in a Report to Crown Counsel, in charges being laid and proceed to prosecution. However, tracking and understanding the outcome of investigations—e.g. why they were discontinued, whether they were referred to other organizations or other RCMP sections, why charges were not approved or why evidence could not be obtained—is important in order to address issues that might require attention and affect the overall performance of IMET. In no way is this meant to be the sole indicator of quality and success of investigations.

*Prosecutions and Case Outcomes*

The table below presents the total number of project and non-project investigations<sup>33</sup> that have reached the prosecution stage as of January 2010:

**Table 5: Number of cases and individuals charged per fiscal year**

	Number of cases	Individuals charged*
<b>2003-04</b>	0	0
<b>2004-05</b>	2	2
<b>2005-06</b>	1	3
<b>2006-07</b>	2	4
<b>2007-08</b>	0	0
<b>2008-09</b>	5	17
<b>2009-10</b>	3	4
<b>TOTAL</b>	<b>13**</b>	<b>30</b>

\*Individuals charged were either subjects of the same or separate investigation.

\*\* Nine project and four non-project investigations

Since 2003-04, a total of 13 cases have resulted in 30 individuals being charged, most in the past two years. Most accused were charged under section 380 (Fraud) of the *Criminal Code*. The estimated loss to investors for all 13 cases is approximately \$627.4 million. Many of these cases are still before the courts, as 21 accused are awaiting preliminary hearing or trial. Decisions in concluded cases are as follows: seven guilty pleas, one conviction and one case in which charges were stayed.

<sup>32</sup> The four non-traditional investigations that were conducted are not to be considered for this rate as they would not have resulted in charges laid. Their purpose was either to develop intelligence or to assist in international investigations.

<sup>33</sup> Includes project and non-project investigations

The evaluation notes comments from the legal community that the number of convictions is not in itself a measure of the success of an investigation or prosecution. Rather, it was pointed out that, from a legal perspective, the purpose of investigations is to determine whether behaviour contravenes the law and, if so, whether there is a reasonable basis to conclude that a person or group has committed an offence. The prosecutor's role is to determine whether the evidence justifies the institution or continuation of proceedings and, if so, to determine whether the public interest requires a prosecution to be pursued. Hence, in some cases, charges may *not* be appropriate because one of the above criteria cannot be met.

*IMET Team Focus Group Questionnaire and RCMP Survey Results - Overall Effectiveness Self Assessment*

The questionnaire completed by IMET team focus group participants indicated that 81% of respondents across the country are of the opinion that IMET is being either somewhat or very effective as a tool to address serious capital market fraud.

The focus group questionnaire responses also indicated that 58% of respondents across the country believe the efforts made following the publication of the Le Pan Report had either partially or significantly improved the program's performance in disrupting capital market fraud. (To put this figure in context, 28% of respondents indicated they did not know, likely because they were not part of the program at the time of the Le Pan study—27% of respondents have been with the program under one year—and therefore have no basis for comparison.) Fourteen percent of respondents thought that the efforts made had not resulted in any improvements.

In response to one of the recommendations in the Le Pan Report, the RCMP has committed to conducting annual IMET employee surveys as a way to measure the efficiency of IMET, assess the working environment and identify measures to improve the program. The 2009 employee survey<sup>34</sup> indicated that 61% of employees agree or strongly agree that the IMET initiative is working efficiently and effectively to fulfill its mandate, while 38% disagree. 85% agree or strongly agree IMET provides good quality service.

### **4.2.3 Timeliness and Benchmarking**

Improved timeliness of IMET investigations and prosecutions is a core performance objective of the IMET initiative. The IMET Results-based Management and Accountability Framework (RMAF) committed IMET to examine performance target-setting for improved timeliness of investigations and prosecutions.

In April 2009, the IMET initiative launched the IMET Benchmarking Study to inform the setting of benchmarks by the IMET participants against which the timeliness of IMET investigations and prosecutions could be measured and assessed.

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<sup>34</sup> Conducted in March 2009 with a participation rate of 55% (72 out of 131 employees).

The Study and its recommendations were presented to Executive Council in September 2009 and accepted by the Executive Council in February 2010. The Executive Council has directed IMET partners to develop action plans to implement the recommendations.

By analyzing the elapsed time in 14 IMET cases, in consultation with IMET investigators, prosecutors and selected participants, the Benchmarking Study identified key milestones and created a model of the “Core Elements of an IMET Case” from investigation to prosecution. In addition, multiple factors within and outside the influence or control of IMET were identified, including the role that case complexity plays in achieving timely results for IMET investigations and prosecutions.

Benchmarks were viewed as:

- case-specific reference points, to be used as a management tool to aid and where feasible expedite the timeliness of operations related to individual IMET cases (as such, they are not “fixed performance targets”); and
- program-level performance reference points, to be used to assess and evaluate IMET Program performance as a whole.

As part of this evaluation, the RCMP provided the evaluation team with updated data on the elapsed timelines of 19 project investigations initiated from January 2004 to November 2009.<sup>35</sup> Key numbers are as follows:

- *Length of time between referral to IMET to start of investigations:* Since IMET’s inception, the average length of time is 187 days<sup>36</sup>, ranging from a low of 3 days to a high of 758 days. (Since changes to the RCMP governance framework were introduced in October 2008, the average is 251 days, compared to 151 days under the previous model. This increase can be explained by the efforts that were dedicated to implementing the new governance framework and the relatively short period of time since implementation.)
- *Length of investigations:* Since IMET’s inception, the average length of investigations up until the submission of a report to Crown Counsel for charge review or approval is 697 days<sup>37</sup> (approximately 23 months), ranging from a low of 125 days to a high of 1610 days. A review of the timeline data shows that the first three IMET investigations—initiated in 2004 following IMET inception—were respectively 1205, 1610 and 1160 days. Excluding these three, the average length of investigations is 487 days. (An insufficient number of projects were fully initiated, conducted and concluded under the new governance framework to compare before and after. IMET is now regularly collecting this data.)

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<sup>35</sup> A detailed breakdown was available for 19 of the 28 project investigations; therefore analysis in this section is based on those 19, and covers the period from January 2004 to December 2009.

<sup>36</sup> This is based on 19 project investigations conducted from 2004 to 2009.

<sup>37</sup> This is based on 12 project investigations conducted from 2004 to 2009.

- *Length of time between end of investigations and the laying of charges:* Since IMET's inception, the average time from the submission of a report to Crown Counsel for charge approval to the actual laying of charges is 213 days<sup>38</sup> (approximately seven months), ranging from a low of 40 days to a high of 445 days.
- *Total length of time from referral to laying of charges:* Since IMET's inception, the average time from referral to the laying of charges is 1049 days<sup>39</sup> (approximately 2 years, 10 months).

The evaluation and the Benchmarking Study note that each IMET case is unique and that multiple factors contribute to its complexity. Furthermore, case complexity is not static and may not be known at the outset of the investigation. It may also change as a case evolves due to factors such as new evidence. In determining the complexity of each case, various factors come into play, either within or beyond the control of IMET, and may have an impact on the timeliness of investigations and prosecutions. For example, factors largely outside the direct control of IMET investigations are the type, nature and scope of investigation (e.g. market manipulation or ponzi schemes), the volume and scope of evidence gathering required (e.g. number of records), the nature and extent of partner/jurisdictional cooperation with the investigation, and disclosure requirements (e.g. solicitor-client privileges). Conversely, the resources assigned to a case (e.g. in-house legal advisor) and the relevant experience of investigators assigned to a case are within the direct control of IMET. The most important factors relating to the timeliness of prosecutions are the number of accused, the number of witnesses and the volume of evidence.

In response to one of the Benchmarking Study recommendations, the IMET interdepartmental working group will be tracking the type, nature, reason and source of delays on a case-by-case basis to identify factors that contribute to or impede timeliness and address issues as required. The above figures are presented for illustrative purposes and may serve as a starting point to establish baselines. However, they should be further refined in future studies based on available data at that time.

The Benchmarking Study also found that, as there was an insufficient number of IMET cases with a wide range of variables from which to determine useful benchmarks, it was not possible at this time to set meaningful, overall IMET performance targets or standards for investigation and prosecution timelines.

At the same time, the Benchmarking Study confirmed the Le Pan Report recommendation by recognizing the importance of striving for timely and reliable performance data at the case-specific level, building on best practices and communicating program-level performance results in a consistent and clear manner.

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<sup>38</sup> This is based on 9 project investigations conducted from 2004 to 2009. It should be noted that the Crown may require additional information in order to determine whether charges are appropriate in some of the cases in which a draft RTCC has been submitted.

<sup>39</sup> This is based on 9 project investigations conducted from 2004 to 2009.

The Benchmarking Study resulted in three operational recommendations, requiring that:

- 1) the RCMP integrate case-specific timelines into IMET investigation operations plans (OPS Plans) and monthly progress updates;
- 2) IMET develop and implement an objective, data-driven methodology to inform and refine case specific operational guidance on the timeliness of IMET investigations and prosecutions; and
- 3) IMET incorporate a “best practices” approach to timeliness in its ongoing business practices (investigations and prosecutions).

A fourth recommendation was that the IMET RMAF performance measures on timeliness be refined to focus on “best practices” and “guidance” rather than fixed “standards and guidelines.”

The evaluation has reviewed the complete Benchmarking Study and engaged in discussions on its content with its authors and with IMET personnel. The evaluation confirms that the Benchmarking Study is an important first step in analyzing IMET timeliness and laying the groundwork for further research and data collection that should contribute to the establishment of meaningful timeliness guidelines and realistic expectations.

#### **4.2.4 Building Operational Capacity**

Since its inception and increasingly since receiving supplementary funding following acceptance of the Le Pan Report, IMET has strived to increase its operational capacity in a number of areas. This section summarizes efforts and progress made in two major areas that were repeatedly emphasized during interviews and focus group discussions.

##### *Human Resources Capacity*

IMET teams across the country have increased their human resources capacity considerably since 2003 and especially in 2009, both in terms of the number of staff engaged and the range of expertise available.

At the time of inception in 2003, IMET was authorized to staff 103 positions, including investigators, legal advisors and forensic accountants. By the end of the 2007-08 fiscal year, the authorized staffing level had risen to 142 and, by the 2008-09, to 180<sup>40</sup>—an increase of almost 27% over the previous year. Acceptance of the Le Pan Report recommendations was at the origin of the establishment of 45 of the current 180 positions<sup>41</sup>.

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<sup>40</sup> Nine of these positions are classed as non-permanent: 4 IMET-funded ITCU (integrated technical crime unit) positions, and the 5 “if/as required” Quick Start positions.

<sup>41</sup> RCMP IMET Annual Report 2008-2009

The RCMP has encountered some difficulty in filling positions in all IMET regions. Nationally, in March 2010, a 20% vacancy rate existed in the IMET teams. For many of the positions, the RCMP reports that staffing processes were under way.

Various appropriate classifications and levels are being sought, including in RCMP Regular Member, Civilian Member and Public Servant categories. Regular Member positions include Constable and Corporal level positions as an initiative to attract younger/lower level IMET members with an interest in financial crime, and to enable career paths within IMET.

A wide variety of specialized skills and experience is also being sought, including individuals with both police investigation and market finance experience, forensic accountants, Market Integrity by Computer Analysis (MICA) specialists, market analysts, investigative analysts, information processors, researchers and others.

In general, site visits and focus group discussions with IMET members in all regions where IMET teams function revealed that IMET team members are dedicated to the achievement of IMET goals, eager to meet the specialized challenges of their work, and willing to contribute to their full potential.

One concern was expressed about possible reassignment (by PPSC) of PPSC legal advisors to other non-IMET sectors of PPSC. It was noted by legal advisors that this could have an impact on team effectiveness if the counsel's knowledge, experience and relationship with the teams were lost.

A shortage of IMET investigative or research follow-up resources (when needed) to assist the prosecution once a report to Crown counsel is submitted and a trial is underway was cited in some jurisdictions as another source of concern for some provincial Attorneys General. This was not the case in the other jurisdictions. The evaluation team did not examine how the investigative resources are re-assigned once an investigation is completed.

A number of focus group participants and IMET interviewees expressed considerable concern with human resources issues ranging from under-staffing of certain expertise and skills on their teams, to limited potential for individual career advancement, to perceived restrictive mobility between the Public Service and the RCMP. It was pointed out during the focus groups that such problems are not exclusive to IMET and exist in other parts of the RCMP. Nevertheless, many felt that these problems were significant enough to present recruitment and retention obstacles that can threaten the successful achievement of IMET team project objectives. Some provincial Attorneys General also acknowledged the difficulty in recruiting qualified prosecutors. They stated that efforts were being made to address the situation.

### *Data and Data Management*

The focus groups with IMET team members and interviews with senior managers have shown that there exists a general consensus that efficient case management for large investigations depends, in some measure, on efficient data management, especially in the current environment of added disclosure burdens.

The use of the Electronic Major Case Management (eMCM) System was discussed in all focus groups and many IMET team member interviews in the regions. The eMCM system is recognized as a useful tool for IMET case management. In one region, a demonstration was made to the evaluation team of its efficacy and extent to which its enhanced usage in the last two years has made a major contribution to operational performance. In contrast to this, another region reported that, as the eMCM was not in use at the initiation of what turned out to be a large, complex investigation, that office now finds itself beset by new data management requirements.

As corroborated in other discussions with IMET team members and managers, it appears that a policy on eMCM as well as the tools, training and personnel required to assure the efficient and effective use of the eMCM are not equally in place in all IMET offices. This variation could be explained by the fact that the management of the eMCM is a responsibility of each regional RCMP division.

#### **4.2.5 Cooperation Among Federal and Non-federal Organizations**

The evaluation notes that cooperation among and integration with the efforts of numerous organizations involved in delivering IMET goals—from federal government departments to provincial Crowns and securities commissions—is a crucial factor in gauging IMET’s effectiveness, efficiency and success.

As evidence, we note that an important recommendation of the Le Pan Report was to “enhance cooperation between the PPSC and provincial Crowns and the RCMP.” Furthermore, one of the responsibilities of the IMET Executive Council is to “liaise with key stakeholders with a view to building and maintaining cooperation among partners”<sup>42</sup>.

All stakeholder groups in headquarters and the four IMET regions were asked in interviews to assess levels of cooperation and integration within the initiative. In the discussions, we noted no generally accepted definitions or distinctions between the terminologies of IMET “partner” or “stakeholder”.

#### ***Federal Departments and Agencies***

Cooperation among the RCMP, the PPSC, Public Safety Canada, Finance Canada and the Department of Justice Canada is achieved through the Executive Council and the IMET Working Group. All interviewees reported positive interaction between the parties, and

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<sup>42</sup> Executive Council Terms of Reference

some noted improvements in recent years. Discussions and work of both bodies were seen as effective, although in some instances, diverging views (e.g. on policy issues, timeliness) and objectives were reported to be difficult to consolidate into common goals among all the participants. There is evidence of close cooperation between the RCMP and the PPSC due to the nature of the work on the ground, as will be discussed below.

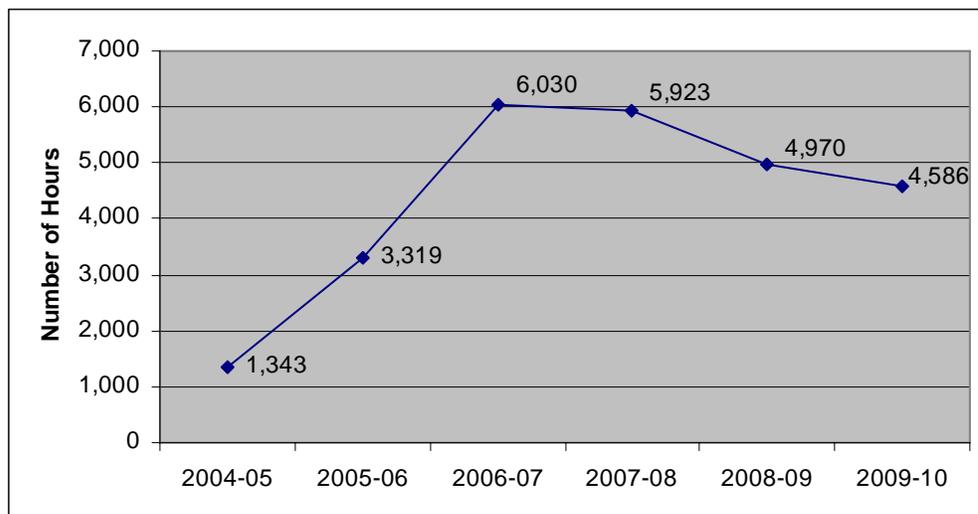
### ***RCMP and PPSC***

Cooperation between the RCMP and PPSC is supported by a formal memorandum of understanding (MOU) signed on October 28, 2008, which defines their respective roles and responsibilities. The MOU aims to improve cooperation thereby enhancing the quality of investigations and the efficiency of IMET prosecutions<sup>43</sup>.

In all regions, IMET team member interviewees noted that the relationship and cooperation between investigators and PPSC legal advisors was generally good, and had been improving in recent years. PPSC legal advisors appear to be integrated within the teams, participate in team meetings and have regular contact with those in charge of investigations. Their role is clearly understood. A few investigators expressed some reluctance at having legal advisors on the team because they felt that some legal advice could be unwarranted and slow investigations unnecessarily. However, the majority of team members report increasing use of PPSC services as the RCMP-PPSC relationship has evolved, and as it has become clear to team members that IMET cases at trial require a foundation of strongly defensible legal positions concerning investigative actions, to minimize possible case vulnerabilities.

The graphic below illustrates the number of hours of legal advice provided by PPSC over the last five years:

**Exhibit 3: Number of hours of PPSC legal advice per year**



<sup>43</sup> Memorandum of Understanding between the RCMP and the PPSC, October 28, 2008

Note: Data for 2009-10 is as of December 16, 2009. The decrease in the provision of legal advice hours in 2008-09 and 2009-10 is due to the fact that the Ontario Attorney General's office was providing pre-charge advice to the Toronto IMET teams on three cases.

### ***IMET and Provincial Crowns***

The level of cooperation between the IMET teams and the provincial Crowns varies across the four IMET regions. In Toronto, the Ontario Attorney General's Office indicated a close relationship with the IMET teams and in some cases the office has provided pre-charge advice. In the other regions, interviews with IMET officers, PPSC legal advisors and provincial Crowns revealed that relationships were good and had been progressing, but the level of interaction varied.

Many PPSC legal advisors, provincial Crowns and IMET officers stated that early and regular involvement in investigations by provincial Crowns would help reduce total project duration by providing advice at the early stages of investigations. However, diverging views exist within the legal community, and from one province to another, on an acceptable level of involvement that would preserve the independence of the investigation and the counsel leading the prosecution.

Interviews with PPSC legal advisors and provincial Crown counsels indicate that most are fairly satisfied with their level of cooperation. Cooperation between the federal and provincial Crowns is supported by three distinct memorandums of understanding between the PPSC and the provincial Attorney General in British Columbia, Alberta and Ontario respectively. The memorandums describe each party's roles, responsibilities, and jurisdiction at the investigative and prosecution stages. An agreement-in-principle is in place with the Quebec Attorney General. These agreements allow for the possibility of joint prosecution teams made up of federal and provincial counsels. In Alberta and in Quebec, in some cases joint prosecution teams have been established. Some PPSC and provincial Crown interviewees believe this type of cooperation helps strengthen and expedite the prosecution, as counsel that assisted in the investigation has in-depth knowledge on the case going to prosecution.

From January 1, 2004 to December 16, 2009, provincial Attorneys General were the lead in three prosecutions that have been concluded. PPSC was not involved in any of these. The provincial Attorneys General are leading five ongoing prosecutions. PPSC is participating in one of these. PPSC is currently leading one prosecution, without involvement from the provincial Attorney General.

The evaluation observed that considerable effort is currently made by each IMET team to negotiate and anticipate, with the assistance of the PPSC, the actions and reactions of provincial Attorneys General offices regarding prosecution or potential prosecution of IMET cases.

The Department of Justice Canada is responsible for managing a Reserve Fund designed to assist provincial Attorneys General conduct prosecutions by defraying certain exceptional expenses arising from IMET prosecutions. Enquiries regarding Reserve Fund usage from provinces were first addressed to the Department of Justice Canada in December 2009. As of March 2010, the Province of Ontario has entered into two agreements to access the Reserve Fund and a third is expected shortly. Another agreement is being negotiated with Alberta. Knowledge about potential usage and benefits of the Reserve Fund appears to be uneven among the provinces. The evaluation has noticed an increase in the number of agreements in the past year, as indicated above. However, the evaluation is unable to determine whether current and future investigations will proceed to prosecution and result in further applications from the provinces to access the Reserve Fund.

***IMET, Provincial Securities Commissions, Self-Regulatory Organizations, and Provincial and Municipal Police Forces***

Securities commission, self-regulatory body and IMET team member interviewees were generally of the opinion that although some challenges exist in certain provinces, overall relationships were positive and that cooperation and interaction between the IMET teams and the provincial securities commissions, at the investigative level, are generally good.

Three provincial securities commissions second employees to IMET teams and report these partnerships are generally useful. Interviewees were also satisfied with IMET’s cooperation with self-regulatory organizations, more specifically the Investment Industry Regulatory Organization of Canada (IIROC), which has also seconded personnel to IMET teams.

The IMET teams also cooperate on certain cases with provincial and/or municipal police forces, some of which also have seconded employees to the IMET teams. This level of cooperation is not uniform among regions.

The questionnaire completed as part of the focus groups for this evaluation asked participants to assess the effectiveness of current cooperation and coordination. Nationally, 63% responded that cooperation and coordination was somewhat or very effective in contributing to the achievement of IMET results, 14.5% responded somewhat ineffective and 2.5% very ineffective, while 20% didn’t know. The table below provides the breakdown by region.

	Very effective	Somewhat effective	Somewhat ineffective	Very ineffective	Don’t know
Calgary	13%	44%	38%	0%	6%
Montreal	6%	63%	13%	6%	13%
Toronto	11%	50%	7%	4%	25%
Vancouver	7%	57%	0%	0%	36%

The Calgary office records a significantly higher percentage of respondents assessing current cooperation and coordination as being somewhat ineffective. This suggests a need for greater efforts to strengthen working interactions and collaboration with non-federal organizations.

The RCMP IMET employee survey asked a similar question concerning external cooperation. Fifty-nine (59%) of respondents either agreed or strongly agreed that they had a strong relationship with external partners, while 32% disagreed or strongly disagreed.

#### ***General Comment on Personnel Secondments and Exchanges***

A number of interviewees from all participant groups noted cases of solid cooperation and collaboration among the parties. However, it was often expressed that these instances of cooperation are initiated by individual parties or they are established through individual contacts. Some IMET and Securities Commission interviewees stated that there is a need for consistency of approach within individual IMET teams and for IMET as a whole, concerning conditions for and usage of incoming and outgoing secondments e.g., from provincial Attorneys General offices, securities commissions, municipal police forces, industry representatives, etc. Inability to access IMET funding for in-coming secondments was mentioned as an impediment.

#### **4.2.6 Horizontal Governance: Program Management and Policy**

The IMET Executive Council is the highest level of initiative governance structure. The Council was established and first met in 2004.

Terms of reference define it as a unified oversight body tasked with ensuring that the operations of the teams are coordinated and aligned with the strategic direction and vision of the initiative<sup>44</sup>.

Specifically, the Executive Council was tasked in the 2003 inception documents with ensuring that the teams are working to deter the commission of capital markets fraud offences by increasing the risk that persons who commit serious capital markets fraud offences will be detected, charged and prosecuted.

A revised mandate for the Executive Council was adopted on March 3, 2008, following the adoption of recommendations made in the Le Pan Report. Revised roles and responsibilities include:

- overseeing the ongoing implementation of the IMET initiative and identifying policy and performance gaps;
- reviewing any changes in direction or implementation of the program designed to enhance program effectiveness;
- reviewing and promoting coordination among the federal partners to the IMET program; identifying coordination issues and ensuring such issues are resolved;

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<sup>44</sup> Terms of Reference IMET Executive Council March 3, 2008

- liaising with key stakeholders, as necessary (other government departments and non-federal partners); and
- reviewing the program goals and assess the performance against these goals on a regular basis.<sup>45</sup>

### *Structure*

IMET inception documents specify that the Executive Council be composed of Assistant Deputy Ministers from the key federal government departments and agencies—Department of Justice<sup>46</sup>, Finance Canada, Public Safety Canada and the RCMP. Currently, Assistant Deputy Ministers or delegates attend meetings. The RCMP and the Department of Finance co-chair the Executive Council. The Council is mandated to meet semi-annually or more frequently as required. Since August 2008, the Executive Council has met four times.

### *Role*

Interviews with Executive Council members or their delegates indicate the Executive Council has positioned itself as a strategic oversight and challenge body for the IMET initiative.

A review of Executive Council reports and minutes from the four meetings since August 2008 confirm that the volume and type of data being reviewed has evolved. The Council receives for example, a regular report from the RCMP on case progression, the intent of which is to monitor progress and identify emerging trends and issues affecting IMET performance. The September 2009 Executive Council report was presented under the following headings: Outstanding Items from the Le Pan Report, Operations and Case Progression, Financial and Human Resources, Program Communication Management, Assessment of Program Environment, Audit and Evaluation and Summary of Proposed Action Items. The PPSC also provides quarterly financial reports which track HR resources and financial expenditures for the provision of legal advice and prosecution services.

Executive Council members also use these reports as sources of information to update and advise them on issues relevant to IMET for their own participation on various external bodies of interest (for example, in interdepartmental or joint external forums examining various policy or potential legislative change issues).

### *Reporting of IMET*

The RCMP produces an annual report on IMET that appears on the RCMP Internet site. The evaluation has not found any formal horizontal reporting mechanism for IMET as an Initiative beyond the Executive Council.

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<sup>45</sup> Terms of Reference IMET Executive Council March 3, 2008

<sup>46</sup> At the time, the prosecution function was assumed by the Federal Prosecution Service which was part of the Department of Justice. The PPSC has been represented on the Executive Council since its creation as an independent organization.

#### *Awareness of the Executive Council*

In spite of Executive Council member participation at meetings and forums on issues of relevance to IMET, IMET team members and participants in the four regions expressed little knowledge of the Executive Council role when questioned.

This situation suggests that, at present, Executive Council activity has little relevance to the IMET teams and key regulatory and provincial stakeholders and that there exists a need for better communication of Executive Council priorities and activities to both IMET teams and stakeholders.

#### *Interdepartmental Working Group*

The IMET Executive Council is supported by the IMET Interdepartmental Working Group (IWG), composed of working-level officials representing the IMET Executive Council partners.

The Interdepartmental Working Group has no formal terms of reference or mandate. Activities are described by members as supporting the Executive Council and carrying out Council decisions, handling day-to-day operational decisions concerning IMET partners, implementing IMET and identifying gaps in performance and policy.

The key Interdepartmental Working Group program management activity at the present time was highlighted as the development and the implementation of the *Interdepartmental Implementation Plan to Improve the Effectiveness of the Integrated Market Enforcement Teams* (April 2008) in response to the Le Pan Report. In addition, the Interdepartmental Working Group has been developing the action plan (June 2010) in response to the Benchmarking Study commissioned by the Executive Council.

Formal records of Interdepartmental Working Group meetings were not available. Examples of the tasking of the working group were available from Executive Council meeting minutes. For example, from the meeting on March 26, 2009, “*The working group was tasked with reviewing the Financial and Human Resources table to include all relevant information to strategic decision-making, including adding a column for budget forecast.*”

### **4.2.7 Progress in Implementation of the Le Pan Report Recommendations**

The October 2007 Le Pan Report presented 31 recommendations grouped under five headings: governance, organization and accountability; achieving timely results; priorities for enhanced funding; human resources matters; and, other matters (including cooperation with partners and communications). A recurring theme was the need to strengthen the multi-layer buy-in, convergence and alignment between the federal and non-federal participants in the complex environment of capital market enforcement.

Using the headings identified above, progress in the implementation of the 31 recommendations by the five federal partners since funds became available for this purpose in December 2008 was reviewed by the evaluation team. A summary table lists

the Le Pan recommendations in numerical order and summarizes implementation status (see Appendix A).

***Le Pan Report Recommendations on Governance, Organization and Accountability***

In accordance with the IMET inception documents, a strategic governance and accountability structure for the IMET initiative was created in 2004 and realigned in 2008. The recommended changes to enhance program governance have been implemented, as described below.

Since 2008, the Executive Council has been co-chaired by Finance and RCMP. Public Safety Canada continues to act as the Council's secretariat and coordinates reporting to the Council.

A review of Executive Council reports confirms that the content of partner reporting has evolved. Since 2008, the reports have addressed program implementation and are used to strategically track the progress of investigations and prosecutions; identify program policy or performance gaps and changes in program direction or implementation; provide updates on developments in the external environment (e.g., establishment of a Canadian Securities Regulator) and on coordination among the federal partners and key non-federal participants.

The documentary review and interviews confirm that recommended RCMP and PPSC accountability structures have been implemented. The RCMP has adopted internal roles and responsibilities and an IMET management structure. Clarity of roles and responsibilities with key provincial participants in respect of IMET prosecutions have been strengthened by MOUs and an agreement-in-principle between the PPSC and the provincial Crowns.

***Le Pan Report Recommendations on Achieving Timely Results***

Achievement of timely results depends on appropriate organizational structures and, at the operational level, competency-based resourcing. The recommendation's intent was to ensure that the federal investigation and prosecution phases were completed effectively.

The RCMP has evolved internal structures and procedures to enhance capacity to achieve timely results. These include RCMP delineation of roles, responsibilities and accountabilities for all IMET positions (March 2008), the adoption of an IMET internal governance framework (October 2008) and the implementation of a revised organizational structure in Divisions and Ottawa Headquarters (October 2008).

***Procedures***

The RCMP has implemented case selection criteria and monthly reporting requirements using project plans for each case. Monthly reports are designed to challenge and identify issues that could impact case timeliness. Daily operational control, reporting, case resourcing, selection and project planning is exercised by the Divisional IMET Officer in Charge.

The agreements between PPSC and the four provincial crowns have established respective roles and responsibilities. However, formal national procedures for case handover and standardized case architecture still elude the partners. Rather, interviews confirmed that handover procedures are evolving on a case-by-case basis and that documentation requirements, e.g. Report to Crown Counsel, follow accepted formats.

#### *Timeliness of Investigations and Prosecutions*

A recurring theme during interviews with federal and provincial participants and focus groups was that delay remains an impediment to more timely prosecutions. Interviews with IMET personnel and provincial securities commissions and Attorneys General confirmed the hand over of the investigation phase to the prosecution continues to be perceived as a potential delay to project progression.

#### ***Le Pan Report Recommendations on Priorities for Additional Funding***

The majority of the \$10 million per year additional funding to enhance the IMET initiative's capacity was directed to the RCMP. The largest proportion of the additional funding was directed towards addressing the IMET resourcing and retention issues within the RCMP. Funding was targeted to strengthening technical and administrative support for investigation teams.

The PPSC and the Department of Justice Canada did not receive additional funding. However, the \$3.75 million Reserve Fund which had been managed by the Department of Justice Canada was reallocated between the PPSC (\$1.5 million) and the Department of Justice Canada (\$2.25 million)<sup>47</sup>. This provides additional flexibility to the PPSC, which is now better positioned to resource IMET prosecutions.

#### ***Le Pan Report Recommendations on Human Resources Matters***

##### *Attraction and retention*

The Le Pan Report recommendations on human resources focused primarily on addressing the RCMP's ability to provide the expected level of services. The recommendations and this evaluation confirmed many of the same systemic human resource issues raised by the *2007 Task Force on Governance and Cultural Change in the RCMP, Rebuilding the Trust* directly impact IMET operational capacity.

To provide critical mass and create developmental and promotional opportunities within the RCMP financial crime community, in February 2008, the RCMP implemented the RCMP constable to staff sergeant rank structure and operationally integrated IMET with other financial crime units (Commercial Crime Section and Integrated Proceeds of Crime). This move was in accordance with the Le Pan Report, which recommended that the implementation of IMET human resource policies be linked more closely to Divisions and in such a way as to maximize career development and movement back and forth between IMET and other financial crime program areas.

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<sup>47</sup> The reserve fund was set at \$2.25 million starting in 2009-10. For 2008-09, \$ 1 million was allocated for the reserve fund.

Additional recommendations implemented include revised organizational structures for the RCMP. The RCMP also implemented new recruitment approaches, an IMET HR plan, revised HR structure and appointed an IMET dedicated HR manager.

*Vacancy rates*

As of March 2010, 130 of 162 IMET/RCMP positions were staffed nationally<sup>48</sup>. Thirty-two RCMP positions<sup>49</sup> remain vacant within the four IMET divisions and eight at headquarters in Ottawa. Seventeen (17) vacant positions existed before the Le Pan Report and 15 were created as a result of the additional funding.

**Table 7: RCMP vacant positions (as of March 2010)**

<b>Ottawa</b>	<b>Montreal</b>	<b>Toronto</b>	<b>Calgary</b>	<b>Vancouver</b>
2 intelligence profilers	1 investigative analyst	3 IMET and 1 SIU investigator	2 IMET investigators	3 IMET and 1 SIU investigator
1 strategic planning		2 information administrators	1 investigative analyst	2 market experts
4 information processors		5 information processors	3 information processors	1 information processor
1 senior analyst		2 market experts	2 market experts	
		1 budget analyst	1 intelligence analyst	
		1 operational support		

As of September 2009, the PPSC had staffed 13.5 of 20 positions, which include 5 legal advisor positions and 15 prosecutor positions; 6 of 15 prosecutor positions are vacant. PPSC has attributed these vacancies to an insufficient prosecutorial workload at the federal level to justify expenditures.

The 20% RCMP vacancy rate, its geographical distribution and nature of positions, and the 32.5% PPSC vacancy rate are indicators that IMET investigative performance continues to be compromised by core human resource issues. It should be noted that i) even if the vacant positions were staffed quickly, the short term impact on investigation or prosecutorial activities and outputs would be limited and ii) the Le Pan Report human resource recommendations only impact federal partner capacity.

***Le Pan Report Recommendations on Other Matters***

*Outreach and non-federal Participants*

The Le Pan Report recommended that relevant coordination issues with Securities Commissions be dealt with and receive focus, either bilaterally or in regular meetings with the Canadian Securities Association (CSA) and the FPT Heads of Prosecution. The Group of Senior Officials on Enforcement in Capital Markets is the main forum for this

<sup>48</sup> This excludes 18 positions that are shared with other RCMP units or staffed/deployed as required (nine market expert positions, five Quick Start positions and four technical crime unit positions).

<sup>49</sup> Ibid

type of coordination. The Group has held two meetings so far (September 2009 and March 2010). The Executive Council met once with the CSA. However, discussions with officials from Provincial Securities Commissions and industry partners confirmed the role of the Executive Council remains at best, low key.

Recommendations highlighted the need to address sharing of resources between prosecutorial agencies and establish protocols with provincial Attorneys General on transition of IMET investigations to the prosecution; interviews suggest progress is ongoing yet handover remains a significant area of concern.

#### **4.2.8 Performance Reporting**

The evaluation notes that reporting on IMET is conducted principally by the lead operational partner, the RCMP, through its IMET annual reports. However, the RCMP IMET annual reports make little mention of the contribution of the other federal partners or of the Executive Council to the IMET initiative, and the financial reporting covers only the RCMP portion of the IMET budget. The other federal partners make little or no mention of IMET in their Departmental Performance Reports. The evaluation found no reports that focused on IMET as a horizontal initiative of five federal partners and its contribution as a strategic horizontal initiative. In addition, some data provided by the RCMP and by PPSC on the status of cases, expenditures and human resources, displayed a number of inconsistencies, suggesting a need for consolidation and standardization. As mentioned in the evaluation limitations section, the evaluation found some discrepancies on the interpretation and the definition of some indicators between the RCMP and PPSC data. These could have an impact on the reported data (e.g. number and length of investigations and prosecutions). Both parties intend on clarifying these issues consistent with the Le Pan recommendations.

### **4.3 Performance—Efficiency and Economy**

We note that the additional IMET funding became available only in January 2009. Total IMET budgetary allocation for 2009-10 for the five federal partners (excluding the employee benefit plan and accommodation costs) is \$35.05 million, an increase of \$13.89 million from 2008-09.

As of September 19, 2009, the total IMET financial position confirms that \$5.50 million of the 2009-10 budget of \$35.05 million had been utilized.<sup>50</sup>

Salient observations related to efficient and economical use of budgets are provided below.

#### *RCMP Allocation*

\$26.66 million of the total IMET allocation of \$35.05 million is for the RCMP. This includes the additional \$8.6 million per year allocated to support enhancements to RCMP IMET activities.

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<sup>50</sup> Executive Council Report (September 19, 2009). Figures exclude employee benefit plan and accommodation costs.

The additional \$8.6 million allocation has been directed as follows:

- a. additional major case management support (\$0.96 million per year);
- b. additional technical crimes support (\$0.76 million per year);
- c. additional transcription support (\$0.26 million per year);
- d. permanent funding for the Security Intelligence Units (\$1.30 million per year);
- e. enhanced Security Intelligence Units and investigative capacity (\$1.15 million per year);
- f. additional investigative team to focus on smaller, less complex investigations (\$0.96 million per year);
- g. additional market experts (\$0.84 million per year);
- h. additional operational oversight at Headquarters (\$0.22 million per year);
- i. two new positions at RCMP Headquarters to enhance human resource management and external communications as well as a new position in each locale to manage administrative duties (\$1.09 million per year); and,
- j. additional corporate services to support the new personnel (\$1.06 million per year).

As of September 19, 2009, the RCMP reported actual expenditures of \$4.49 million from a budgetary allotment of \$26.66 million for fiscal year 2009-2010.<sup>51</sup>

An examination of the RCMP's spending shows under expenditure of \$196,442 of a budget of \$16 million<sup>52</sup> (1%) for 2007-08 and under expenditure of \$8.2 million of an allocated amount of \$26.4 million (31%) for 2008-09<sup>53</sup>.

These under expenditures have been explained by citing the complexity of the federal recruitment process, including the difficulties encountered in creating, attracting suitable candidates and staffing specialist positions, as well as other HR circumstances.<sup>54</sup>

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<sup>51</sup> IMET Executive Council Report (September 19, 2009). Figures exclude EBP and accommodation costs. More recent numbers are unavailable.

<sup>52</sup> This excludes the RCMP's \$3.75M Contingency Fund, which was not accessed in 2007-08. Figures also exclude EBP, capital and accommodations costs.

<sup>53</sup> Lapsed funds at year end were transferred to the RCMP's Operational Budget Carry Forward for other usage. Figures exclude EBP, capital and accommodation costs.

<sup>54</sup> For example, a MERX request for market expert positions in January 2010 resulted in one proposal for four positions. In January 2010, Toronto IMET reported only four of 14 IT support positions had been filled.

### *Department of Justice Canada Allocation*

\$2.25 million of the Department of Justice Canada allocation of \$2.53 million is allocated to the Reserve Fund. 2009-10 is the first fiscal year in which the Reserve Fund has been accessed. Three agreements totalling approximately \$274,000 have been concluded or are under negotiation. The Department has included performance indicators for tracking the use of the Reserve Fund in the horizontal initiatives section of Public Safety's 2010-11 Report on Plans and Priorities<sup>55</sup>.

### *PPSC Allocation*

As of September 30, 2009, PPSC was anticipating spending of \$3.3 million of its \$5.13 million allocation. As previously noted, PPSC explains the under expenditure by insufficient prosecutorial workloads at the federal level.

## **5. Conclusions**

### **5.1 Relevance**

There exists an ongoing need to prevent, investigate and prosecute serious capital market fraud in Canada, and doing so falls within the purview of federal government priorities and the mandates and objectives of the five federal IMET partners.

There exist strong arguments for maintaining this function within the national police force given the current context and existing infrastructures. By doing so, it provides the function with effective and efficient access to investigative and other tools and services. Additionally, given the interprovincial and international nature of capital market fraud cases, the national police force is well positioned to effectively conduct criminal capital market investigations.

IMET appears to have reached a practical balance between its focus on cases of national significance while allowing for the pursuit of cases of regional significance as required so that it remains relevant in the regions.

### **5.2 Performance – Effectiveness**

This evaluation observes that IMET initiative has endured considerable criticism<sup>56</sup> since 2003 for not producing expected results as quickly as had been predicted. However, following a slow start, IMET is now making progress. This report has documented a number of ongoing and concluded cases. Provincial and regulatory participants confirmed that the scope and size of complex capital market fraud investigations and prosecutions require an appropriate level of specialist resources.

IMET has made some progress in demonstrating to some members of this previously sceptical set of stakeholders, that, despite some ongoing challenges, it is better equipped

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<sup>55</sup> See Supplementary information table on horizontal initiatives

<sup>56</sup> Media Analysis Report, Canadian media coverage of the RCMP IMETs, June 2003 to June 2009, Cormex Research

to do the job and to become a relevant force in the investigation, prosecution and deterrence of capital market fraud.

IMET has also shown that through the commissioning of the Le Pan Report and with the seriousness and thoroughness with which the Le Pan recommendations have been addressed, it is capable of addressing important operational issues. Considerable, sustained effort will still be required by the RCMP and the PPSC to address current and projected human resource issues of attraction and retention in a creative and pro-active manner to meet operational requirements, but much has been accomplished in the relatively short period since additional funding was made available in January 2009. Other questions on the further development of infrastructure will also need to continue to be addressed in an equally pro-active manner, and with a consistent approach for all regions.

Some groundwork has now been completed in the development and documentation of methods and data collection practices to monitor the progress of investigations and prosecutions, and to identify the reasons for extraordinary delays. Consistency and accuracy of performance measurement is still of some concern.

Federal IMET partners will also now need to clearly articulate their action plans to address the recommendations of the Benchmarking Report, and to develop methods and protocols to keep investigations focused and on track, to assure that resources remain directed toward necessary, value-added activity. A solid body of lessons learned and a well-documented body of practice knowledge, gained through working in the unique integrated perspective of IMET, should be developed and shared among IMET partners and teams.

It appears to this evaluation that the Executive Council—having overseen the initiation of IMET during its early years, and in continuing to monitor the implementation of the Le Pan recommendations to strengthen IMET’s operational capacity—should continue to actively reinforce its leadership, oversight, and contribution to policy development roles.

The challenge for IMET now is to increase its profile by debating, developing and communicating an integrated IMET initiative position on key issues relevant to combating serious capital market fraud—first, to the IMET teams on the ground where policy positions can have a positive effect on assuring consistent delivery from region to region and from case to case, and second, to external forums attended by IMET Executive Council members where an IMET articulated position may be relevant to the debates taking place on important, broad policy issues. This will be the joint work to be accomplished by the IMET Executive Council, facilitated by Public Safety Canada and supported by the IMET Working Group.

While respecting the individual responsibilities of each federal partner organization, suggested areas where a shared IMET initiative contribution to policy development could be a benefit are:

- the negotiation and establishment of reasonable standards for disclosure and the provision to IMET offices of “best practice” tools for implementation;
- the development of standards and protocols for information sharing between securities commissions and the RCMP;
- the establishment of common standards and expectations concerning interactions/cooperation with provincial Attorneys General offices;
- the enhancement of cooperation, coordination, roles and responsibilities definition and resourcing of shared resources with other non-federal organizations (e.g. for personnel interchanges or temporary assignments for specific prevention activity);
- the definition of IMET’s role in relation to the potential establishment of a Canadian Securities Regulator; and
- the development of an IMET position on the development of an integrated approach to combating organized crime.

### **5.3 Performance—Economy and Efficiency**

The evaluation confirms that IMET would benefit from developing, over time, assurances (and accompanying self-monitoring mechanisms) that all its resources are focused on and devoted to activities that contribute to the achievement of investigation and prosecution outcomes in an economic and efficient manner.

Interviews, focus groups and document review demonstrated that establishing a recommended size and scope for the IMET initiative is an elusive goal, as no consensus opinion was forthcoming about how large or small the problem of serious capital market fraud is in the environment. Furthermore, it was fully recognized that other players and forces also combat serious market fraud, and that they have a strong impact on IMET case outcomes. The evaluation confirms that it appears that no large gaps in coverage exist and that regional IMET offices are adapting to their regional IMET needs.

IMET has demonstrated that it possesses the tools to assure that its expenditures are committed and reported on in a responsible fashion. As noted in section 4.2.8, some inconsistencies in financial reporting have been noted during this evaluation.

## **6. Recommendations**

Four recommendations emerge from the conduct of this evaluation. It is recommended that:

1. under the leadership of the Executive Council, action plans that address the outstanding recommendations of the Le Pan Report and the Benchmarking Study be developed, tracked and reported by the lead organizations<sup>57</sup>.

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<sup>57</sup> This refers to the organization to which the recommendation was addressed or responsible of the implementation measure.

2. the RCMP and PPSC continue to expend necessary efforts to address and resolve current and anticipated recruitment, retention and capacity issues specific to IMET.
3. the Executive Council continue to contribute to an enhanced central policy capacity while respecting the individual responsibilities of each partner organisation and to an ability to communicate with a concerted voice on issues of IMET performance, as outlined in the conclusion section of this report.
4. based on environmental factors discussed in this evaluation and the evolving Canadian context, the Executive Council periodically review the appropriateness of IMET goals and expectations.

## 7. Management Responses and Action Plans

This evaluation report has been reviewed and approved by deputy heads of the IMET partner organizations. Management response and action plans for partners directly affected by the evaluation's recommendations areas follow.

Departmental Management Response and Action Plan	Target Date
<b>Department of Justice Canada</b> fully accepts and supports the recommendations of this evaluation.	
Management Action Plan: <ul style="list-style-type: none"> <li>• The Department of Justice Canada will continue to contribute to the central policy capacity and periodically review IMET goals and expectations. The Department of Justice Canada is also fully committed to working with other federal partners in ensuring that the IMET Executive Council is as effective as it can be.</li> </ul>	Ongoing.
<b>Finance Canada</b> accepts the recommendations of this evaluation.	
Management Action Plan: <ul style="list-style-type: none"> <li>• Finance Canada will continue to monitor progress in response to addressing the outstanding recommendations of the Le Pan Report and the Benchmarking Study through its role on the Executive Council, with a view to ensuring that the recommendations are materially implemented in a timely manner and lead to improvements in the initiative's effectiveness, the timeliness of investigations and prosecutions, and the setting of realistic performance expectations.</li> </ul>	Ongoing.
<ul style="list-style-type: none"> <li>• Finance Canada will support efforts to advance the Executive Council as a forum to contribute to the development of policy on matters of importance related to the administration of the IMET initiative, while respecting the responsibilities and reporting lines of partner organizations.</li> </ul>	Ongoing.
<ul style="list-style-type: none"> <li>• Finance Canada will work with the Executive Council to periodically review the objectives and expectations of the IMET program, to ensure that they are properly aligned with the</li> </ul>	Ongoing.

<p>environment in which it operates, and maximize the initiative’s contribution to effective enforcement of the law against serious criminal capital offences in Canada and investor confidence in the integrity of Canada’s capital markets.</p>	
<p><b>Public Prosecution Service of Canada</b> agrees with the recommendation of this evaluation.</p>	
<p>Management Action Plan:</p> <ul style="list-style-type: none"> <li>• (Recommendation 1): In order to address concerns stemming from perceived delays in the handover of investigations to the PPSC or provincial AGs, as well as concerns regarding the accuracy and reliability of current benchmarking data, the PPSC will work with the RCMP to develop complementary strategies to systematically document the progress of IMET investigations and prosecutions over time, as well as the factors that may contribute to the timeliness of, or extraordinary delays in the resolution of IMET cases.</li> </ul>	<p>A joint RCMP-PPSC Benchmarking Study action plan will be submitted to the Executive Council by fall 2010. The Le Pan recommendations action plan will be submitted to the Executive Council on or before November 15, 2010. <u>OPI</u><sup>58</sup>: IMET Coordinator; Principal Researcher, Strategic Planning and Performance Management Division</p>
<ul style="list-style-type: none"> <li>• (Recommendation 2): In order to respond to ongoing training needs and further develop federal expertise and capacity in IMET and economic crime prosecutions, the PPSC will establish an inventory of training courses and opportunities that address the skill sets that IMET legal advisors and prosecutors require. In addition, the PPSC will promote both formal and informal training, including on-the-job learning opportunities such as job shadowing and mentoring.</li> </ul>	<p>Updates on HR issues and actions to be provided to the Executive Council on a quarterly basis. <u>OPI</u>: DG, Regulatory and Economic Prosecutions; IMET Coordinator; Chief Federal Prosecutors</p>
<ul style="list-style-type: none"> <li>• (Recommendation 3): The PPSC will support the Executive Council in further developing a central policy capacity through its active participation in the Council and in the IMET Working Group, as well as its previously mentioned commitment to implement the outstanding recommendations of the Le Pan Report and the Benchmarking Study.</li> </ul>	<p>Ongoing. <u>OPI</u>: A/Deputy Director, Regulatory and Economic Prosecutions and Management Branch; IMET Coordinator</p>

<sup>58</sup> OPI: Office of Primary Interest

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<ul style="list-style-type: none"> <li>(Recommendation 4): The PPSC will support the Executive Council in its leadership role by actively participating in the IMET Working group and co-chairing the Securities Fraud and Economic Crime Prosecutors Affiliation tasked with studying best practices in prosecution approaches.</li> </ul>	<p>Ongoing. <u>OPI</u>: A/Deputy Director, Regulatory and Economic Prosecutions and Management Branch; IMET Coordinator</p>
<p><b>Public Safety Canada</b> accepts and fully supports the recommendations of this evaluation.</p>	
<p>Management Action Plan: Public Safety Canada will continue to work with its governmental partners to strengthen the IMET Executive Council leadership on horizontal policy issues.</p>	<p>Ongoing.</p>
<p><b>Royal Canadian Mounted Police</b> accepts this evaluation and the recommendations made herein.</p>	
<p>Management Action Plan:</p> <ul style="list-style-type: none"> <li>The RCMP is currently in the process of developing the Action Plan to address the recommendations of the Benchmarking Study and expect to have that finalized in June 2010. As for how the recommendations of that study will be addressed, reporting processes between National headquarters and the field will be amended to obtain timeline estimates and key operational variables identified in that study. Additionally, the RCMP will adopt a more formalized approach to the sharing of best practices across the program.</li> </ul>	<p>A joint RCMP-PPSC Benchmarking Study action plan will be submitted to the Executive Council by fall 2010. The Le Pan recommendations action plan will be submitted to the Executive Council on or before November 15, 2010.</p>
<ul style="list-style-type: none"> <li>Clearly, this evaluation also places strong emphasis on the importance of continuing to treat HR and capacity issues with the highest priority. The RCMP supports this theme. The RCMP has already fully implemented the HR related recommendations of the Le Pan Report. The Strategic IMET Human Resources Manager (a position whose establishment itself was a Le Pan recommendation), staff at RCMP National headquarters and management in the IMET locales is continually looking at what steps can be taken to ensure that a complement of fully competent resources is available.</li> </ul>	<p>Updates on HR issues and actions to be provided to the Executive Council on a quarterly basis.</p>
<ul style="list-style-type: none"> <li>The RCMP is also committed to working with other federal partners in ensuring that the IMET Executive Council is as effective as it can be.</li> </ul>	<p>Ongoing.</p>

## Appendix A: Le Pan Recommendations Implementation Status

Recommendation	Partner	Status
1. Leadership communication of expectations and means to follow-up on progress	RCMP/PPSC	Reporting structure and requirements implemented
2. Appointment of Assistant Commissioner-level Program Leader	RCMP	Implemented
3. Proactive identification of issues affecting performance	RCMP/PPSC	Monthly reporting mechanism and RCMP-PPSC monthly joint managers meetings
4. Include capital market fraud in priorities. Lead coordination to develop shared prosecution approaches with provinces.	PPSC	PPSC DPR identifies IMET as a key activity. Ongoing Securities Fraud and Economic crime Prosecutors Affiliation project to develop shared expertise and education between jurisdictions.
5. Co-chairmanship of the Executive Council assumed by Finance Canada and the RCMP	All	Implemented
6. Report and review progress to bi-annual DM-level meeting	All	No evidence ongoing
7. Establish goals, objectives and roles for IMET HQ and Divisions	RCMP	Reformulated organizational structure, roles and responsibilities implemented
8. Creation of a Program Leader position	RCMP	Implemented (Assistant Commissioner) with reporting structure and roles and responsibilities
9. Adoption of revised accountability structure and principles	RCMP	Reformulated organizational structure implemented, (2008-10-09); realignment of roles and responsibilities (2008-03-14) and creation internal governance structure (2008-10-21)
10. Rigorous review of project-status investigations	RCMP/PPSC	Project progress has been reported via EC Strategic Reports. Other related activities, i.e. information sharing between police and regulatory bodies remain ongoing.

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		<ul style="list-style-type: none"> <li>Greater focus and target should be set for information sharing protocols and involve all relevant federal and provincial regulatory parties, e.g. through the Securities Fraud and Economic Crime Prosecutors Affiliation.</li> </ul>
11. Use benchmarks to expedite investigations	All	Benchmarking study completed (October 2009) and recommendations adopted (Jan 2010). Action plan expected June 2010.
12. Ensure adequate capability to prosecute capital market fraud and plan for enhanced capability	PPSC	PPSC staffed positions and provided training to in-house prosecutors to create pool expertise in economic crime (2008-09). Also developed an inter-jurisdictional network of federal and provincial prosecutors—the Securities Fraud and Economic Crime Prosecutors Affiliation—to share knowledge and best practices.
13. Accessibility of contingency and reserve funding	RCMP/PPSC/ Executive Council	Allocation and use of contingency and reserve funding addressed in 2008 Treasury Board submission.
14. Coordination of case handover from IMET to prosecution	RCMP/PPSC	MOU between RCMP and PPSC (2008-10-28), as well as PPSC and four IMET jurisdictions. <ul style="list-style-type: none"> <li>Case handover and protocols, resource allocation remains a complex and ongoing issue for all partners.</li> </ul>
15. Use of wider range proactive police techniques	RCMP	Focus groups and meetings with JSIU indicate many evidence gathering techniques are being used.
16. Targeting additional resources to specialist needs	RCMP	2008-10 creation of new specialist positions completed. December 2008 additional funding available. RCMP (September 2009) 32% (54 positions) vacant nationally.
17. Enhance capacity to investigate and prosecute smaller	RCMP/PPSC	Focus groups indicate increased IMET capacity

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cases		currently focused on clearing backlog of investigations and on case disclosure needs.
18. Account for resource utilization and implementation plan	All	EC Strategic reports contain expenditure and resource allocation, recruitment and implementation plan progress
19. Update HR vision	RCMP	Report and recommendations RCMP IMET HR Committee adopted April 2009
20. Development HR plan and annual updating	RCMP	HR plan created and adopted. Report of IMET HR Committee Civilian Member Attraction and Retention (2009-01-04). No evidence of annual revision.
21. Ensure divisional implementation of HR policies	RCMP	Delineation of roles and responsibilities and accountability adopted March 2008. Initiatives to attract and retain candidates need to be continued.
22. Use of annual employee surveys and exit interviews	RCMP	RCMP IMET Employee Survey outcome released 2009-06-17. Use of exit interviews sporadic according to focus groups.
23. Continue to use pay scale	RCMP	No action required.
24. Use of HR tools to deal with selected attraction and retention issues	RCMP	New concepts regarding the identification and selection of candidates being used. Reversion to standard RCMP structure to enhance career path and IMET attraction and retention
25. Use of retention pay for Commissioned Officers	RCMP	RCMP will not pursue.
26. Enhancing relations between securities commissions and JSIUs and IMET at regional and national level	RCMP/ Executive Council	Two meetings of Group of Senior Officials on Enforcement in Capital Markets (Sept. 22, 2009 and March 22, 2010). Divisional level-ongoing partnership between IMET teams and JSIU/SIU. Interviews with Securities Commissions officials (Jan. 2010) by evaluators indicated low awareness of

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		<p>IMET Executive Council.</p> <ul style="list-style-type: none"> <li>• Senior Executive Council – Commission partnership needs continued attention and priority</li> </ul>
27. RCMP / PPSC cooperation and use of MOU to define roles and responsibilities	RCMP/PPSC	MOU signed 2008-10-28.
28. Strengthen management practices including program management meetings, enhanced monthly reporting to senior management, development shared RCMP / PPSC action list	RCMP/PPSC	<p>Enhanced monthly reports, shared RCMP / PPSC participation in management and progress meetings.</p> <ul style="list-style-type: none"> <li>• Priority needs to be given to regular face to face meetings between IMET divisions with objective to share best practices and address common issues</li> </ul>
29. Development of Quality audit and evaluation program specific to IMET	RCMP/Executive Council	<p>IMET using RCMP corporate policy on reviews. Evaluation of IMET in accordance with TB mandated guidelines</p>
30. Development of coordinated national communication strategy	RCMP	<p>Draft national communications plan for IMET ready November 2009. National Communications Manager post staffed spring 2009</p>
31. Revision of Executive Council mandate, oversight of enhancement plan, build consensus about program expectations, regular review of program performance	Executive Council	<p>Revised mandate adopted 2008-03-03; EC strategic reports expanded; 2 meetings in 2008, 2 meetings in 2009.</p> <ul style="list-style-type: none"> <li>• No evidence of progress on developing strategic program expectations and vision or coordinated central policy position</li> </ul>

## Appendix B: Ongoing and Outstanding Action Items from Implementation of Le Pan Report Recommendations (April 2010)

Number	Recommendation	Participant	Status
6	Five federal departments and agencies involved in IMET meet at least twice a year at level of Deputy Minister and/or Minister to review progress on IMET	Executive Council/All	Evidence of one meeting held since publication of the Le Pan Report. No further meetings scheduled. No evidence of process and protocol for organizing meetings.
9.5	A Strategic Review Committee of the Program Leader and Criminal CROPs should support the Program Leader and CROPs/COs in meeting their responsibilities	RCMP	Committee terms of reference (TOR) developed. Original response indicates Committee was to meet regularly only during implementation of enhancement plan (inconsistent with intent of the Le Pan recommendation). Meetings initially held quarterly, now semi-annually. No formal tracking of meetings, i.e. dates, minutes. TOR may need to be revisited.
10	Based on U.S. experience, development of a policy and process for criminal prosecution of business organizations, together with settlement agreements and deferred prosecution agreements	PPSC	Study of U.S. experience ongoing. Securities Fraud and Economic Crime Prosecutors Affiliation tasked with studying best practices in prosecution approaches and use of deferred prosecution agreements and immunity agreements. PPSC indicates it will be in a position to complete the study by fall 2010.
10	Ensuring that information sharing with partners is appropriate and working well	RCMP/PPSC	RCMP and PPSC are identifying measures to improve information sharing between provincial securities commissions and police. Securities Fraud and Economic Crime Prosecutors Affiliation was asked to study issue. PPSC indicates Ontario Attorney General has circulated draft for comments to Affiliation partners. Affiliation's work ongoing.
11	Set internal, informal reasonable expectations for various stages IMET cases	RCMP	Benchmarking Study approved by Executive Council in January 2010. Action plan to be developed in June 2010.
14.1	Elimination of delays in handover of investigations to prosecution	RCMP/PPSC	PPSC indicates it is developing a performance measurement strategy to document case characteristics and progress, as well as reasons for extraordinary delays.
16	Priorities for additional funding: <ul style="list-style-type: none"> <li>• RCMP staffing</li> <li>• Support for effective timely prosecutions</li> </ul>	RCMP/PPSC	Retention and attraction of suitable staff and specialists remain a priority for IMET.
17	Development of a simple more-formal implementation plan regarding desired and achievable caseload, including capacity to investigate and prosecute	RCMP	Positions to support this function being staffed. No evidence of a formal implementation plan and definition of criteria for smaller, less complex

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	more smaller, less complex investigations. <sup>59</sup>		investigations.
20	Identify program-wide training priorities, and assess positions at risk for departures and succession plans.	RCMP	HR Plan developed. No evidence of program-wide training priorities. No evidence of assessment of positions at risk and succession planning. Civilian member and public servant issues remain.
26	National meetings of Joint Securities Intelligence Units (JSIUs)	RCMP	Two JSIUs and two Securities Intelligence Units (SIUs) are in place. No evidence of integration of securities commissions within the two SIUs. One JSIU meeting held in September 2008. No evidence of further annual JSIU meetings to share experiences and trends.
29	Quality assurance process and professional standards to help ensure investigations are on track.	RCMP	Evidence of inconsistent use and status of implementation of Major Case Management policy and system. Quality assurance is linked to communication and reporting mechanisms. Evidence shows inconsistent HQ feedback.

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<sup>59</sup> As stated in the Le Pan Report, accepting more investigations should not become a priority until other short term funding priorities are dealt with to enhance results under existing investigations. It should then proceed in stages.

## Appendix C: List of Principal Documents Consulted

### Reports

- Expert Panel on Securities Regulation – Summary of On-Line Submissions Volumes 1 and 2 – July 2008
- Expert Panel on Securities Regulation Final Report and Recommendations – Creating an Advantage in Global Capital Markets – January 2009
- Critical Issues in Enforcement – The Honourable Peter de C. Cory and Marilyn L. Pilkington – Task Force to Modernize Securities Legislation in Canada September 2006
- Canadian Securities Administrators 2009 Enforcement Report
- Canadian Securities Administrators 2008 Enforcement Report
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## Appendix D: Evaluation Matrix

Issues and Questions	Source										
	Federal key informant interviews (including members of Executive Council, Working Group and departmental partners)					Non-federal key informant interviews			Focus Group	Focus Group Questionnaire	Document/Data/Literature Review
	PS	RCMP	Justice	Finance	PPSC	Securities Commissions	Provincial AGs	Others			
<b>Background</b>											
Please describe your level of involvement, knowledge of and experience with IMET?	x	x	x	x	x	x	x	x	n/a	x	n/a
<b>Relevance: Continued Need for the Program</b>											
In your view, does Canada need a national program to combat serious capital market fraud? Why or why not? On what specific evidence or observations do you base your view?	x	x	x	x	x	x	x	x	x		x
Is the integrated IMET team approach for market enforcement i.e. establishing local, integrated specialized teams of federal/provincial/ local law enforcement personnel, regulators and other expert federal and non-federal resources in large centres) needed, and does it continue to be needed?	x	x	x	x	x	x	x	x	x		x
Are you familiar with other Canadian or foreign market/financial enforcement programs? If so, please comment on the strengths or weaknesses of their structure and design, compared to IMET.	x	x	x	x	x	x	x	x			x
<b>Alignment with Government Priorities and Federal Roles and Responsibilities</b>											
To what degree does the overall IMET objective to <i>effectively enforce the law against serious criminal capital market fraud offences in Canada</i> and its mandate to <i>investigate serious Criminal Code capital markets fraud offences that are of regional and national significance and threaten investor confidence or economic stability in Canada</i> align itself with a) Government of Canada priorities, and b) the stated priorities of	x	x	x	x	x				x		x

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your Department/Organization (if applicable)?												
In what way(s), if any, are each of the three areas of IMET activity i.e. prevention, investigation and prosecution of serious capital market offences specifically relevant to your Department/Organization's priorities? Please discuss.	x	x	x	x	x	x		x				x
In your view, is the establishment of the IMET Program and IMET teams an appropriate area of involvement of the federal government? Please discuss.	x	x	x	x	x	x	x	x	x			x
Performance: Achievement of Expected Outcomes												
In your view, have IMETs, and especially the increased IMET funding and resources since they have become available in December 2008, contributed to: a. enhanced capacity for the prevention of capital market fraud? If so, how? If not, why not? b. enhanced capacity for the investigation of capital market fraud? If so, how? If not, why not? c. enhanced capacity for the prosecution of capital market fraud? If so, how? If not, why not? d. improved cooperation and coordination within the IMET teams? If so, how? If not, why not? e. an increase in level of awareness of IMET prevention efforts among targeted audiences/ stakeholders? If so, how? If not, why not? f. a perception among stakeholders that IMET prevention efforts are improving and helping to prevent capital market fraud from occurring or to disrupt their occurrence? If so, how? If not, why not? g. improved cooperation and coordination among federal and provincial players and evidence that the team approach is adding value? If so, how? If not, why not? h. improvements in the quality of investigations? If so, how? If not, why not?	x	x	x	x	x	x	x	x	x	x		x
To what extent is IMET contributing to improved Canadian and international investor confidence in the integrity of Canada's capital markets? If so, how? If not, why not?	x	x	x	x	x	x	x	x	x	x	x	x
Performance: Demonstration of Efficiency and Economy												
To what extent does the IMET governance and management	x	x	x	x	x	x	x	x	x	x	x	x

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structure support the achievement of IMET objectives?											
Are there more effective or efficient ways of accomplishing IMET objectives? Please discuss.	x	x	x	x	x	x	x	x	x	x	x
In your view, is the delivery of IMET through a federal department/organization horizontal partnership arrangement appropriate, or should the responsibility for the fulfillment of IMET objectives reside elsewhere e.g. with other jurisdictions or in an independent, external body? Please discuss.	x	x	x	x	x	x	x	x	x	x	x