



**DEPARTMENT OF JUSTICE CANADA  
PUBLIC SAFETY AND ANTI-TERRORISM (PSAT) INITIATIVE  
SUMMATIVE EVALUATION  
Final Report**

**June 2007**

**Evaluation Division**



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### List of acronyms

APEC	Asia-Pacific Economic Cooperation
ATA	<i>Anti-Terrorism Act</i>
CBSA	Canada Border Services Agency
CBCF	Cross-Border Crime Forum
CIC	Citizenship and Immigration Canada
CIPS	Citizenship, Immigration and Public Safety portfolio
CLPS	Criminal Law Policy Section
CSE	Communications Security Establishment
CSIS	Canadian Security Intelligence Service
DFAIT	Department of Foreign Affairs and International Trade
DND	Department of National Defence
FATF	Financial Action Task Force on Money Laundering
FINTRAC	Financial Transactions and Reports Analysis Centre
FPS	Federal Prosecution Service
IAG	International Assistance Group
IMO	International Maritime Organization
INSET	Integrated National Security Enforcement Teams
IWG	Interdepartmental Working Group
LSUs	Legal Services Units
MLAT	Mutual Legal Assistance Treaties
NSG	National Security Group
OAS	Organization of American States
OSCE	Organization for Security and Cooperation in Europe
PCO	Privy Council Office
PLG	Public Law Group
PPSC	Public Prosecution Service of Canada
PSA	<i>Public Safety Act 2002</i>
PSAT	Public Safety and Anti-Terrorism Initiative
PSEPC	Public Safety and Emergency Preparedness Canada
RCMP	Royal Canadian Mounted Police
RMAF	Results-based Management and Accountability Framework
TB	Treasury Board

## EXECUTIVE SUMMARY

### 1. Introduction

In response to the September 11<sup>th</sup> terrorist attacks on the United States, the Canadian government announced the Public Safety and Anti-Terrorism (PSAT) Initiative to support the government's commitment to fight terrorism and address related national security and public safety concerns. The announcement of the Initiative was preceded by the development and passage of the *Anti-terrorism Act (ATA)*. The *ATA* and the *Public Safety Act 2002 (PSA)* are cornerstones of Canada's response to the threat of terrorism. The PSAT Initiative supports the implementation of these two key pieces of legislation and provides resources so that the Department of Justice can respond to the increase in demand for its legal services to support the national security legislative framework. The Department of Justice plays an important role in this government-wide priority through the development and implementation of legislation, and through related activities both domestically and abroad.

This summative evaluation assesses the relevance, fulfilment of objectives, and effectiveness of the Department of Justice component of PSAT. It builds upon the 2005 formative evaluation, which focused on the issues of design, effectiveness, and efficiency. The Department is conducting the evaluation to fulfill Treasury Board (TB) requirements.

The evaluation included interviews with 44 key contacts representing relevant sectors of the Department and with 14 key contacts from other departments and agencies involved with the PSAT Initiative. A document and data review were also conducted.

The evaluation focuses exclusively on the Department's role in the PSAT Initiative from 2001-2006. During this period, the Federal Prosecution Service (FPS) was the prosecution arm of the Department. The FPS was reconstituted as the Public Prosecution Service of Canada (PPSC) in December 2006 and continues the federal prosecution function, but as an independent entity that is no longer part of the Department of Justice. The FPS is referred to as such throughout this report. Any findings applicable to the FPS should be understood as referring, in the current environment, to the PPSC.

## **2. Description of the Department of Justice component of the PSAT Initiative**

The Department's role in the PSAT Initiative is similar to the ongoing support it has always provided, namely legislative support and policy development, legal advice and assistance, and prosecution and civil litigation. In practical terms, this means that its primary purpose is to address an increased demand for services resulting from the sudden and intense demands placed on the Department in the period immediately following the September 2001 terrorist attacks, as well as the anticipated increase in the level of activity in the areas of anti-terrorism and public safety.

Six core activities under the PSAT Initiative reflect the legal advisor role the Department plays in the Initiative: policy development and analysis; legal advice and assistance; international advice and assistance; outreach, training, and education; civil litigation and prosecution; and provision of legal aid funding.

The Department of Justice has the following five objectives for its component of the PSAT Initiative:

- to engage with other departmental representatives, client organizations, and other jurisdictions in relevant public safety and anti-terrorism activities;
- to assist departmental representatives, client organizations and other jurisdictions in developing more effective laws, regulations and policies;
- to increase knowledge and understanding among key participants in the justice system and others of laws and regulations related to public safety and anti-terrorism;
- to improve the litigation and/or prosecution of cases where terrorism or other threats to public safety and anti-terrorism are involved or where disclosure of sensitive information is an issue;
- to provide legal aid to the economically disadvantaged accused affected by public safety and anti-terrorism initiatives.<sup>1</sup>

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<sup>1</sup> Department of Justice (2006). Results-based Management and Accountability Framework for the Public Safety and Anti-Terrorism Initiative.

## 2.1. Funding

The federal government allocated 1% (\$78 million) of its \$7.7 billion PSAT budget to the Department of Justice. Most of these funds are dedicated to the provision of PSAT-related legal services. In addition, \$2.5 million per year in contribution funding is made available to the provinces and territories or their legal aid delivery entities to ensure that those economically disadvantaged accused affected by the PSAT Initiative have access to legal aid.

Table 1 shows the funding allocation between 2002-2003 and 2006-2007. The Department's PSAT funding is a special purpose allotment, which means that funds cannot be internally reallocated for other purposes without TB approval. The Department contributed some of the PSAT funding to the government reallocation exercise so when demand for PSAT services increased in 2003-2004 and 2005-2006, there was a deficit in funding.

**Table 1: Fund allocation**

Year	TB approved funding*	Reductions (Government reallocation exercise)	Funds available	Actual spending	Surplus/deficit
<b><i>Within Vote 1 – Salary and O&amp;M</i></b>					
2002-2003	\$8.1M	\$0.0M	\$8.1M	\$6.5M	\$1.6M
2003-2004	\$10.1M	\$3.8M	\$6.3M	\$7.1M	(\$0.7M)
2004-2005	\$11.6M	\$2.1M	\$9.5M	\$9.5M	\$0.0M
2005-2006	\$11.6M	\$2.2M	\$9.4M	\$10.4M	(\$1.0M)
2006-2007	\$11.6M	\$2.4M	\$9.2M		
<b><i>Within Vote 5 – Grants and Contributions for Legal Aid</i></b>					
2002-2003	\$2.5M	\$0.0M	\$2.5M	\$0.0M	\$2.5M
2003-2004	\$2.5M	\$2.5M	\$0.0M	\$0.0M	\$0.0M
2004-2005	\$2.5M	\$2.2M	\$0.3M	\$0.3M	\$0.0M
2005-2006	\$2.5M	\$2.2M	\$0.3M	\$0.3M	\$0.0M
2006-2007	\$2.5M	\$0.5M	\$2.0M		
Note: Figures are rounded. *TB approved funding excluding accommodation (13%) and employee benefits plan costs (20%) **Figures for 2006-2007 are based on allocated resources. Source: Department of Justice internal reports.					

### **3. Evaluation findings**

#### **3.1. Relevance**

The objectives of the PSAT Initiative address national security concerns that are of continuing importance to the federal government: protecting Canadians from terrorist attacks; keeping borders open; identifying, prosecuting, and punishing terrorists; and contributing to international efforts to fight terrorism. The integrated, interdepartmental approach of the Initiative also remains a commitment of the government. Furthermore, intelligence threat assessments show that terrorism is considered to be a major threat to Canada, and that the tactics of terrorist groups are becoming more deadly and difficult to detect. All of these factors point to an ongoing level of need for the PSAT Initiative.

The Department's PSAT activities support the government's objectives under the Initiative. There is a strong demand for the Department's PSAT-related activities, demonstrating the importance of the Department's contribution to the Initiative. There is also an expectation that the demand for these services will increase in the coming years. Ensuring public safety, in the face of terrorist or other threats, is a cornerstone of Canadian government policy, and is now on the agenda of most international gatherings. As the government continues to engage in new national security initiatives and also to sign international agreements related to terrorism and national security concerns, the legal advice and support required expands accordingly, and this growth will likely continue unabated. The Department also supports law enforcement agencies by providing advice to border agencies and investigators, and the DOJ (pre-PPSC) handled prosecutions to suspected terrorists.

#### **3.2. Success in meeting objectives**

The Department of Justice is conducting all of its six core activities under the PSAT Initiative and has made progress in meeting the objectives it has outlined for its role in PSAT. The Department has been particularly successful in engaging other Departments, client organizations, and other jurisdictions in PSAT-related matters. Departmental clients expressed a high degree of satisfaction with the work that has been done in the development of laws, regulations, and policies that support the general framework of the ATA.

Measuring the impacts of the activities conducted under the Initiative remains a challenge for the Department. Activities such as providing legal advice and drafting legislation, for example, do

not lend themselves to having easily-measured outcomes. The following outlines the Department's success in meeting each of its intended outcomes under PSAT:

**Engaging with others in relevant public safety and anti-terrorism initiatives.** The evaluation found that the Department serves an important function in linking government departments and in coordinating national security activities. This coordination largely occurs on an informal basis. Undoubtedly, the Initiative could benefit from more forums that make meetings and information sharing, both within Justice and among other departments and agencies, a more regular feature of the Initiative.

**Assisting in the development of more effective laws, regulations, and policies.** Both the formative and summative evaluations found that the Department's work on the *ATA* and the *PSA* was valued by the other government departments involved with these pieces of legislation. Although the legislation has been the subject of legal challenges, these challenges are to be expected in such an uncharted area of the law. The *ATA* has created new criminal offences, which Canada has been able to use to prosecute people for activities that might previously not have been considered illegal, as well as new tools to assist investigators in detecting terrorists and terrorist activities. The process of reviewing the *ATA* was underway at the time of the evaluation's data collection phase. The CLPS will coordinate the government response to recommendations from the parliamentary committees as required.

The Department continues to assist in the development of laws, regulations, and policies that support the national security and anti-terrorism legislative framework, including that of the *ATA*. This assistance primarily involves providing advice to client departments, and the evaluation found general satisfaction with the work that has been done. The Department has developed expertise in drafting legislation and policies pertaining to terrorism. As a result, other government departments and agencies look to the Department of Justice to coordinate the government's national security policy, as the Department is considered to have the most comprehensive understanding of the various departments' activities. In addition, that expertise causes other countries to look to Canada for advice and assistance in drafting their own anti-terrorism laws. The Department also serves a vital role by reviewing all legislation, regulations, and policies so that fundamental human rights are not compromised when national security concerns arise.

**Increasing the knowledge and understanding of laws and regulations related to public safety and anti-terrorism.** The evaluation found that this is an objective that appears to have been less of a priority after the *ATA* was enacted. Shortly after the *ATA* was enacted, the



Department provided a number of training sessions on the legislation within the Department, as well as to other departments and agencies at the federal and provincial levels, and these were well received. Since then, the Department now provides training when it is requested, on a more ad hoc basis, and it incorporates PSAT-related information into training on other issues. CLPS counsel have made presentations at conferences, universities, and other forums to raise awareness of the ATA. The Department has also set up a website on the Parliamentary Review of the ATA. In 2005, there were 15, 060 unique visitors to the site and 19, 558 unique visitors in 2006.

**Improving the litigation and/or prosecution of terrorism-related cases.** The ATA provisions have not been used extensively, but through interviews, the evaluation found that the provisions, and also the Department's contribution to their implementation, have improved Canada's response to investigations, litigation and/or the prosecution of terrorism cases. In particular, the Department has contributed to the potential use of intelligence in criminal proceedings by managing the notice provisions of section 38 of the *Canada Evidence Act*. The evaluation found that there are concerns about the handling of the large volumes of records associated with section 38 notices.

The Department has also developed an interdepartmentally agreed upon protocol for the management of Canadian evidence and testimony in foreign proceedings involving national security matters.

Some possible suggestions to improve investigations, litigation and/or prosecutions include assigning front-line prosecutors with top secret clearances to provide advice at the early stages of potential terrorism investigations, as well as developing a dedicated team of anti-terrorism prosecutors, as this legal area is very complex, covers new legal ground and therefore requires careful consideration.

**Improving international efforts in the fight against terrorism.** Since the ATA was enacted, the Department has been engaged in a number of activities that support Canada's role as an international partner in anti-terrorism efforts. These include: participating in international organizations; negotiating and providing legal advice on international instruments; handling extradition and mutual legal assistance requests; and providing advice and assistance to foreign countries on developing their own anti-terrorism legislation. Working with the international community in these areas is critical to Canada's anti-terrorism efforts, as acts of terrorism are a transnational crime. Each country has its own approach to the issue, based on its own legal and political culture. It is, therefore, important for Canada to understand other countries' systems, as

well as for them to understand Canada's system. The Department serves an important role in providing this explanation, which improves Canada's ability to cooperate with other countries. It also ensures that any international commitments made by Canada meet Canadian and international legal standards.

Suggestions for how the Department could better assist these international efforts, identified by interviewees, included expanding the number of liaison counsel who are stationed in foreign capitals, as well as providing additional resources so that the Department can participate in more capacity-building efforts and also attend international conferences. These activities help the Department to build a network with its international counterparts and to improve international cooperation.

**Providing legal aid to economically-disadvantaged accused affected by public safety and anti-terrorism initiatives.** The Department provides contribution funding to the provinces and territories or their legal aid delivery entities to ensure that those economically disadvantaged accused affected by the PSAT Initiative have access to legal aid. While the current number of contribution agreements is not large, the significance of this funding provision cannot be underestimated. Mounting a defense to terrorism charges will be costly, and the provision of legal aid funding helps to ensure access to justice. At the same time, the funding ensures that there will be no stays of prosecutions because of lack of defence counsel. To date, there has not been a known instance of an unrepresented accused in a terrorism-related case.

#### **4. Effectiveness**

**Resources.** For the summative evaluation, the RMAF defines effectiveness as, in part, "assessing the appropriateness of the level of resources allocated to the department." Resources are an issue for some of the Department's sections, and for the last fiscal year (2005-06), the Department of Justice reports a \$1.0 million deficit for its PSAT activities. If Department of Justice sections do not have sufficient funds available to them, there are two possible impacts on the services they provide to their clients: services are provided only in a reactive manner in response to national security issues and departmental officials can only provide the minimum required level of services to their clients.

It was noted during the course of the evaluation that the Department has a limited ability to demonstrate the sufficiency of its PSAT resources. The Department currently tracks funds by business line and this does not align with the Treasury Board Secretariat's requirement that funds

be tracked by program or initiative. Some of sections in the Department currently use iCase, which is an information management system that provides timekeeping, billing, case management, document management and reporting functions. The data from this system does not provide a clear overall picture of PSAT-related resource usage; use of this system and the data entered into it varies among departmental sections. As a result, some sections can only provide estimates of their PSAT-related resource use.

**Management.** The formative evaluation recommended that the PSAT Steering Committee become more involved in coordinating activities under the Initiative. The summative evaluation found that the Committee has not yet fully expanded its role beyond that of resource allocation.

**Recommendation 1: The Committee should further review its role and mandate so the full implications of the PSAT work of the Department are fully understood and appropriately funded.**

**Management Response:**

Agreed. While the Committee recognizes that each sector needs to continue to be responsible for its own PSAT-related activities, it is important for the Committee to make resource allocation decisions, monitor the implementation of the PSAT activities, and facilitate the reporting of the overall impact of PSAT funding. The PSAT Steering Committee will review its mandate, as outlined in the Committee's Terms of Reference, during a future meeting

The formative evaluation also identified a need for an effective department-wide financial and performance measurement reporting system(s) for the Department's component of the PSAT Initiative. Since then, the Department has taken positive steps towards improving the reporting of the results of its PSAT activities. For example, the Department, through its Corporate Services, has taken a number of steps towards improving the reporting of the results of the Department's PSAT activities, in close collaboration with the TB Secretariat. Furthermore, the Department engaged a consultant to review its performance measurement strategy, to consult with key contacts in the Department, and to identify key performance indicators for each sector involved with the Initiative. As this project was conducted fairly recently, its results were not available for consideration in the evaluation.

**Recommendation 2: The Department should continue to implement the positive measures it has already undertaken to improve the measurement and reporting of results for its PSAT activities.**

**Management Response:**

Agreed. In October 2006, the Department hired a contractor to consult with Departmental employees from each sector involved with PSAT. The goal of the exercise was to improve the collection and reporting of performance measurement data to assist in demonstrating the impact of the Department's contribution to the PSAT Initiative. The Department will build on this by implementing the consultant's recommendations.

The Department has undertaken a substantial amount of work as part of its PSAT responsibilities, and there is a strong belief that this work will expand and therefore require more resources. For that reason, it is imperative that a financial management and performance measurement reporting system can demonstrate the impact of both current and future demands on the Department under the Initiative.

**Recommendation 3: The Department should continue to implement measures to improve its financial management and reporting systems to help demonstrate the impact of both current and future demands on the Department under the Initiative.**

**Management Response**

Agreed. The Committee will work with Financial Services to determine how it could facilitate the work of managers who need to enter PSAT-related information in the Integrated Financial and Material System (IFMS), taking into account other systems used such as iCase, the Salary Management System and the Timekeeping System.

## **1. INTRODUCTION**

In response to the September 11<sup>th</sup> terrorist attacks on the United States, the Canadian government announced the Public Safety and Anti-Terrorism (PSAT) Initiative (or “the Initiative”) to support the government’s commitment to fight terrorism and address related national security and public safety concerns. The announcement of the Initiative was preceded by the development and passage of the *Anti-terrorism Act (ATA)*. The *ATA* and the *Public Safety Act 2002 (PSA)* serve as cornerstones of Canada’s response to the threat of terrorism. The PSAT Initiative supports the implementation of these two key pieces of legislation and provides resources so that the Department of Justice can respond to the increase in demand for its legal services to support the national security legislative framework.

The PSAT Initiative reflects the complexities of the threat raised by terrorism, which does not reside neatly within the jurisdiction of any one agency, level of government, or nation. As a result, the Initiative is government-wide, involving a substantial number of federal departments and agencies that are a cross-section of government – from the more traditional law enforcement and national security agencies, like the Royal Canadian Mounted Police (RCMP), Canadian Security and Intelligence Service (CSIS) and the Communications Security Establishment (CSE), to departments like Health, Transport, and Finance. The Initiative also requires coordination and collaboration by the federal departments and agencies with their provincial and international counterparts.

The Department serves an important function within the Initiative by assisting in the development of policies, regulations, and legislation related to public safety and anti-terrorism; providing legal advice and assistance on terrorism-related issues, both domestically and internationally; conducting terrorism-related prosecutions; and balancing access to justice and human rights with Canada’s collective security concerns.

### **1.1. Purpose of the evaluation**

This summative evaluation assesses the relevance, fulfilment of objectives, and effectiveness of the Department of Justice component of PSAT. It builds upon the 2005 formative evaluation,

which focused on the issues of design, effectiveness, and efficiency. The Department is conducting the evaluation in part to fulfill Treasury Board Secretariat requirements.

The evaluation focuses exclusively on the Department's role in the PSAT Initiative from 2001-2006. During this period, the Federal Prosecution Service (FPS) was the prosecution arm of the Department. The FPS was reconstituted as the Public Prosecution Service of Canada (PPSC) in December 2006 and continues the federal prosecution function, but as an independent entity that is no longer part of the Department of Justice. The FPS is referred to as such throughout this report. Any findings applicable to the FPS should be understood as referring, in the current environment, to the PPSC.

## **1.2. Scope of the evaluation**

This evaluation does not cover the full breadth of the PSAT Initiative, which means that certain aspects of Canada's response to terrorism are not part of this evaluation. Moreover, this is not an evaluation of the *ATA*. The parliamentary review of the *ATA* is the forum for discussing the legislation and making recommendations on changes to the legislative framework, whereas this evaluation considers whether the PSAT-funded activities of the Department of Justice are meeting the objectives and goals that the Department has set under the Initiative.

## **1.3. Structure of the report**

This report is divided into six sections, including the introduction. Section 2.0 describes the policy context and legislative framework of the PSAT Initiative, Section 3.0 describes the Department of Justice component of the Initiative, Section 4.0 outlines the methodology for the evaluation, and Section 5.0 summarizes the key findings. Section 6.0 concludes the report. The evaluation framework is available in appendix A.

## 2. POLICY CONTEXT AND LEGISLATIVE FRAMEWORK

*Policy context.* Domestic concerns, as well as international calls for action after the September 11<sup>th</sup> terrorist attacks, created a need for a rapid government response. On September 28, 2001, the United Nations Security Council unanimously adopted resolution 1373, which called upon Member States to ensure that their domestic legislation includes provisions to make it illegal to finance, plan, prepare or perpetrate terrorist acts. Member States were also to take steps to facilitate cooperation with other countries' criminal investigations related to terrorism, and to adopt border control measures to prevent the movement of terrorists. The level of urgency is seen in the requirement that Member States were to report on actions taken within 90 days from the date of the resolution's adoption.

The Canadian government responded through legislative and policy actions. In late September 2001, the Prime Minister created the Ad Hoc Cabinet Committee on Public Security and Anti-Terrorism to coordinate Canada's response. This committee, which included a representative from Justice, reviewed proposals submitted by 17 relevant departments for activities to support the Initiative's five main objectives:

- preventing terrorists from entering Canada
- protecting Canadians from terrorist attacks
- bringing forward tools to identify, prosecute, convict, and punish terrorists
- keeping the Canada-United States border secure and open to legitimate trade
- working with the international community to bring terrorists to justice.<sup>2</sup>

Based on the work of the Committee, the government announced the federal plan for "Enhancing Security for Canadians" in its December 10, 2001 budget speech, and allocated \$7.7 billion (over

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<sup>2</sup> Department of Justice (2005). *Formative Evaluation of the Department of Justice Public Safety and Anti-Terrorism (PSAT) Initiative Technical Report*, p. 1. Other government documents use different, but similar, wording. See, Department of Justice (2001). *Government of Canada Introduces Anti-Terrorism Act*. Retrieved February 6, 2007 from [http://www.justice.gc.ca/en/news/nr/2001/doc\\_27785.html](http://www.justice.gc.ca/en/news/nr/2001/doc_27785.html).

5 years) to increase the government's capacity in the areas of public safety and anti-terrorism, which became known as the PSAT Initiative.<sup>3</sup>

**Legislative framework.** In addition to this policy response, the government began work immediately on domestic legislation to strengthen Canada's laws on terrorist activities and public safety. The result was the *ATA* and the *PSA*.

The Department of Justice drafted legislation that amended numerous statutes, implemented international conventions, and created new criminal offences. The government introduced the *ATA* on October 15, 2001, and it received Royal Assent on December 18, 2001, within the 90 days called for in UN resolution 1373. CLPS led the development of this legislation. The first version of the *PSA* received a first reading in November 2001, but the government re-introduced the Bill three more times before the *PSA* received Royal Assent on May 6, 2004. The development of this legislation was led by the Department of Transport Canada, including its Legal Services Unit.

This legislation changed Canadian law by enhancing the powers of investigative authorities, particularly by allowing for preventative arrests, preventative detentions and investigative hearings, focusing on combating terrorism before it happens. The *PSA* provides increased powers to Ministers in cases of emergency. Key provisions in each of the Acts are listed in Table 2.

**Table 2: Key legislative provisions**

<b>Anti-Terrorism Act</b>	
<b>New measures to identify, prosecute, convict and punish terrorists</b>	
New definitions	The <i>ATA</i> introduced into the <i>Criminal Code</i> definitions of terrorist activity and terrorist group.
New offences	The <i>ATA</i> created several new terrorist offences, including participating in, contributing to, or facilitating any activity of a terrorist group; instructing anyone to carry out a terrorist activity; and knowingly harbouring or concealing a terrorist. The <i>ATA</i> also created a number of new terrorist financing offences.
Increased sentences	The <i>ATA</i> set the maximum sentence of any indictable offence, if it was committed for the benefit of, at the direction of, or in association with a terrorist group, to life imprisonment.
Implemented international conventions	Canada had signed all 12 UN conventions related to terrorism, but had not ratified two of them. The <i>ATA</i> ratified and implemented Canada's obligations under the remaining two conventions, and also implemented the <i>Convention on the Safety of UN and Associated Personnel</i> .

<sup>3</sup> Department of Finance Canada (2001). *Securing Progress in an Uncertain World: the Budget Speech 2001*. Retrieved October 28, 2006 from <http://www.fin.gc.ca/budget01/speech/speeche.htm>.



<b>Anti-Terrorism Act</b>	
<b>New investigative tools</b>	
Recognizance with conditions, or preventative arrest powers	Peace officers can apply to a judge to have the judge cause a person to attend before him or her in order to determine if a recognizance with conditions should be imposed on a person in order to prevent the carrying out of a terrorist activity, provided certain conditions are met. Peace officers have the power to arrest persons without a warrant and generally hold them for 24 hours. This power ceased to exist on March 1, 2007.
Investigative hearings	Peace officers can apply for a court order to compel individuals believed to have information on a terrorism offence to attend a hearing and answer questions, provided certain conditions have been met. This power also ceased to exist on March 1, 2007.
Use of electronic surveillance	The Act extend the provisions applying to the use of electronic surveillance against criminal organizations to include terrorist groups.
<b>Protection of sensitive information</b>	
Disclosure in legal proceedings	Section 38 of the <i>Canada Evidence Act</i> was amended to include new procedures protecting the disclosure of sensitive or potentially injurious information during legal proceedings when that disclosure could affect international relations, national defence, or national security.
<b>Public Safety Act 2002</b>	
Emergency powers	Federal Ministers have new powers in emergency situations (in areas such as health, safety, and the environment).
New offence	The <i>PSA</i> created a new offence of terrorist hoax, making it a crime to convey false information that a terrorist activity is likely to occur or to commit an act that causes a reasonable but false apprehension that a terrorist activity is likely to occur.
Increased data sharing	Advanced Passenger information can be shared with Transport Canada, the RCMP and CSIS.
Increased airport security	This is accomplished particularly in screening passengers and in declaring certain areas of aircraft and airports to be restricted.

Because of the sweeping new authority provided in the *ATA*, and to respond to concerns expressed by the Canadian Bar Association among others, Parliament amended the *ATA* to provide provisions that strengthen oversight of its use. The *ATA* requires annual reports to Parliament on the use of the recognizance with conditions and investigative hearing provisions. Sunset clauses were added to these provisions and in addition, three years after receiving Royal Assent, the *ATA* has been required to undergo a comprehensive parliamentary review.<sup>4</sup>

<sup>4</sup> [http://www.sppc.gc.ca/en/anti\\_terr/backgrounder.html](http://www.sppc.gc.ca/en/anti_terr/backgrounder.html)

### **3. PROFILE OF THE DEPARTMENT OF JUSTICE COMPONENT OF THE PSAT INITIATIVE**

The Department's role in the PSAT Initiative is to provide legislative support and policy development, legal advice and assistance, prosecution and civil litigation. The additional funding provided to the Department under PSAT is intended primarily to address an increased demand for its services resulting from the sudden and intense demands placed on the Department in the period immediately following the September 2001 terrorist attacks, as well as the anticipated increase in the level of activity in the areas of anti-terrorism and public safety.

#### **3.1. Logic of the Department's PSAT Component**

This section describes the Department's PSAT component logic, including its activities and expected impacts. Figure 1 (page 8) presents a diagram of activities, outputs and outcomes.<sup>5</sup>

##### **3.1.1. Activities and outputs**

Six core activities under the PSAT Initiative reflect the legal advisor role the Department plays in the Initiative. These activities are presented in Table 3.

**Table 3: Department of Justice PSAT activities**

<b>Activity</b>	<b>Description</b>
Policy development and analysis	Assisting with drafting policy and legislation, research, and legal advice to the Minister of Justice and other government departments on new or existing legislation, policies, and initiatives related to terrorism or public safety
Legal advice and assistance	Advising on anti-terrorism and public safety policies as well as operational issues, such as the disclosure of sensitive documents and the use of investigative techniques

<sup>5</sup> The figure is taken from the Department of Justice Canada (2006). *Results-Based Management and Accountability Framework Public Safety and Anti-Terrorism Initiative*.

Activity	Description
International advice and assistance	Providing legal advice and technical assistance in negotiating international instruments, and implementing international obligations through domestic legislation, assisting other countries with the development of anti-terrorism legislation, as well as generally supporting the work of Canada with its international partners on issues related to anti-terrorism and public safety
Outreach, training and education	Providing training and educational sessions on the ATA for government departments and the general public
Civil litigation and prosecution	Handling civil challenges to the ATA and PSA, as well as requests for disclosure of sensitive documents, and managing or supporting prosecutions for terrorism-related offences
Provision of contribution funding to the provinces and territories or their legal aid delivery entities	Ensuring that the economically disadvantaged accused affected by public safety and anti-terrorism initiatives have access to legal aid
Source: Based on descriptions in the Department of Justice (2006). <i>Results-based Management and Accountability Framework for the Public Safety and Anti-Terrorism Initiative</i> .	

### 3.1.2. Expected impacts

The activities listed in section 3.1.1 are expected to contribute to the achievement of the following initial outcomes:

- Engagement with other departmental representatives, client organizations, and other jurisdictions in relevant public safety and anti-terrorism activities:* This impact is considered a necessary effect of the Department's activities under its PSAT component. In providing legal advice and assistance, the various departmental sections involved in the Initiative must interact, as each brings different expertise to the legal issues involved. As well, legal advice and assistance are provided to client organizations within the Canadian government and other jurisdictions.
- Departmental representatives, client organizations, and other jurisdictions develop more effective laws, regulations, and policies:* Through its role as legal advisor, the Department is expected to assist client organizations and other jurisdictions in developing laws, regulations and policies that will support law enforcement and national security agencies with their public safety and anti-terrorism efforts while ensuring that issues of fundamental fairness and human rights are respected.
- Increased knowledge and understanding among key participants in the justice system, and others, of laws and regulations related to public safety and anti-terrorism:* Through the Department's educational and training activities, it is expected that those involved in the

justice system will become more aware and gain a greater understanding of the legislative provisions. This improved awareness will enhance the ability of law enforcement and national security personnel to use the provisions effectively.

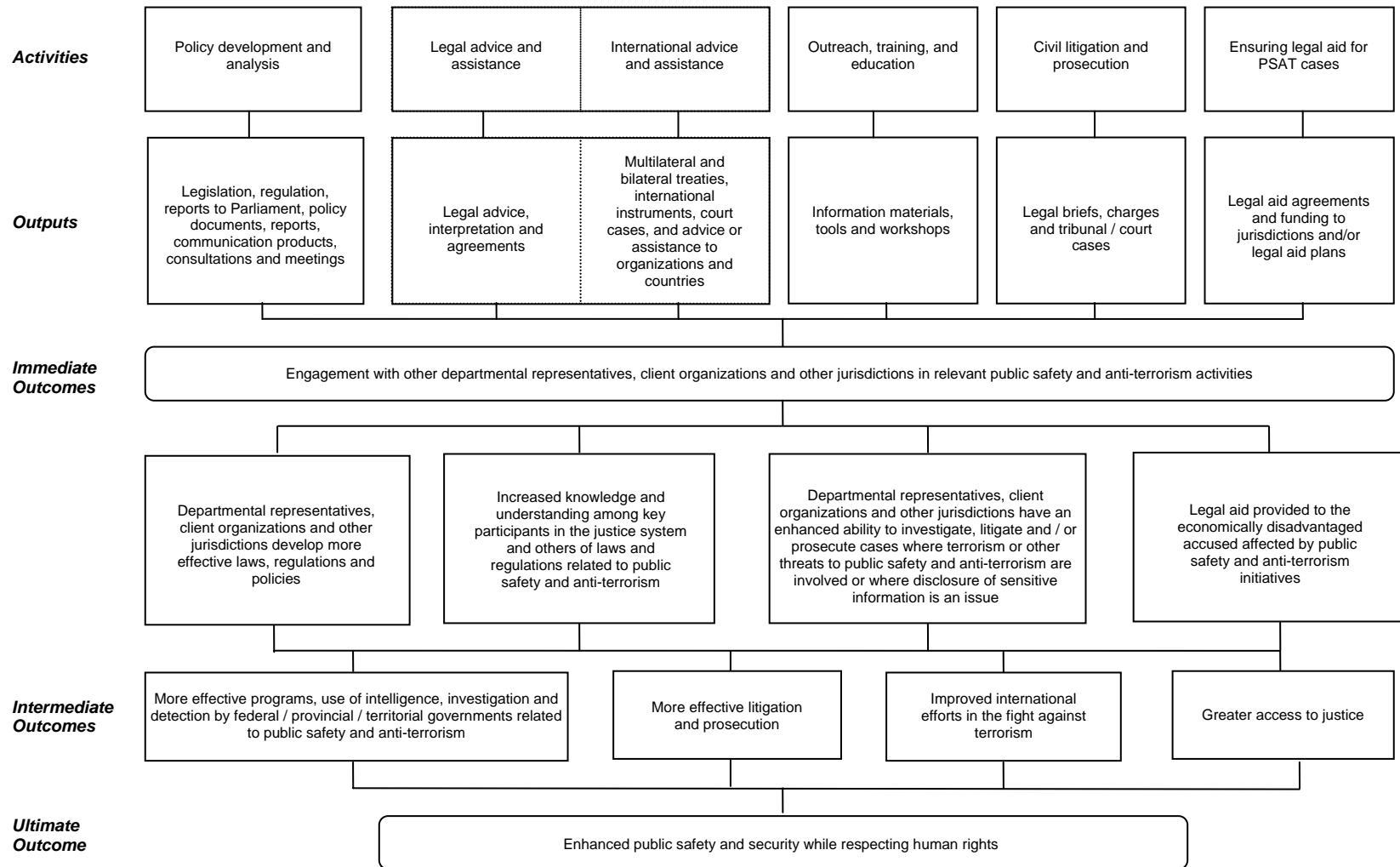
- *Department representatives, client organizations, and other jurisdictions have an enhanced ability to investigate, litigate, and/or prosecute cases where terrorism or other threats to public safety and anti-terrorism are involved or where disclosure of sensitive information is an issue:* The anti-terrorism and public safety legislation provides additional tools to investigators and prosecutors, and is expected to result in more effective investigations, litigations and prosecutions that will prevent and/or punish terrorist activities while also protecting sensitive information from disclosure during court proceedings.
- *Legal aid provided to the economically-disadvantaged accused affected by the public safety and anti-terrorism initiatives:* To ensure that the new anti-terrorism and public safety legislation does not adversely affect low-income accused, the Department provides contribution funding to the provinces and territories to support legal aid in handling these cases. This provision of funds for legal aid is intended to ensure that the constitutional rights of accused are protected.

The successful achievement of the initial outcomes will also support the following intermediate outcomes:

- *More effective programs, use of intelligence, investigation, and detection by federal/provincial/territorial governments related to public safety and anti-terrorism:* The federal government expects that the development of anti-terrorism and public safety legislation, and the provision of legal advice, education and training, will result in more effective programs, intelligence, investigative operations and detection.
- *More effective litigation and prosecution:* The involvement of Justice counsel is expected to enhance the department's ability to conduct litigation and prosecutions related to terrorism and public safety.
- *Improved international efforts in the fight against terrorism:* It is expected that the international efforts will be improved in three main ways: through providing legal advice to government organizations involved in negotiating international instruments; through assisting in the investigation, litigation and prosecution of suspected terrorists at home and abroad; and, through assisting other countries in building their capacity to respond to terrorism through improved legislation.

- *Greater access to justice:* Through ensuring that legal aid is available to economically-disadvantaged accused in terrorism-related cases, and by providing education and training to ensure that the anti-terrorism and public safety legislation is understood and properly used, it is expected that the Department will contribute to greater access to justice.

Finally, the activities are expected to lead to the ultimate outcome of enhanced public safety and security while respecting human rights.



**Figure 1**  
 Logic Model for Public Safety and Anti-Terrorism Initiative

### 3.2. Main sections involved in the Department's PSAT Initiative

Public safety and anti-terrorism issues cut across subject areas and legal specialties, requiring collaboration and consultation among relevant Department of Justice organizational units, other federal departments, provincial governments, and international counterparts. For this reason, the structure of relationships within the PSAT Initiative is complex.

The following are the main groups within the Department of Justice that have a role in its PSAT component:

- The **PSAT Steering Committee** was established to oversee the Initiative and is composed of senior departmental officials.
- **Headquarters (HQ)** in Ottawa provides legal advice and assistance to the Minister of Justice as well as policy and research support. The anti-terrorism and public safety activities of the Department, its client organizations, and other jurisdictions touch on many legal areas (for example, civil law, criminal law, human rights law, privacy law) and, therefore, advising the government requires collaboration among various sections. These sections are described in more detail on the following pages.
- **Regional offices** are involved in front-line operational work: the PPSC (formerly the FPS) handles PSAT-related prosecutions. PSAT-related civil matters are handled by regional civil divisions.
- The **Legal Services Units (LSUs)** are composed of Justice counsel who are based in other government departments and agencies and serve as their legal advisors. The LSUs involved in the PSAT Initiative have client organizations that are part of the security and intelligence community or that are involved in activities affecting national security.

Table 4 (next page) shows in greater detail the main sections in the Department that are involved in the PSAT Initiative, and provides descriptions of their involvement. Please note that Table 4 does not include sections that provide organizational, administrative, and evaluation support, such as the Executive Services Office, Corporate Services, or the Evaluation Division.

Table 4 is based on the structure of the Department prior to December 12, 2006, the effective date of the PPSC. The FPS regional offices and the Ottawa-Gatineau office discussed in Table 4 are now part of the PPSC, except for counsel who perform extradition and mutual legal assistance work. The NSG and IAG remain part of the Department of Justice.

**Table 4: Department of Justice sections involved in the PSAT Initiative  
 (April 2001 – December 11, 2006, prior to the effective date of the Office of the Director of Public Prosecutions)**

<b>PSAT Steering Committee</b>		
<p>The PSAT Steering Committee oversees the Department's activities under the PSAT Initiative and allocates PSAT resources among its sections. The Committee, which is chaired by an Associate Deputy Minister, consists of senior level representatives from six sections: the Policy Sector; the Citizenship, Immigration and Public Safety Portfolio (CIPS); the FPS; Corporate Services; Finance (within Corporate Services), and the Civil Litigation Branch. The Committee meets approximately three times a year.</p>		
<b>Headquarters (HQ)</b>		
<b>Policy sector</b>	<b>Formerly part of the Federal Prosecution Service (FPS)</b>	<b>Public Law Sector</b>
<p style="text-align: center;"><b>Criminal Law Policy Section (CLPS)</b></p> <p>This section takes the lead on legislative development and drafting in the area of criminal law and consults with other sections in their areas of expertise when drafting legislation as well as other government departments. The Security, Terrorism, and Governance Team and the ATA Review Team currently handle the work related to the PSAT Initiative for CLPS. CLPS was responsible for drafting the ATA and for coordinating and preparing the ATA parliamentary review. In addition, the CLPS assists in the development and negotiation of international instruments; helps with reporting to international bodies on Canadian laws related to national security; responds to requests for analysis of domestic and foreign national security legislation; and conducts outreach and training activities.</p>	<p style="text-align: center;"><b>National Security Group (NSG)</b></p> <p>NSG is the departmental focal point for coordinating the statutory responsibilities of the Attorney General of Canada relating to the <i>Canada Evidence Act</i> provisions applicable to the handling of sensitive and potentially injurious information.. To provide this advice, NSG consults with those Departments and agencies whose interests are involved. Its central role is to ensure that the legal advice is consistent and takes into consideration the effect of this advice on other activities of the national security and intelligence community. The NSG also does operational work under the ATA, such as coordinating the government's response to section 38 notices of anticipated or imminent disclosure of sensitive information under the <i>Canada Evidence Act</i>. After the effective date of the PPSC, the NSG remains part of the Department.</p>	<p style="text-align: center;"><b>Public Law Group (PLG)</b></p> <p>The PLG provides legal advice and assistance on matters pertaining to public law issues. The PLG organizes its legal counsel by area of expertise, and the following sections have all worked on PSAT-related matters by providing advice and assistance in the drafting and implementation of anti-terrorism and public safety-related legislation, policies and international instruments.</p> <ul style="list-style-type: none"> <li>• Human Rights Law Section – This section provides advice on Charter and international human rights issues when legislation is developed, challenged, or there is a disagreement among policy makers.</li> <li>• Constitutional and Administration Law Section – This section provides legal advice on the division of powers, administrative law, and Crown liabilities.</li> <li>• Information Law and Privacy Section – This section gives legal advice on the <i>Privacy Act</i> and the <i>Freedom of Information Act</i>. Under the PSAT Initiative, work has focused on information sharing among government departments/agencies and also between Canada and its international partners and ensuring <i>Privacy Act</i> obligations are met.</li> <li>• Judicial Affairs, Courts, and Tribunal Policy – This section provides an advisory role on matters relating to the judiciary and the courts. The ATA created 13 additional federal judicial positions for the Federal Court. This section monitors the workload to ensure that the judicial positions are both needed and sufficient.</li> </ul>
<p style="text-align: center;"><b>Legal Aid Directorate</b></p> <p>The directorate negotiates and monitors federal/provincial/territorial funding agreements with legal aid plans, including agreements made under the PSAT funding set aside for providing legal aid to the economically disadvantaged accused affected by the PSAT Initiative.</p>	<p style="text-align: center;"><b>International Assistance Group (IAG)</b></p> <p>The IAG ensures that Canada meets its international obligations when responding to or making extradition and mutual legal assistance requests in criminal matters. The IAG reviews requests to ensure that they comply with treaty provisions. The IAG also participates in the negotiation of international agreements or treaties, which contain provisions on mutual legal assistance or extradition. After the effective date of the PPSC, the IAG remains part of the Department.</p>	
<p style="text-align: center;"><b>Research and Statistics Division</b></p> <p>Research and Statistics provides social science and statistical research to support the Department in its policy development, including the area of national security and public safety.</p>	<p style="text-align: center;"><b>Ottawa-Gatineau FPS</b></p> <p>While now part of the PPSC, this FPS office of prosecutors was organizationally part of Justice HQ during the period of the evaluation. This office received PSAT funds for providing legal advice and assistance to investigative agencies and litigation services related to the PSAT Initiative. The office has one senior counsel who works within the Integrated National Security Enforcement Teams (INSET) and provides legal advice to investigators. This position is entirely funded by the PSAT Initiative.</p>	<p style="text-align: center;"><b>Civil Litigation Section</b></p> <p>The Civil Litigation Section, and its counterparts in the regional offices, handle all litigation brought by or against the federal government, excluding tax and criminal litigation. For PSAT-related work, the Civil Litigation Section handles litigation related to section 38 notices under the <i>Canada Evidence Act</i> (acting on instruction from the NSG). While this section would also handle any litigation that is initiated in the civil courts by individuals who have been charged under the ATA, to date no such litigation has occurred.</p>



<b>Regions</b>	<b>Legal Services Units (LSUs) and other direct services to client departments</b>
<p style="text-align: center;">Formerly the Federal Prosecution Service (FPS) – Regional offices</p> <p>During the period of the evaluation, the prosecution arm of the Department was the FPS, which had twelve regional offices and sub-offices. Based on the information available to the evaluation, at least five offices received some PSAT funds, with three offices (Quebec, Ontario, and British Columbia) receiving most of those funds. The regional offices provided legal advice and assistance to investigative agencies and prosecution services related to the PSAT Initiative.</p> <p>The largest single PSAT activity undertaken by a regional office to date was the Dorval Airport Pilot Project. Under this project, the Quebec regional office has about eight legal counsel who provide legal support to investigative agencies involved in border security at Montreal’s two international airports. Most of this funding comes through the Citizenship, Immigration, and Public Safety Portfolio.</p> <p>The regional offices are also involved in the 19 ongoing prosecutions of those charged under the <i>ATA</i> as well as extradition requests with a terrorist component.</p> <p>The regional offices are now part of the PPSC, except for counsel involved in extradition and mutual legal assistance work.</p>	<p style="text-align: center;">Citizenship, Immigration, and Public Safety (CIPS) Portfolio</p> <p>This portfolio groups together LSUs from departments/agencies that deal with transnational criminal matters and immigration laws. The LSUs provide legal advice and assistance to their client department/agency, including operational advice, and legislation and policy development. Based on the information available to the evaluation, the following departments/agencies in the CIPS Portfolio received PSAT funds: Public Safety and Emergency Preparedness Canada (PSEPC), Canadian Security Intelligence Service (CSIS), Royal Canadian Mounted Police (RCMP), Canada Border Services Agency (CBSA), and Citizenship and Immigration Canada (CIC).</p> <p>A litigation coordination team for the CIPS Portfolio that works out of HQ provides legal risk management advice to the client departments.</p> <p>Over the last two fiscal years, the CIPS Portfolio has provided about one-quarter of its PSAT funds to support the Dorval Airport Pilot Project mentioned above under FPS – Regional offices.</p>
<p style="text-align: center;">Regional offices – Civil</p> <p>The regional offices have counsel in their civil law sections who handle section 38 notices under the <i>Canada Evidence Act</i>. Other national security-related roles include handling litigation related to border security and immigration under the <i>Immigration Refugee Protection Act</i> when it is related to national security issues, although these activities might not be funded by the PSAT Initiative.</p>	<p style="text-align: center;">Business and Regulatory Law Portfolio</p> <p>This portfolio groups together LSUs from the departments/agencies that have a business or regulatory law component. Based on the financial information available, the evaluation was not able to determine the LSUs within the Business and Regulatory Law Portfolio that have received PSAT funds.</p>

### 3.3. Funding

The federal government allocated 1% (\$78 million) of its \$7.7 billion PSAT budget to the Department of Justice. Most of these funds are dedicated to the provision of PSAT-related legal services, including legal support, advice and assistance at the national and international levels, as well as conducting prosecutions and civil litigation related to anti-terrorism and public safety legislation and policies. In addition, \$2.5 million per year is used to provide legal aid funds to provinces and territories to cover costs of PSAT-related criminal legal aid services, such as immigration and refugee legal aid or representation for those charged under the *ATA*.

Usually when the TB approves additional resources for a department, these new funds are combined with the existing resources, and the department can reallocate the funds, subject to standard policies and regulations governing departmental spending. For national security programs like the PSAT Initiative, TB requires funded departments to establish special purpose allotments, whereby all money received has to be disbursed exclusively on the basis of the TB submissions and cannot be reallocated internally for other purposes without TB approval.

In the Initiative's first year (2002-03), the Department lapsed \$1.6 million under Vote 1 and the entire \$2.5 million under Vote 5 because of the late receipt of PSAT funding and the lack of terms and conditions for the legal aid funding.<sup>6</sup> Due to the nature of special purpose allotments, which restrict internal reallocation, and also as a result of the lapsed funds, the Department decided to contribute the projected portion of PSAT funds it could not use to the government's budget reallocation exercise. Since 2002-03, the demand for PSAT-related services has grown, but the Department had already committed PSAT funds for reallocation. As a result, there have been deficits in its PSAT budget for 2003-04 and 2005-06 in Vote 1.

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<sup>6</sup> As the formative evaluation reports, the development of legal aid terms and conditions was not a priority due to the lack of PSAT-related legal aid cases. Department of Justice (2006). *Results-based Management and Accountability Framework for the Public Safety and Anti-Terrorism Initiative*.

**Table 5: Fund allocation**

Year	TB approved funding*	Reductions (Government reallocation exercise)	Funds available	Actual spending	Surplus/deficit
<b><i>Within Vote 1 – Salary and O&amp;M</i></b>					
2002-2003	\$8.1M	\$0.0M	\$8.1M	\$6.5M	\$1.6M
2003-2004	\$10.1M	\$3.8M	\$6.3M	\$7.1M	(\$0.7M)
2004-2005	\$11.6M	\$2.1M	\$9.5M	\$9.5M	\$0.0M
2005-2006	\$11.6M	\$2.2M	\$9.4M	\$10.4M	(\$1.0M)
2006-2007	\$11.6M	\$2.4M	\$9.2M		
<b><i>Within Vote 5 – Grants and Contributions for Legal Aid</i></b>					
2002-2003	\$2.5M	\$0.0M	\$2.5M	\$0.0M	\$2.5M
2003-2004	\$2.5M	\$2.5M	\$0.0M	\$0.0M	\$0.0M
2004-2005	\$2.5M	\$2.2M	\$0.3M	\$0.3M	\$0.0M
2005-2006	\$2.5M	\$2.2M	\$0.3M	\$0.3M	\$0.0M
2006-2007	\$2.5M	\$0.5M	\$2.0M		
<p>Note: Figures are rounded.                      *TB approved funding excluding accommodation (13%) and employee benefits plan costs (20%)                      **Figures for 2006-2007 are based on allocated resources.                      Source: Department of Justice internal reports.</p>					

## 4. METHODOLOGY

The evaluation included two methods of data collection: a document and data review and interviews with key contacts. This section describes these methods and discusses limitations to the methodology.

### 4.1. Document and data review

The document and data review provided contextual information on the Initiative: its rationale and expected results, the operation of the Initiative, its outputs, and outcomes achieved. Each Departmental section that participated in the evaluation was asked to provide relevant documents to the evaluators. Examples of documents reviewed for the evaluation include:

- departmental financial data
- annual PSAT performance reports for each section as well as the Department overall
- policy documents/reports related to the Initiative
- multilateral and bilateral treaties and other international instruments to which the Department has contributed under the PSAT Initiative
- research studies and previous evaluations.

Information from iCase, the database that the Department uses to track the time that counsel spend on cases and files, is the main source of data for the case/file review. However, the value of iCase for this evaluation is limited (as discussed in section 4.3). In the Department's audit of iCase, national portfolio managers questioned the accuracy of iCase data and the study found that ownership of iCase data is unclear, which means that use of the data may require the consent of every section.<sup>7</sup> For these reasons, the evaluation worked with individual sections, focusing on data that were ostensibly reliable and useful.

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<sup>7</sup> Department of Justice (2003). *Internal audit of the iCase system*. Retrieved on September 20, 2006 at [http://www.justice.gc.ca/en/dept/pub/audit\\_reports/2003/iCase2003-e.pdf](http://www.justice.gc.ca/en/dept/pub/audit_reports/2003/iCase2003-e.pdf).

## 4.2. Interviews

For the evaluation, 58 key contacts participated in interviews (44 Department of Justice contacts and 14 external clients). Most interviewees participated through telephone or in-person interviews, and four chose to submit written responses. Because of the decentralized nature of the Initiative, interviewees were asked to provide names of other key individuals who have either worked on PSAT activities within the Department or who have been external clients of the Department. Accordingly, the key contacts comprise all individuals who were identified and who agreed to be interviewed within the study time frame. The organizational affiliations of the key contacts are in Table 6.

**Table 6: Key contacts participating in the evaluation**

Department of Justice	External clients
<ul style="list-style-type: none"> <li>• Citizenship, Immigration and Public Safety Portfolio (representatives from HQ and the following Legal Service Units (LSUs): CBSA, CIC, CSIS)</li> <li>• Civil Litigation Section</li> <li>• Criminal Law Policy Section (CLPS)</li> <li>• Federal Prosecution Service – International Assistance Group (IAG)</li> <li>• Federal Prosecution Service (FPS) – National Security Group (NSG)</li> <li>• Federal Prosecution Service – Regional offices</li> <li>• Federal Prosecution Service – Strategic Operations</li> <li>• Public Law – Constitutional and Administrative Law Section</li> <li>• Public Law – Human Rights Law Section</li> <li>• Public Law – Information Law and Privacy Section</li> <li>• Public Law – Judicial Affairs, Courts and Tribunal Policy</li> <li>• Legal Aid Directorate</li> <li>• Research and Statistics</li> </ul>	<ul style="list-style-type: none"> <li>• Public Safety and Emergency Preparedness Canada (PSEPC) - Various divisions including RCMP</li> <li>• Treasury Board (TB)</li> <li>• Department of Foreign Affairs and International Trade Canada (DFAIT)</li> <li>• Department of National Defence (DND)</li> <li>• Transport Canada</li> </ul>

The key contacts and clients were interviewed using a guide developed to respond to the RMAF’s summative evaluation framework. The evaluation framework is in Appendix A.

### 4.3. Methodological limitations

The evaluation faced several methodological limitations and other challenges.

***Few lines of evidence were available.*** The evaluation relies on available documents, interviews conducted with key contacts, and past evaluation findings (the formative evaluation and the evaluation of the Dorval Pilot Project). Other potential lines of evidence, such as iCase and performance measurement data, were limited, as described on the next page.

***iCase limitations.*** Overall PSAT Initiative statistics are not available through iCase. This is due to several factors:

- While some sections have complete information, not all of them are entering information into iCase or its predecessor, Caseview (e.g., CLPS, some LSUs).
- Data entered are not reliable for much of the PSAT Initiative's time period: some sections have only recently begun entering information into iCase; information in Caseview is not flagged for PSAT in the same way as iCase, which means that iCase and Caseview data cannot simply be combined; and inputting of data is inconsistent for some sections (e.g., CIPS Portfolio).
- iCase is an incomplete record of activities. Whereas lawyers and paralegals enter their time into iCase, staff such as program managers and financial officers do not.

***Performance measurement data are limited.*** The availability of performance measurement data is limited and this was noted in the formative evaluation. The Department is in the process of reviewing its data collection and performance measurement strategy. This process involves each section identifying key performance indicators that would be useful for ongoing performance measurement and reporting.

***Identifying performance measures.*** The evaluation of the Dorval Pilot Project drew attention to the challenges involved in developing performance measures and collecting performance data on activities such as providing legal advice. The summative evaluation also experienced these challenges; for provision of legal advice and policy development, the distinction between activities, outputs, and outcomes is often unclear.

***Attribution challenges.*** It is difficult to attribute the results of the department's PSAT-related work to the funding provided under the Initiative. For the most part, the funds are intended to provide additional support for activities that the department already conducts, such as providing

legal advice and assistance. This aspect of the initiative, as well as its cross-cutting nature, means it is difficult to define precisely which activities fall under the Initiative. As a result, one cannot make a direct link between the funds provided, the distinct activities and outputs these funds support, and the resulting impact or outcomes. Furthermore, the Department's financial systems are not designed in a manner to provide a complete picture of the activities funded under the Initiative.

***Identifying key contacts outside of HQ.*** Some LSUs had difficulty knowing which activities were PSAT funded and, therefore, several contacts in LSUs turned down requests for an interview, citing insufficient knowledge of the Initiative.

## 5. EVALUATION FINDINGS

This section presents the findings organized by evaluation issue.

### 5.1. Relevance

This section considers the relevance of the broader PSAT Initiative and the importance of the Department in supporting the objectives of the Initiative. The evaluation found that the security threats presented by terrorist organizations persist, and that the Department's role as legal advisor and (formerly, pre-PPSC) prosecutor are key components to the multidimensional response that modern terrorism requires.

Although the PSAT Initiative was established shortly after September 11<sup>th</sup>, its national security goals of protecting Canadians from terrorist attacks, keeping the borders open, and contributing to international efforts to combat terrorism have remained a priority through the years and also through changes in government. These goals were restated in the 2004 *National Security Policy* as “core national security interests,” and the PSAT Initiative’s approach, of an integrated response to national security concerns that protect Canadians while maintaining respect for the rule of law and human rights, remained a key component.<sup>8</sup> The government continues to announce new policy and legislative measures that are intended to implement the Initiative’s objectives.<sup>9</sup>

The relevance of the PSAT Initiative is seen in the persistent threat of terrorism, both domestically and abroad. While Canada is the only country expressly targeted by Al Qaeda that has not been attacked, the country continues to receive threats from that terrorist organization,

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<sup>8</sup> Privy Council Office. (2004). *Securing an Open Society: Canada’s National Security Policy*. Retrieved February 20, 2007 from [http://www.pco-bcp.gc.ca/docs/Publications/NatSecurnat/natsecurnat\\_e.pdf](http://www.pco-bcp.gc.ca/docs/Publications/NatSecurnat/natsecurnat_e.pdf).

<sup>9</sup> Office of the Prime Minister. (2006). *Prime Minister announces new measures to enhance the safety of Canadians*. Retrieved on February 20, 2007 from <http://www.pm.gc.ca/eng/media.asp?id=1207>. Department of Finance Canada. (2006). *The Budget Speech: Focusing on Priorities*. Retrieved on February 20, 2007 from <http://www.fin.gc.ca/budget06/pdf/speeche.pdf>.



the latest being in July 2006.<sup>10</sup> Threat assessments show that “a significant proportion of the world’s terrorist groups are represented in Canada” and they consider terrorism “the most significant threat to Canada.”<sup>11</sup> While the activities of these groups may focus more on fund raising and support of terrorist activities beyond the Canadian border, the 2006 arrests of eighteen individuals on terrorism-related charges in the Toronto area raise the possibility that domestic terrorist groups had planned attacks within Canada.<sup>12</sup> In addition, the events of recent years demonstrate the continued vulnerability of the international community to terrorist attacks, with bombings and other terrorist incidents occurring in the United Kingdom, Spain, Indonesia, Israel, Iraq, Afghanistan, Thailand, Indonesia, Uzbekistan, and Bangladesh.<sup>13</sup>

The terrorist threat is seen as becoming increasingly complex as tactics become more deadly; the nature of terrorism broadens to include religious extremism, secessionist violence, domestic extremism, and state-sponsored terrorism; and the structure of terrorist groups becomes more dispersed, with their members acting with increasing autonomy.<sup>14</sup> Coupled with this complexity is the fact that the costs of terrorism are substantial, both in human and economic terms.<sup>15</sup> These factors, as well as those addressed above, support the continued need for an integrated governmental response that addresses prevention, detection, and prosecution.

Public response also demonstrates the continued relevance of the goals and objectives of the PSAT Initiative. While the level of public concern fluctuates with events, it has remained persistent. Shortly after the September 11<sup>th</sup> attacks, Canadians indicated heightened concerns about safety, but these feelings dissipated over time. In September 2001, 55% of Canadians polled thought that Canada would suffer from a terrorist attack in the next two years, but this dropped to 37% in 2002 and remained at that level two years later.<sup>16</sup> Shortly after the July 2005

<sup>10</sup> Stewart Bell. (2006). “Al-Qaeda warns Canada”, *National Post*. Retrieved on December 13, 2006 from <http://www.canada.com/nationalpost/news/story.html?id=e9f20f44-ec19-470c-9ac3-6c79218d4d91>.

<sup>11</sup> Canadian Security Intelligence Service. *Public Report*. (2003). Retrieved on February 6, 2007 from [http://www.csis-scrs.gc.ca/en/publications/annual\\_report/2003/report2003.asp](http://www.csis-scrs.gc.ca/en/publications/annual_report/2003/report2003.asp).

<sup>12</sup> According to CSIS, “Most of [terrorist groups] Canadian activities support actions elsewhere ....” *Ibid*.

<sup>13</sup> Canadian Security Intelligence Service. *Public Report 2004-05*. (2006). Retrieved on February 6, 2007 from [http://www.csis-scrs.gc.ca/en/publications/annual\\_report/2004/report2004\\_e.pdf](http://www.csis-scrs.gc.ca/en/publications/annual_report/2004/report2004_e.pdf). The London bombings occurred after the reporting period and, therefore, are not referred to in the 2004-05 report.

<sup>14</sup> See *ibid* and Canadian Security Intelligence Service. *Public Report*. (2003). Retrieved on February 6, 2007 from [http://www.csis-scrs.gc.ca/en/publications/annual\\_report/2003/report2003.asp](http://www.csis-scrs.gc.ca/en/publications/annual_report/2003/report2003.asp).

<sup>15</sup> Bruno S. Frey, et al. *Calculating Tragedy: Assessing the Costs of Terrorism*. (2004). Retrieved on February 6, 2007 from [http://www.cesifo.de/pls/guestci/download/CESifo%20Working%20Papers%202004/CESifo%20Working%20Papers%20November%202004/cesifo1\\_wp1341.pdf](http://www.cesifo.de/pls/guestci/download/CESifo%20Working%20Papers%202004/CESifo%20Working%20Papers%20November%202004/cesifo1_wp1341.pdf).

<sup>16</sup> Chris Baker. *Canada after September 11<sup>th</sup>: A Public Opinion Perspective*. Retrieved on January 10, 2007 from [http://www.yorku.ca/robarts/projects/canada-watch/conferences/conf\\_cnd-res/papers/cw\\_conf\\_baker.pdf](http://www.yorku.ca/robarts/projects/canada-watch/conferences/conf_cnd-res/papers/cw_conf_baker.pdf).

London bombing, 62% of Canadians believed that the country could experience an act of terrorism, and this grew to 71% after the Toronto arrests.<sup>17</sup>

### **5.1.1. Department of Justice component's contribution**

The Department's component supports the government's objectives under the PSAT Initiative. Its role, as the policy and legal advisor to the Canadian government, means that it has served a central function in the development and support of Canada's anti-terrorism legislative framework. Since the initial development of the *ATA* and *PSA*, the demand for services, in relation to PSAT activities, is consistent and substantial. This demand, and the activities of the Department, demonstrate the relevance of its component to the PSAT Initiative.

***Assisting law enforcement.*** By drafting legislation and policies that seek to prevent terrorist acts, the Department supports law enforcement. Specifically, the *ATA* includes preventative aspects in the offences, such as making it an offence to participate in the activities of a terrorist group for the purpose of "enhancing [its] ability to facilitate or carry out a terrorist activity." The *ATA* also includes investigative tools, such as investigative hearings, recognizance with conditions, and preventative arrests (see Table 2 for description), which are intended to help law enforcement stop terrorist incidents before they occur. In addition, the Department's provision of legal advice and assistance to investigators and the intelligence community is intended to enhance their capacity to conduct successful investigations. This advice and assistance to law enforcement contributes indirectly, therefore, toward successful prosecutions.

***Providing legal advice to government.*** The Department serves as the legal counsel for government. This responsibility requires that the government's activities under the Initiative respect the rule of law and fundamental fairness, which is reflected in the ultimate outcome – "to enhance public safety and security while respecting human rights."<sup>18</sup> Specifically, the Department supports this aim by providing funds for legal aid to economically-disadvantaged accused affected by public safety and anti-terrorism initiatives, and by ensuring that human rights concerns are taken into account in the drafting and implementation of legislation.

***Helping Canada meet its international obligations.*** When the government considers negotiating and signing international instruments or engaging in other international activities with legal

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<sup>17</sup> Angus Reid Global Monitor. *Seven-in-ten Canadians Expect Attack*. (2006). Retrieved on February 6, 2007 from <http://www.angus-reid.com/polls/index.cfm/fuseaction/viewItem/itemID/12258>.

<sup>18</sup> Department of Justice Canada (2006). *Results-Based Management and Accountability Framework Public Safety and Anti-Terrorism Initiative*.

implications, the government departments involved seek legal guidance and often the participation of Justice counsel to ensure that what they are contemplating is consistent with Canadian and international law.

***Building anti-terrorism capacity abroad.*** Canada is active in supporting other countries in their efforts to develop counter-terrorism capacity. The Department plays a vital role by explaining the Canadian anti-terrorism legal framework, and by helping other countries understand the importance of aligning anti-terrorism legislation with international human rights standards.

***Engaging in legislation and policy development.*** The Department provides the necessary legal advice and support, including drafting and implementing legislation, to support new national security initiatives and international instruments. The Department will also coordinate the Government's response to recommendations from the ATA review as required. This review required a substantial amount of work for the Department, during the period assessed by the evaluation. Responding to the review's recommendations will likely continue to make sizeable demands on resources.

***Prosecuting terrorism-related cases.*** Although this is now the responsibility of the PPSC, the FPS handled criminal prosecutions during the period of the evaluation. Terrorist prosecutions and investigations are demanding and they consume substantial resources. Though the number of prosecutions or investigations with a terrorism aspect cannot be predicted, key Justice contacts believe that a demand will always be there and that these cases must be accorded high priority. The Department also assists with terrorism-related investigations and prosecutions, both at home and abroad, through its work on extradition and mutual legal assistance requests, which are key tools in fighting transnational crime in general, and terrorism, specifically.

***Responding to legal challenges.*** Cases challenging the public safety and anti-terrorism legislation will continue to go through the court system. In response to these cases, the Department must engage in contingency planning, and, in the event that the courts overturn some of the legislation, it will respond by preparing new legislation.

## **5.2. Success in meeting objectives**

This section considers the success of the Department in meeting each of its main objectives for the PSAT Initiative.

### **5.2.1. Engaging with others in relevant public safety and anti-terrorism activities**

Because the Initiative is government-wide, involving a substantial number of federal departments and agencies that are a cross-section of the government, it has had the positive result of more consultation and coordination among government organizations in the area of national security. Interviews revealed a broad network of engagement among departmental sections and other government departments/agencies.

For issues that affect several departments, the Department of Justice or another department may form an Interdepartmental Working Group (IWG); for example, there are IWGs for the *ATA* parliamentary review, on aspects of the Air India inquiry, and on marine security. From what the evaluation could determine, the decision on whether to establish an IWG appears to be made on a case-by-case basis.

Within the Department a number of sections have a role in engaging others on PSAT-related matters. The CLPS coordinates work around legislative and policy development. The NSG is responsible for the breadth of the security and intelligence sector in support of the Minister and Deputy Minister as well as operational responsibilities in relation to section 38 *CEA*. The LSUs provide advice to clients on PSAT-related matters. Regional offices represent the Attorney General of Canada (AG) before the courts. When the Department of Justice is not the lead department, for example, in matters involving the PSA, its role is to respond to requests from other departments. Generally, coordination was described as being driven more by events or by specific initiatives rather than as part of a larger national security strategy.

There is also a significant informal process of engaging with others, where the level of coordination, and its success, depends on the individuals involved. However, an approach that seemed to be effective, and also less dependent on individual initiative, was in the drafting of the *ATA* and the *ATA* review. In this endeavour, there were regular, formal consultations, as these files required concentrated attention. Those involved generally said that they found the process effective, and some suggested using this approach more often. Several key Justice contacts believe that more coordination and collaboration would improve information-sharing; would ensure that cooperation filters down from the managerial to operational level; and would build a greater understanding of the different cultures around security issues (particularly between prosecutors and the intelligence community). Communication among sections in HQ generally appears to work well, but between HQ and the regions and/or LSUs, it is somewhat less smooth. The regions and LSUs would benefit from receiving more information about the Department's work within the Initiative as well as having more input into its PSAT activities.

### **5.2.2. Assisting in the development of more effective laws, regulations, and policies**

*ATA and PSA.* Both the formative and summative evaluations found that the Department's PSAT work on the *ATA* and the *PSA* was valued by the other government departments involved with these pieces of legislation. The IWG for the *ATA* led by the CLPS was considered highly effective in coordinating all of the involved departments and ensuring that the various interests were considered and addressed in the development of the legislation and the support of government efforts with respect to the Parliamentary Review of the *ATA*. However, because terrorist-related investigations and prosecutions are complicated and protracted, no prosecutions have been completed more than five years after the *ATA* was enacted. Therefore, one measure of effectiveness – convictions – has yet to be achieved.

Since the enactment of the *ATA* and the *PSA*, the Department's role in the PSAT Initiative focuses largely on monitoring and supporting the existing legislation rather than on drafting new anti-terrorism and public safety legislation. New policy and legislative developments have been deferred until the review is complete. Also, because the *ATA* is an omnibus piece of legislation that responded to broad international and national imperatives, the government did not expect that major additional legislation would be required in the near future. Rather, it was anticipated that some time would be necessary for determining how well the legislation was working, and the parliamentary review scheduled within the *ATA* set the time frame for any large-scale reassessment.

*Drafting legislation since 2001.* Various sections of the Department are involved in the drafting of legislation. For example, the CLPS develops criminal legislation in the areas of anti-terrorism and national security, and the LSUs draft legislation when their respective department is the lead. Other sections provide advice within their subject areas: IAG on extradition matters; the PLG's Human Rights Section on *Charter* issues; and NSG on security of sensitive information. CLPS also provides legal advice, and helps to coordinate departmental legal advice, on various national security matters.

Legal advice is provided on a variety of legislative proposals, some of which deal directly with public safety or anti-terrorism, but many of which have an indirect effect on national security. Not all of these legislative proposals become law, but they nevertheless require the attention of legal counsel. Again, it is difficult to talk about “outcomes” when it comes to the provision of legal advice or the drafting of legislation. The activity itself is, in a sense, the outcome. The fact that proposed legislation may not become law cannot be considered a reflection on the work done, as the legislative process is much too complex to attribute cause and effect on that basis

alone. Indeed, satisfaction among their client departments and agencies may be the best measure. In this regard, clients generally believe that they have received high quality and timely legal advice from the Department, and that this advice is critical to their ability to develop and effectively pursue a legislative agenda. At the same time, the evaluation found that inadequate resources sometimes prevented staff from being able to fully meet the PSAT-related needs of clients' departments. Examples of this included lawyers being unable to attend meetings because of insufficient staff; legal advice being delayed; and an already heavily burdened department hesitant to agree to new international commitments.

Areas of legislative and regulatory development in which the Department has been involved include the following examples.<sup>19</sup>

- To comply with United Nations (U.N.) Security Council resolutions that require Member States to freeze the assets of terrorist organizations, Canada created, in 1999, the *United Nations Afghan Regulations*, and in 2001, the *United Nations Suppression of Terrorism Regulations*. In 2006, Canada amended both regulations, which were re-named the *United Nations Al-Qaida and Taliban Regulations* and the *Regulations Implementing the United Nations Regulations on the Suppression of Terrorism*. While not the lead department, the Department of Justice reviewed the proposed amendments to ensure that they had due process safeguards. CLPS has also assisted in and coordinated departmental input for reporting to the U.N. Counter-Terrorism Committee to show compliance of Canada's domestic legislation with the U.N. Security Council resolutions.
- Legal advice was needed on Bill C-25, *An Act to Amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, which received Royal Assent on December 14, 2006. This legislation is intended to improve Canada's current anti-money laundering and anti-terrorist financing framework through new reporting measures, new penalties and offences, and enhanced information sharing between the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and law enforcement agencies.
- An amendment to the *Criminal Code* was drafted for an offence for terrorist hoax, which was passed in 2004 as part of the *PSA*.
- Legal advice was given to lead departments on several pieces of legislation that have not yet become law. For example, one bill sought to create a National Security Committee of

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<sup>19</sup> This is not a complete listing and focuses on the Department's activities since 2004, as the Formative Evaluation of its PSAT Initiative covers activities between 2001-2004. This listing also does not include legislation that is still in the drafting stage and has not yet been tabled.

Parliamentarians (first reading: November 24, 2005), and several months were spent working with the Privy Council Office (PCO) on this legislation. Another bill, brought by the Minister of Industry, sought to amend the *Investment Canada Act* so that the government could review foreign investments that it believed could threaten national security (first reading: June 20, 2005). A third example is the proposed *Emergency Management Act* tabled by PSEPC (first reading: November 17, 2005), which was intended to provide a modernized, comprehensive approach to emergency management.

- There has been departmental representation on the Interdepartmental Marine Security Working Group and the Department has provided legal advice on a number marine security issues.
- Legal advice has been provided on work related to transport security and air marshals. In particular, the drafting of the new *Criminal Code* section 27.1, which established justification for the use of reasonable force on board an aircraft, as well as a new *Firearms Act* regulation that applies to foreign air marshals.

***Developing new policies or initiatives.*** Since the *ATA*, several protocols have been developed to assist with anti-terrorism work at the operational level.

- NSG developed a protocol for handling requests for the use of Canadian evidence and witnesses in foreign proceedings. According to key contacts, this new protocol has worked well: it reduces the risk of inadvertent disclosure of sensitive information; it ensures that the most appropriate Canadian witnesses are sent to testify, and that they are prepared to testify; and it facilitates cooperation with international legal proceedings. NSG developed the protocol with input from every department or agency involved in intelligence and security issues, as well as from the IAG.
- NSG also developed an agreement with the prosecution services of the provinces and territories that will facilitate decision making in *ATA* cases, as these cases have dual jurisdiction. The agreement helps the involved jurisdictions determine which one will take the lead in the case.
- CLPS and NSG assisted in the development of an administrative process for notifying persons who are permanently bound to secrecy.
- The Human Rights Section of the PLG has implemented an initiative in response to concerns about racial profiling within ethnocultural communities.

- The LSUs are also directly involved in developing policies and initiatives within their client departments. Clients report that the legal advice from the LSUs, as well as from sections within HQ, assist them by ensuring that new initiatives comply with Canadian law, specifically the *Charter*. Staff also reviews new initiatives (as well as legislation), so that the government has a consistent response to national security and terrorism issues.

**Monitoring and reporting.** Certain monitoring and reporting activities are essential to the implementation of Canada's anti-terrorism laws.

- The CLPS prepares annual reports to Parliament on the use of investigative hearings and recognizance with conditions provisions of the *ATA*.
- The CLPS also serves on the interdepartmental coordinating committee for listing entities and individuals linked to terrorist activities, as defined under section 83.05 of the *Criminal Code* and under Canada's regulations adopted to implement U.N. Security Council resolutions on freezing terrorist assets.

The situation at home and abroad is monitored to assess whether changes should occur in the present legal framework, or what the response should be to new developments.

- For example, the CLPS monitors other countries' legislation to see what changes they are making, how those changes might affect Canada as a partner, and whether any changes are something to consider for Canada.
- Cases challenging Canadian law are monitored, such as *Khawaja* and *O'Neill*, and inquiries, such as *Arar* and *Air India*, to determine whether a response is required, and, if so, what that response should be.

Other government departments and agencies do not monitor national and international legal developments, and they rely on the Department to advise them on other countries' legislation or any international instruments that might affect them, as well as potential impacts of domestic inquiries and litigation.

**Parliamentary review.** Under section 145 of the *ATA*, three years after receiving Royal Assent, the legislation must undergo a comprehensive parliamentary review. In December 2004, both the House of Commons and the Senate authorized the review to begin. For the House of Commons, the Subcommittee on Public Safety and National Security of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness conducted the review. The Senate



established a Special Committee for its review of the legislation.<sup>20</sup> Hearings began in February 2005, and the House Subcommittee expanded the scope of its review to include both section 4 of the *Security of Information Act* and the security certificate provisions of the *Immigration and Refugee Protection Act*.<sup>21</sup> The Senate Committee has also expanded its mandate beyond the ATA to cover national security issues more broadly.

The ATA parliamentary review has required substantial efforts. CLPS resources were supplemented through the PSAT fund by the establishment of the ATA Review Team. Preparation for the ATA included research and development of materials for use in the parliamentary review, including briefing materials; background documents to explain the ATA and its use/impacts; compilations of other countries' legislative frameworks; analysis of academic research; and communications materials. Advice was provided to other participating government departments, and departmental representatives attended the committees' hearings in order to stay apprised of the proceedings.

The IWG for the ATA review is chaired by the Team Leader of the ATA Review Team. This IWG includes about 60 members from a variety of departments and agencies, including CBSA, CIC, FINTRAC, DFAIT, Finance, Revenue Canada, DND, RCMP, CSIS, Transport, PSEPC, and PCO. Representatives of member departments' LSUs sit on this IWG. The IWG started meeting in early 2004, in preparation for the review. Other sections, such as NSG and the Human Rights Law Section, also assisted with the ATA review by providing briefing materials and advice. The CLPS, through the IWG, keeps other government departments and agencies informed about the parliamentary review. Clients have found this useful because it keeps them abreast of the proceedings.

In 2006, the House of Commons Subcommittee on the Review of the Anti-terrorism Act issued an interim report with recommendations dealing with the investigative hearing and recognizance with conditions. It did not request a Government response to these recommendations. These provisions ceased to exist on March 1, 2007 following debate in the House of Commons. The Subcommittee completed its study of the ATA and related matters on February 20, 2007 and issued its final report with recommendations in March 2007. For this part, the Senate Special

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<sup>20</sup> Crutcher, N. & Budak, M. (2005). *The Anti-Terrorism Act and Security Measures in Canada: Public Views, Impacts and Travel Experiences*. Department of Justice Canada: Research and Statistics Division.

<sup>21</sup> As discussed earlier in this section, this provision of the *Security of Information Act* was recently found to be unconstitutional by the Ontario Superior Court. The constitutional validity of the security certificate procedures, which were used prior to the ATA to detain non-citizen terrorist suspects, was recently argued before the Supreme Court and the decision is expected in January 2007.

Committee on the Anti-terrorism Act issued its recommendations in February 2007 and provided a supplementary report in March 2007. It has not requested a Government response. At the present time, therefore, the Government is obliged to respond to the February 2007 House of Commons Subcommittee report.

The CLPS will coordinate and draft a response to this report with input from other sections. If the government's response to the ATA review ultimately requires new legislation, the work on implementing the recommendations from this review and other possible law reform could continue for another two to three years and require substantial resources.

The remainder of this section addresses, more generally, both the challenges and effectiveness of the development of legislation and policies relating to the Initiative.

***Balancing security concerns with fundamental human rights.*** It is the role of the Department to ensure that both fundamental human rights and national security are protected and that this responsibility extends to other departments involved in the PSAT Initiative. Striking this balance between security concerns and fundamental human rights is sometimes challenging. Since the ATA became law, the constitutionality of certain provisions has been the subject of three court decisions. In the first case, *In the Matter of an Application under section 83.28 of the Criminal Code*, the person named in an application for an investigative hearing order (as part of the Air India case) challenged the application on the grounds that the investigative hearing provision violated the *Canadian Charter of Rights and Freedoms* by infringing on a person's right to silence and protection against self-incrimination. First, the British Columbia Supreme Court, and then the Supreme Court of Canada, held that the investigative hearing provision was constitutional.<sup>22</sup>

The other two court decisions came in October 2006 and both found that sections of the ATA violated the *Charter*. One case involved Juliet O'Neill, the Ottawa Citizen reporter whose home and office were searched and items seized as part of an RCMP investigation of unauthorized "leaks" of "secret official" government information.<sup>23</sup> The Ontario Superior Court held that certain provisions in section 4 of the *Security of Information Act* are unconstitutionally vague and violate the freedom of the press. While the law at issue is part of the ATA, it existed prior to the ATA and was incorporated into the new legislation.<sup>24</sup> The most recent case, also decided in

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<sup>22</sup> *Application under s. 83.28 of the Criminal Code Re* [2004] SCC 42.

<sup>23</sup> *O'Neill v. Canada (Attorney General)*, 2006 CanLII 35004 (ON S.C.). Retrieved on January 10, 2006 from <http://www.canlii.org/on/cas/onsc/2006/2006onsc16405.html>.

<sup>24</sup> The provisions were taken from the *Official Secrets Act*, which was replaced by the *Security of Information Act*.

October 2006 by the Ontario Superior Court, struck down the motive clause in the definition of terrorist activities, which required that the crime be motivated by politics, religion, or ideology. The court's ruling held that this provision violates the *Charter's* guarantees of freedom of religion, and of association.<sup>25</sup>

The need to strike a balance between protecting national security and human rights in the context of the heightened political and public concern about these issues, means that activities under the PSAT Initiative are subject to intense scrutiny by political leaders, ethnocultural communities and the general public.

***Expertise in drafting policies and legislation pertaining to terrorism.*** The Department has a strong reputation in drafting policies and legislation pertaining to terrorism and security issues. The evaluation found that other departments view Justice as the most suitable department to coordinate the government's national security policy, as it is aware of the legislation and regulations of all government departments and can ensure a consistent approach and message on national security issues. In addition, other countries look to Canada for advice and assistance in drafting their own anti-terrorism laws, and the *ATA* is considered by many international colleagues to be a model, particularly in the balance it strikes between national security and individual rights. In particular, the provisions in the *ATA* that other countries have shown interest in are the procedures for protecting sensitive information under section 38 of the *Canada Evidence Act*, and the due process protections for investigative hearings.

### **5.2.3. Increasing knowledge and understanding of laws and regulations related to public safety and anti-terrorism**

***Training.*** The Department provided several training sessions on the *ATA* shortly after it was enacted to prosecutors, law enforcement officers (including the RCMP, the Ontario Provincial Police, and la Sûreté du Québec), and LSU personnel, among others. The formative evaluation found that these training sessions and materials were well received. More recent training opportunities with PSAT-related content were described by some key contacts.

- The Department and CSIS co-sponsored annual conferences on national security for three years following the passage of the *ATA*. Operational demands precluded personnel being made available in subsequent years to plan such sessions.

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<sup>25</sup> *R. v. Khawaja*, [2006] O.J. No. 4245. Retrieved on January 15, 2006 from <http://www.theglobeandmail.com/special/audio/Rutherford.pdf>.

- The NSG has offered training on the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and the *Canada Evidence Act* to police services, the RCMP, CSIS, and judges.
- The CLPS has offered a parliamentary review workshop and a committee witness workshop as part of its preparation for the ATA review. The parliamentary review workshop covered reviews generally and did not solely focus on the ATA. This workshop provided advice on how to manage a parliamentary review, including issues such as ensuring that parliamentarians have adequate information, briefing ministers, and developing a communication strategy. About 50-60 people from a variety of departments attended this training. The committee witness workshop was specifically directed to the ATA review and was a session on how to be an effective witness. CLPS has also offered other training and awareness-raising presentations in various forums.
- Other training offered by various sections may have touched on PSAT-related issues, but this was not funded by the Initiative (e.g., annual CIPS Portfolio conference).
- The Department currently responds to requests for training and it often includes PSAT-related information in the training it offers on other issues that can have a national security aspect, such as privacy or information-sharing.

Many key Justice contacts indicated a desire for more training or educational opportunities related to anti-terrorism and national security. International conferences were mentioned as particularly beneficial as they offer a comparative law perspective, updates on international law developments, and information on best practices. These conferences are also considered an important opportunity to network with international counterparts, which will provide contacts to facilitate future work in the areas of international cooperation and assistance. Refresher training on the ATA could also be useful, but some key contacts noted that, while a legislative overview is useful for increasing basic awareness, there would still be a substantial learning curve if they were to become involved in an ATA case.

Additional suggestions included:

- training that is geared more to the operational level: what is important for conducting an effective prosecution, and how law enforcement and intelligence agencies can conduct investigations, or gather intelligence, in a way that supports prosecutions. A specific example given was to add a module to the prosecutors' conference on national security issues on how to handle classified materials.

- training after the parliamentary review on what the reports and recommendations mean for the legislative framework, and how that might affect operations.
- hosting international conferences with legal experts from each country, focusing on best practices.
- developing accessible resources on relevant legislation, case law, and policies through the creation of a “virtual legal library” for national security and anti-terrorism work.

**Outreach and education.** The Department has not engaged in substantial outreach or education to ethnocultural communities, and this is an area where there is potential for helping to increase an understanding of the legislative framework, how it operates, and the human rights protections it includes. Participants in focus groups conducted by the Department expressed concern with the potential for unequal or inappropriate application of the legislation.<sup>26</sup> In particular, participants from ethnic and visible minority communities worried about the potential for misinterpreting the definition of terrorism and the terrorist-financing provisions, as well as the possibility of ethnic stereotyping. While some key Justice contacts would like to conduct more outreach to explain Canada’s legislation and remove misconceptions, they also reported that they currently do not have the resources to do so.

#### 5.2.4. Improving the litigation and/or prosecution of terrorism-related cases

**Use of legislative framework.** The following section focuses on the *ATA* provisions with which the Department is involved.

- **Recognizance with conditions (also known as preventative arrests) and investigative hearings.** These two *ATA* provisions require annual reports to Parliament. As of the most recent available annual report (covering the period from December 24, 2004 to December 23, 2005), the recognizance with conditions provision has not been used, and the investigative hearings provision has been used once, at the request of the Attorney General in British Columbia as part of the Air India investigation/prosecution.<sup>27</sup> As discussed in section 5.2.2,

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<sup>26</sup> Department of Justice Canada (2003). *Focus Group Report Minority Views on the Canadian Anti-Terrorism Act (Formally Bill C-36)*.

<sup>27</sup> The annual reports on investigative hearings and recognizance with conditions that are submitted to Parliament by the Minister of Justice and the Attorney General of Canada can be found at [http://www.justice.gc.ca/en/anti\\_terr/reports.html](http://www.justice.gc.ca/en/anti_terr/reports.html). Four reports have been submitted to date and cover the time periods: December 24, 2001 – December 23, 2002; December 24, 2002-December 23, 2003; December 24, 2003-December 23, 2004; and December 24, 2004-December 23, 2005.

this use of the investigative hearings provision resulted in a legal challenge and a Supreme Court of Canada decision upholding the constitutionality of the provision.

These two provisions are the only parts of the *ATA* subject to a sunset clause, which was inserted into the legislation to respond to concerns over the largely unprecedented nature of these provisions and the possibility that they might be abused. Under the sunset clause, these provisions are set to expire early in 2007 unless extended by a resolution of both Houses of Parliament.

In October 2006, the Standing Committee on Public Safety and National Security (a subcommittee on the review of the *ATA*) tabled its interim report on these provisions.<sup>28</sup> The Committee heard from a number of witnesses, including representatives of the Department. The Committee concluded that, although five years was insufficient time to assess the necessity of these provisions, the provisions should be extended for five years and reviewed as part of another comprehensive parliamentary review of the legislation.<sup>29</sup> The Committee also recommended several changes to the legislation. While most recommendations provided suggestions for clarifying and simplifying the existing provisions, one recommendation called for a more substantive change to the law. The Committee accepted the position of the Canadian Civil Liberties Association that the investigative hearings provision should only apply to those situations where “there is reason to believe there is imminent peril that a terrorist offence will be committed.”<sup>30</sup> On February 27, 2007, Parliament voted not to extend these provisions.

- **Section 83.05 of the *Criminal Code*.** This provision established a procedure for listing entities if there are reasonable grounds to believe that they are knowingly involved in terrorist activities. Being placed on the list is not a criminal offence, but it creates other legal consequences and makes those who associate with a listed entity vulnerable to criminal charges. The list is developed by the Governor in Council acting on the recommendation of the Minister of Public Safety and Emergency Preparedness. As noted in section 5.2.2, the CLPS serves on the interdepartmental coordinating committee for listing entities.

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<sup>28</sup> Subcommittee on the Review of the Anti-terrorism Act. *Review of the Anti-Terrorism Act Investigative Hearings and Recognizance with Conditions: Interim Report of the Standing Committee on Public Safety and National Security*. October 2006. Retrieved December 12, 2006 from <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=10804&Lang=1&SourceId=193467>.

<sup>29</sup> *Ibid.* at p. 5.

<sup>30</sup> *Ibid.* at p. 7.

The NSG is also involved in the listing process. The NSG role in this process is to challenge the factual material included in the intelligence documentation prepared to substantiate the listing of an entity.

The *Criminal Code* requires a review of the list every two years. As of the most recent review (November 9, 2006), the list had 40 entities.<sup>31</sup> After reviews in 2004 and 2006 by the Minister of Public Safety, none of the entities were removed from the list.<sup>32</sup>

- **Section 38 of the *Canada Evidence Act*.** In the development of the ATA, it was deemed important to identify the Attorney General of Canada as the independent office of expertise to balance the competing interests of the disclosure of sensitive information in the course of judicial or other proceedings. In this regard, the NSG serves as the central coordinating office. Part 3 of the ATA amended sections 37 and 38 of the CEA, introducing a number of changes to section 38. The new section 38.01 sets out a process by which participants in a proceeding or officials give notice to the Attorney General of Canada when they believe that “sensitive information” or “potentially injurious information” may be disclosed during a proceeding. The Attorney General of Canada has 10 days to assess the position on disclosure, which requires consultations with relevant federal departments, agencies, and other relevant parties, to assess if the information can be released, in what form, and subject to what conditions. Where the Attorney General of Canada has not consented to disclosure, an application can be made to the Federal Court Trial Division. Section 38.06 permits the judge of the Federal Court Trial Division to authorize disclosure of information or a written admission of facts, subject to conditions he or she deems appropriate. Section 38.13 gives the Attorney General of Canada the power to issue a certificate that prohibits the disclosure of information for the purpose of protecting information received in confidence from a foreign jurisdiction or for the purpose of protecting national defence or security. Section 38.15 permits the Attorney General of Canada to issue a *fiat* to take over carriage of a provincial prosecution when “sensitive information” or “potentially injurious information” may be disclosed in connection with a prosecution.

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31 Public Safety and Emergency Preparedness Canada. “Listed entities.” Retrieved on January 1, 2007 from <http://www.psepc-sppcc.gc.ca/prg/ns/le/cle-en.asp>.

32 News release. November 10, 2006. “Minister of Public Safety completes two-year review of listed terrorist entities.” Retrieved on January 1, 2007 from <http://www.psepc.gc.ca/media/nr/2006/nr20061110-1-en.asp> and News release. November 11, 2004. “Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness completes two-year review of listed terrorist entities.” Retrieved on January 1, 2007 from [http://ww2.psepc-sppcc.gc.ca/publications/news/2004/20041117\\_e.asp](http://ww2.psepc-sppcc.gc.ca/publications/news/2004/20041117_e.asp).

- The NSG role in these cases is multifaceted. NSG counsel manage the process, facilitate communication, educate participants, assess whether disclosure would result in injury negotiate competing interests, provide advice and recommendations to the Assistant Deputy Attorney General Criminal Law, and instruct litigators on the positions adopted by the Attorney General of Canada. Since the *ATA* was passed, the NSG has dealt with 20 cases that involve section 38. One case had ten separate section 38 notices and two cases had two notices each, for a total of 31 notices. The NSG has also provided advice on 31 cases where section 38 notices were considered but not issued. The amount of time devoted by NSG counsel to section 38 notices, and potential notices, has increased each fiscal year: 527 hours in 2002-03; 1,414 hours in 2003-04; 3,067 hours in 2004-05; 4,801 hours in 2005-06; and 5,728 hours in 2006 (partial year: April 1 to November 30, 2006).<sup>33</sup>
- **Litigation and prosecutions.** To date, 19 individuals have been charged under the *ATA*, but none of the cases have yet gone to trial. The first individual was charged under the *ATA* in 2004, and the trial is expected to begin in early 2007. This individual has been charged with several *Criminal Code* provisions: participating in the activity of a terrorist group (section 83.18); facilitating a terrorist activity (section 83.19); explosives offences (section 81(1)); the commission of offences for a terrorist group (section 83.2); providing property for terrorist purposes (section 83.03); and instructing another person to carry out an activity for the benefit of a terrorist group (section 83.21). In 2006, 18 individuals were arrested and charged with numerous offences such as participating in, or contributing to, the activity of a terrorist group, including training and recruitment (section 83.18); the commission of indictable offences, including firearms and explosives offences for the benefit of, or in association with, a terrorist group (section 83.2); and providing, or making available, property for terrorist purposes (section 83.03).

Civil litigation cases under the *ATA* involve section 38 notices (as section 38 matters are the exclusive jurisdiction of the Federal Court) and litigation initiated in civil courts by individuals charged under *ATA* provisions. In the first five years of the *ATA* the Department has been involved in civil litigation for the section 38 notices discussed above, but there has not been any civil litigation stemming from prosecutions under the *ATA* because the current prosecutions have not progressed very far.

***Contribution to improving Canada's response to national security issues.*** The evaluation explored the Department's contribution in a number of areas:

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<sup>33</sup> This data was provided by the NSG from iCase.



- **Use of intelligence and the prevention of disclosure of sensitive information.** The Department has contributed to the potential use of intelligence in criminal and other proceedings through its handling of section 38 notices. To date, each case has exhibited distinct characteristics, but with growing experience, a process is beginning to develop. Section 38 allows for the protection of sensitive information during proceedings, in that no longer are the options either to disclose or stay, but options such as summaries, are available to the court.

Although the section 38 process is considered an improvement, there are concerns about the ability to handle the potential future volumes of documents involved as a result of section 38 notices. The short time frame for response places a substantial burden on NSG counsel, as well as those agencies whose documents are the subject of the notice. The consequences of delay are substantial. An undue delay caused by the section 38 process could jeopardize the prosecution, as the *Charter* requires that the accused be tried within a reasonable time. It is anticipated that the use of the section 38 notice provisions will continue to grow in response to terrorist-related prosecutions as well as other proceedings. If the growth in workload continues to increase substantially, it will be difficult to manage without additional resources.

The Department has also contributed to the use of intelligence in proceedings through its development of an interdepartmentally agreed upon protocol for handling requests from foreign jurisdictions for the use of Canadian evidence and testimony in national security related proceedings.

Interviewees noted that it is a challenge for the Department to use information gathered for the purpose of advising the government in relation to threats to the security of Canada, in the context of a criminal proceeding. Intelligence collection agencies do not collect, analyse or retain information for the purpose of it being used as evidence. With the passage of the *ATA*, however, the potential for a prosecution to need to rely on intelligence to prove the elements of an offence is theoretically increased. The Department is aware of this issue and has undertaken considerable work to explore various options.

- **Detection of potential terrorists or terrorist activities.** The Department assists in the detection of potential terrorists or terrorist activities by working with agencies to ensure that intelligence is being shared, and also by developing legal protections for agencies so that their cooperation will not result in legal consequences that could interfere with their core mandates. In addition, the Department supports law enforcement in effectively applying the powers provided to them under the *ATA* (such as investigative hearings, preventative arrests) by providing them with legal advice on the use of these tools.

- **Investigation or prosecution of cases.** Because of the sensitivity of the investigations as all prosecutions under the *ATA* are still ongoing, key Justice contacts discussed the Department's role in improving investigations and prosecutions in very general terms, noting that investigations of terrorism cases are improving. For the period under review, the NSG and front-line prosecutors assisted investigators with using investigative tools, such as search warrants and electronic intercepts, by providing legal advice and getting the necessary court orders. They also make recommendations on whether to proceed with charges in terrorism cases to the Assistant Deputy Attorney General (now the Director of Public Prosecutions), who has the ultimate authority for laying the charge. The NSG role in connection with prosecution has since been assumed by the PPSC.

***Complexity of PSAT-related work.*** There are various factors that make handling civil and criminal anti-terrorism cases particularly complex, in particular, the number and novelty of the legal issues involved. Anti-terrorism cases typically involve activities that cross jurisdictional boundaries, including national boundaries; involve many areas of law; and require sophisticated investigation methods, all of which multiply the number of legal issues in a case. The *ATA* also breaks new legal ground, which means that there are few legal precedents on which to rely. This means that it is difficult to predict the correct legal course in all situations, and that it therefore requires counsel to be innovative in their arguments as they are making new law. Moreover, anti-terrorism cases involve many different departments that have their own mandates. This makes coordination challenging, and at the same time, vitally important, as failure to effectively collaborate may have legal consequences.

#### **5.2.5. Improving international efforts in the fight against terrorism**

The *ATA* responded to the U.N. Security Council Resolution 1373 that called upon Member States to ensure that their domestic legislation includes provisions to make it illegal to finance, plan, prepare or perpetrate terrorist acts. In addition, the *ATA* enabled Canada to ratify and implement several international obligations, including the *International Convention for the Suppression of Terrorist Bombings*, the *International Convention for the Suppression of the Financing of Terrorism*, and the *Convention on the Safety of United Nations and Associated Personnel*. Since the *ATA* was enacted, the Department has been engaged in activities that support Canada's role as an international partner in anti-terrorism efforts.

***Participation in international or multi-lateral bodies.*** Departmental representatives, particularly CLPS and IAG, have participated in a variety of international fora. The activities involve

attending and participating in discussions at international meetings, supporting other Canadian departments at international meetings, and responding to requests made by international bodies for information on Canadian law and policies dealing with terrorism and national security.

Because terrorism is now discussed at most international meetings, this area of work has expanded considerably. By participating in international organizations and/or supporting other departments' work in international organizations, the Department of Justice ensures that Canada's legal system and anti-terrorism and public safety laws are understood, and the Department also gains a better understanding of other countries' systems. As one interviewee phrased it, "There are many differences among legal systems around the world, and a good understanding of these differences is key to effective international cooperation." The Department's assistance in explaining the Canadian legal system is fundamental to Canada's ability to work with other countries. For example, the Department provides the necessary legal context for the international reporting that is required of Canada, so that bodies like the U.N. will understand that Canada is complying with its international commitments while remaining within the standards set by Canadian law. Client contacts who were interviewed considered the Department's advice to be of a high quality.

The following list provides examples of the Department's international activities associated with anti-terrorism and public safety:

- U.N.: CLPS provides responses to DFAIT for reports submitted to the U.N. Counter-Terrorism Committee that monitors Member State compliance with Security Council Resolution 1373 and 1624. CLPS also assists with Canada's response to U.N. requests for information about Canadian law and policy, such as the inquiries by the Special Rapporteur about Member State efforts to deal with the impact of the anti-terrorism legislation on minorities. The Department has also provided information on the security certificate procedure to demonstrate how Canada is complying with the *U.N. Convention Against Torture*.
- The G-8 and its Lyon/Roma Group, which focuses on combating transnational organised crime and international terrorism through enhancements to legal systems, transport security, and cyber-crime investigative techniques: CLPS sends representatives to the Lyon/Roma working group, which meets three times a year, and a representative may also attend the annual meeting of justice and law ministers. In addition, the Department assists with the preparation of briefing materials, and provides advice and assistance to the Justice Minister

and other Canadian departments attending the Lyon/Roma working groups and the G-8 summits.

- **Financial Action Task Force on Money Laundering (FATF):** The Financial Action Task Force on Money Laundering was established by the 1989 G-7 Summit to examine money laundering techniques and trends, review the action which had already been taken at a national or international level, and set out the measures that still needed to be taken to combat money laundering. In 1990, it issued a report containing recommendations, which provide a plan to fight money laundering. In 2001, the development of standards in the fight against terrorist financing was added to its mission. The Department provides advice to committee members from Canada on how to translate the Task Force's recommendations into domestic Canadian law.
- **Organization of American States (OAS):** the Department provides advice to Canadian representatives on the OAS regarding anti-terrorism issues. In particular, the Department has helped the Canadian delegation prepare for OAS summits, and CLPS has attended meetings of the Inter-American Committee Against Terrorism and other OAS committees where terrorism issues have been discussed.
- **Council of Europe:** Canada is not a member of this organization but has official observer status. CLPS sends a representative to sit on the Council's anti-terrorism committee.
- **Terrorism Sub-committee of the Cross-Border Crime Forum (CBCF):** this committee meets annually and is a joint effort of PSEPC, the Department of Justice, and the U.S. Department of Justice. The CBCF considers many issues involving crime that cross the U.S.-Canada border, including terrorism. NSG is a member of the Terrorism Sub-committee of the CBCF, and has drafted information papers explaining how Canada balances the protection of sensitive information with disclosure requirements in criminal proceedings.
- **International Maritime Organization (IMO) and the International Atomic Energy Agency (IAEA):** CLPS has been involved in negotiating new counter-terrorism conventions and protocols in these organizations, and with others in the Department also assisted with preparatory work and legal advice.

***Advice and assistance with international agreements.*** As with domestic laws, various sections provide legal advice and technical assistance on negotiations of new international agreements. While DFAIT is often the lead, Department of Justice sections, such as CLPS, NSG, IAG, and the Human Rights Section, give advice within their areas of expertise. By participating in the negotiations or by providing this legal advice and assistance to other federal government officials

involved in negotiating international agreements, the Department has helped to establish an international legal framework for anti-terrorism efforts. In particular, the Department ensures that international obligations and domestic laws do not conflict and that international agreements comply with the *Charter* and also meet international human rights standards.

CLPS participated in the negotiations of various international instruments, including the following:

- *2005 Amendment to the Convention on the Physical Protection of Nuclear Material* (International Atomic Energy Agency)
- *Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (IMO)*
- *Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (IMO)*
- *2005 Council of Europe Convention on the Prevention of Terrorism (Council of Europe)*

The following are additional examples of recent international agreements that contain provisions related to anti-terrorism and public safety, and for which legal advice was provided:

- *2005 Co-operation Agreement between Canada and the European Police Office* (European Union)
- Agreements under the Smart Border Declaration and Action Plan between Canada and the U.S., which includes measures to promote the secure flow of people and goods; enhance border infrastructure; and promote information-sharing to investigate cross-border criminal activity, including terrorism (e.g., 2004 regulations to implement the Safe Third Country Agreement on refugee claims; sharing of Advance Passenger Information/Passenger Name Record on high risk travellers)
- Treaty between Canada and the European Union and the agreement between Canada and Switzerland on sharing Advance Passenger Information/Passenger Name Record, both of which came into force in March 2006
- Various strategies, initiatives, and agreements under the Security and Prosperity Partnership of North America between Canada, the US and Mexico, which covers areas such as aviation and maritime security, as well as law enforcement and intelligence cooperation
- Agreements on cyber-crime with U.S. security counterparts.

***Mutual legal assistance and extraditions.*** The Department assists international efforts to detect and suppress terrorism through participating in international extradition and mutual legal assistance agreements. Canada is currently party to approximately 140 such agreements. Extradition agreements address the surrender of individuals to a requesting state or entity for the purposes of prosecution, imposition of sentence or enforcement of a sentence. Mutual legal assistance agreements address the gathering of evidence at the request of a foreign state or entity. These requests can encompass several matters, such as requests for obtaining documentary evidence, compelling witness testimony, or transferring a detained person to the custody of another country to assist an investigation.

The Minister of Justice is the central authority under the *Extradition Act* and the *Mutual Legal Assistance in Criminal Matters Act*. These acts implement Canada's responsibilities under various extradition and mutual legal assistance treaties (MLAT). The acts and treaties do not include provisions specifically directed to terrorism, but govern all extradition and MLAT requests. As the Minister's designate, the IAG handles all incoming (from foreign countries) and outgoing from Canada MLAT and extradition requests.

As part of its responsibilities, the IAG provides guidance and assistance to foreign authorities who make a request to ensure that they meet Canada's standards. Likewise, the IAG assists Canadian law enforcement and prosecutors with making requests of foreign countries. Most of this assistance is provided through HQ; however, the IAG has two counsel posted in Europe (Brussels and Paris) to assist European authorities with making requests. The decision to place these counsel in Europe predated the PSAT Initiative, and their work goes beyond PSAT-related matters; however, they have worked on terrorism-related requests and criminal investigations. Their presence is seen as a major benefit, as it ensures an immediate in-person response to any terrorism-related matters with a Canadian connection. The IAG liaison counsel in Brussels and Paris help build an understanding of the Canadian system in Europe, particularly in the area of MLAT and extradition requests, and this improves cooperation. Their presence also shows a Canadian commitment to providing prompt and undivided attention to terrorism issues when they arise.

The IAG handles all MLAT and extradition requests, so the portion of its work that comes under the PSAT Initiative are requests that have a terrorism or national security component. Since the Initiative began, the IAG has handled 56 terrorism-related MLAT requests (41 incoming and 15 outgoing) and 15 terrorism-related extradition requests (all incoming). For completed MLAT requests (not ongoing), 80% of those made by a foreign country and 75% of those made by Canada were executed. Among completed extradition requests (not ongoing), 66% (6 of 9)

people were extradited to the requesting country. Table 7 provides the number of requests by fiscal year and an overall assessment of the results. The number of MLAT requests does not capture all of the IAG's MLAT work. In situations where another department of the Canadian government holds the evidence sought, the IAG will work to determine what information can be supplied voluntarily, as that is more expeditious than the formal request process.

**Table 7: Terrorism-related extradition and mutual legal assistance treaty (MLAT) requests**

Fiscal year	MLAT requests			Extradition requests		
	Made by foreign country (incoming)	Made by Canada (outgoing)	Total	Made by foreign country (incoming)	Made by Canada (outgoing)	Total
2002/03	11	2	13	6	0	6
2003/04	7	4	11	2	0	2
2004/05	6	1	7	0	0	0
2005/06	6	4	10	3	0	3
2006/07*	11	4	15	4	0	4
<b>Total</b>	41	15	56	15	0	15
<b>Results</b>	20 executed 3 abandoned 2 withdrawn 16 ongoing	6 executed 2 abandoned 7 ongoing		6 extradited 1 discharged 2 withdrawn 6 ongoing	N/A	

\*Number of requests as of November 24, 2006 based on iCase data. Data provided by IAG.

Terrorism-related MLAT and extradition requests are labour-intensive as they involve many legal issues, many different national and international parties, the laws of more than one country, and sensitive information that triggers Section 38 procedures. Since the PSAT Initiative began, the number of hours spent by IAG counsel and paralegals on MLAT and extradition matters by fiscal year has fluctuated: 1,197 hours for 2002-03; 2,055 hours for 2003-04; 1,192 hours for 2004-05; 1,865 hours for 2005-06; and 1,160 for 2006-07 (as of November 6, 2006). Given the complexity and high profile of the terrorism-related requests, senior counsel are heavily involved in this work.

**Capacity building.** Departmental representatives (mainly from the IAG and CLPS) engage in capacity building by providing advice and assistance to foreign countries on how to develop and implement their own anti-terrorism legislation. These efforts are conducted as part of international teams of experts organized by multilateral organizations, such as the Organization for Security and Cooperation in Europe (OSCE), the U.N. Office of Drugs and Crime, and Asia-Pacific Economic Cooperation (APEC). The Department of Justice was represented in trips to several former Soviet republics to help these countries develop laws on terrorist financing and

money-laundering. The Department was also represented at workshops on anti-money laundering legislation in Central Asia to assist countries with developing laws, and the CLPS has assisted Asian countries with drafting legislation on cyber crime.

Capacity-building activities are an important part of the national and international response to the terrorist threat. By assisting other countries with developing their own anti-terrorism laws and fulfilling international agreements, Canada is promoting international cooperation and contributing to international efforts to fight terrorism. Key Justice contacts said that other countries view Canada's anti-terrorism and public safety legislation as a moderate approach that balances national security concerns and individual rights. For that reason, many countries want Canadian representatives to attend the meetings and workshops that are organized to assist them with developing their own laws. As a further example, the Commonwealth has drafted model provisions of anti-terrorism laws, many of which rely on Canada's legislation. However, key Justice contacts were clear that the Department does not have sufficient resources for capacity-building activities and has therefore had to decline opportunities to participate.

While the Department is assisting in Canada's international efforts, key Justice contacts offered suggestions for how the Department could do more. Some mentioned the expansion of liaison counsel, citing the French example. Currently, France has placed counsel in major capitals including Ottawa, and, according to key Justice contacts, this has improved working relationships, demonstrated a commitment to partnership, and created the ability to respond quickly to emergencies. The U.S. is beginning to follow the French lead, and key justice contacts believe that Canada should as well, in major national capitals where it receives the most MLAT and extradition requests. Another area of improvement was that of providing more resources for the Department to engage in capacity-building and attending international conferences. These activities are seen as helping the Department build a network with its international counterparts, and they generally improve international cooperation.

#### **5.2.6. Providing legal aid to economically-disadvantaged accused affected by public safety and anti-terrorism initiatives**

Under the PSAT Initiative, the Legal Aid Directorate receives funding to reimburse legal aid plans for their costs in providing legal counsel for individuals who are affected by public safety and anti-terrorism initiatives. Initially, it was expected that the demand for legal aid would primarily come from the immigration and refugee area, due to the enhanced border security measures post-September 11<sup>th</sup>. However, the context changed by 2003 when Legal Aid's terms



and conditions with the TB were approved. The need for legal aid assistance is not focused on issues related to border control, but primarily involves prosecutions arising from terrorism and other public security offences established through the *ATA* and the *PSA*, as well as proceedings under the Extradition Act where the requesting state is alleging terrorist activities.

Terrorism-related investigations are very complex, involving sophisticated investigative methods and the need to gather evidence on activities that cross jurisdictional boundaries. Because developing a case takes time, few individuals have been charged under the *ATA* and almost all of these prosecutions are in their very early stages. In the past two years, since the approval of their terms and conditions, the Legal Aid Directorate has entered into a total of 25 contribution agreements (nineteen in 2005-06 and six in 2004-05). The amount of money spent was \$300,000 for each of these two fiscal years. Defending individuals charged under the *ATA* will likely be very costly, given the complexity of the issues and evidence involved, and the expenditures of legal aid will continue to grow as the prosecutions progress. Given the high cost of mounting a defence, the provision of legal aid is vital to ensuring access to justice for the accused. To date, there is no known instance of an unrepresented defendant in a terrorism-related case, although key Justice contacts were uncertain whether all defendants have had representation at their initial appearances.

### **5.3. Management issues**

#### **5.3.1. Resources**

Several sections in the Department reported being under-resourced for the level of activities funded under the Initiative. In particular, the sections that reported inadequate funding said they were understaffed, which has meant that they respond to the work in a more reactive than proactive manner, both in terms of policy development and the provision of training. Physical space is also an issue, particularly as premises that are Top Secret approved are at a premium within the Department. The NSG also foresees difficulties, as the secure registry used for housing documents is already full and therefore, handling future section 38 requests will likely overwhelm the current space. Some sections reported that PSAT-related activities are not funded by the Initiative and that funds are borrowed from elsewhere to cover the shortfall.

The evaluation did not have enough information to compare actual and planned resource use by fiscal year beyond that for the overall departmental PSAT Initiative. More detailed breakdowns by section may be misleading as, in some cases, it is simply assumed that the total budget was

spent, and, for some sectors, expenditures are estimates. However, as shown in section 3.3, based on the available financial reporting, the Department ran a \$1.0 million deficit.

Some key Justice contacts said that their sections initially over estimated their needs and returned funds under the government reallocation exercise. This was most likely a temporary situation, as demands on the Department are expected to continue increasing. Other key Justice contacts cited some areas where resource constraints limited their ability to participate in certain activities. In particular, they considered the lack of funds to have affected the Department's ability to undertake the following activities:

- offer additional training on the *ATA*
- attend international conferences on issues such as comparative law and other countries' legislative responses to terrorism and other security-related issues
- conduct outreach activities with ethno cultural communities
- assist with capacity-building in other countries.

While not all sections have funding issues, key Justice contacts were concerned about resources because they see the Department's role expanding each time Canada institutes a new national security policy and enters into new international agreements or initiatives. For example, the National Security Policy, the new Smart Border Declaration agreements, and the Security and Prosperity Partnership all require the Department's support.

### **5.3.2. Department coordination**

The PSAT Steering Committee consists of senior Justice officials who oversee the Department's activities under the Initiative. The committee is chaired by an Associate Deputy Minister and includes ADM-level representatives from a variety of sections.<sup>34</sup> Initially, the Steering Committee restricted its role to that of allocating PSAT resources. Upon completing its initial allocation of resources, the Committee remained inactive for about 18 months, due, at least in part, to the departure of the Associate Deputy Minister who had been chairing the Committee. The Steering Committee reconvened in Spring 2004. The formative evaluation found that “the Department lacked an effective overall coordination mechanism during the first two years of the Initiative,” and recommended that the Steering Committee move beyond allocating resources to

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<sup>34</sup> See Table 3 in Section 3.2, *supra*, for a listing of the membership.

become more involved in coordinating activities under the Initiative and providing general oversight. Following the formative evaluation, the PSAT Steering Committee reviewed its role, and, in October 2005, approved a revised role that includes three key functions: to make decisions on resource allocations; to coordinate and oversee the activities related to the PSAT Initiative; and to ensure that each section understands the entire context of the PSAT Initiative.

However, the evaluation found that the Steering Committee has not yet fully expanded its role beyond resource allocation to including a coordinating function. In allocating resources, each section submits a business case to the Committee requesting PSAT funds. The Committee reviews these requests, allocates and monitors PSAT funds among the sections, reviews the annual reports of the sections, and approves the annual roll-up report provided to the Treasury Board Secretariat. Some of those interviewed indicated that they would like more information on how the resources are allocated and the rationale for the Committee's decisions.

### **5.3.3. Performance measurement**

The formative evaluation identified a need for an effective initiative-wide financial and performance information reporting system(s). This need remains. Limited performance measurement information is currently available on the Department's activities under the Initiative. There are two key difficulties for developing an effective performance measurement strategy. The first is determining what activities are PSAT-related. A second is measuring the success or outcomes of the Department's PSAT activities, which primarily serve to support other government departments.

Currently, the Department is reviewing its methods for collecting and assessing ongoing performance measurement data. This process seeks to have departmental sections identify key performance indicators that would be useful for internal planning purposes, meeting TB requirements, and measuring the initiative's success in an ongoing manner that will not be onerous. Because this process began at about the same time as the summative evaluation, the results of improved performance measurement were not available in time for the summative evaluation.

## **6. CONCLUSION, RECOMMENDATIONS AND MANAGEMENT RESPONSE**

This section presents, by evaluation issue, the conclusions of the evaluation based on the findings of the previous sections.

### **6.1. Relevance**

**What is the ongoing level of need for a program that supports elevated efforts to combat public security issues and the threat of terrorism in Canada and abroad?**

The objectives of the PSAT Initiative address national security concerns that are of continuing importance to the federal government: protecting Canadians from terrorist attacks; keeping borders open; identifying, prosecuting, and punishing terrorists; and contributing to international efforts to fight terrorism. The integrated, interdepartmental approach of the Initiative also remains a commitment of the government. Furthermore, intelligence threat assessments show that terrorism is considered to be a major threat to Canada, and that the tactics of terrorist groups are becoming more deadly and difficult to detect. All of these factors point to an ongoing level of need for the PSAT Initiative.

**Are the Department's PSAT objectives in line with the government-wide initiative?**

The Department's component supports the government's objectives under the Initiative. There is a strong demand for the Department's PSAT-related activities, demonstrating the importance of the Department's contribution to the Initiative. There is also an expectation that demand for these services will increase in the coming years. Ensuring public safety, in the face of terrorist or other threats, is a cornerstone of Canadian government policy, and is now on the agenda of most international gatherings. As the government continues to engage in new national security initiatives and also to sign international agreements related to terrorism and national security concerns, the legal advice and support required expands accordingly, and this growth will likely continue unabated. The Department also supports law enforcement agencies by providing advice

to border agencies and investigators, and the DOJ (pre-PPSC) handled prosecutions to suspected terrorists.

## **6.2. Success in meeting objectives**

The Department of Justice is conducting all of its six core activities under the PSAT Initiative and has made progress in meeting the objectives it has outlined for its role in PSAT. The Department has been particularly successful in engaging other Departments, client organizations, and other jurisdictions in PSAT-related matters. Departmental clients expressed a high degree of satisfaction with the work that has been done in the development of laws, regulations, and policies that support the general framework of the *ATA*.

Measuring the impacts of the activities conducted under the Initiative remains a challenge for the Department. Activities such as providing legal advice and drafting legislation, for example, do not lend themselves to having easily-measured outcomes.

### **To what extent have the DOJ PSAT activities engaged departmental representatives, client organizations and other jurisdictions in relevant public safety and anti-terrorism activities?**

The evaluation found that the Department serves an important function in linking government departments and coordinating national security activities. This coordination largely occurs on an informal basis. Undoubtedly, the Initiative could benefit from more forums that would make meetings and information sharing, both within Justice and among other departments and agencies, a more regular feature of the Initiative.

### **In what ways is the DOJ, through its PSAT activities within the Department, in client organizations and with other jurisdictions, contributing to the development of more effective laws, regulations and policies?**

Both the formative and summative evaluations found that the Department's work on the *ATA* and the *PSA* was valued by the other government departments involved with these pieces of legislation. Although the legislation has been the subject of legal challenges, these challenges are to be expected in such an uncharted area of the law. The *ATA* has created new criminal offences, which Canada has been able to use to prosecute people for activities that might previously not have been considered illegal, as well as new tools to assist investigators in detecting terrorists and terrorist activities. The process of reviewing the *ATA* was underway at the time of the

evaluation's data collection phase. The CLPS will coordinate the government response to recommendations from the parliamentary committees as required.

The Department continues to assist in the development of laws, regulations, and policies that support the national security and anti-terrorism legislative framework, including that of the ATA. This assistance primarily involves providing advice to client departments, and the evaluation found general satisfaction with the work that has been done. The Department has developed expertise in drafting legislation and policies pertaining to terrorism. As a result, other government departments and agencies look to the Department of Justice to coordinate the government's national security policy, as the Department is considered to have the most comprehensive understanding of the various departments' activities. In addition, that expertise causes other countries to look to Canada for advice and assistance in drafting their own anti-terrorism laws. The Department also serves a vital role by reviewing all legislation, regulations, and policies so that fundamental human rights are not compromised when national security concerns arise.

**To what extent have DOJ PSAT activities contributed to increased knowledge and understanding among key participants in the justice system and others of laws and regulations related to public safety and anti-terrorism?**

The evaluation found that this is an objective that, over time, has become less of a priority. Shortly after the *ATA* was enacted, the Department provided a number of training sessions on the legislation within the Department, as well as to other departments and agencies at the federal and provincial levels, and these were well received. Since then, the Department now provides training when it is requested, on a more ad hoc basis, and it incorporates PSAT-related information into training on other issues. CLPS counsel have made presentations at conferences, universities, and other forums to raise awareness of the *ATA*. The Department has also set up a website on the Parliamentary Review of the *ATA*. In 2005, there were 15, 060 unique visitors to the site and 19, 558 unique visitors in 2006.

**To what extent have DOJ PSAT activities enhanced the ability of departmental representatives, client organizations and other jurisdictions to investigate, litigate and / or prosecute cases where terrorism or other threats to public safety and anti-terrorism are involved or where disclosure of sensitive information is an issue?**

The *ATA* provisions have not been used extensively, but through interviews, the evaluation found that the provisions, and also the Department's contribution to their implementation, have

improved Canada's response to investigations, litigation and/or the prosecution of terrorism cases. In particular, the Department has contributed to the potential use of intelligence in criminal proceedings by managing the notice provisions of section 38 of the *Canada Evidence Act*. The evaluation found that there are concerns about the handling of the large volumes of records associated with section 38 notices.

The Department has also developed an interdepartmentally agreed upon protocol for the management of Canadian evidence and testimony in foreign proceedings involving national security matters.

Some possible suggestions to improve investigations, litigation and/or prosecutions include assigning front-line prosecutors with top secret clearances to provide advice at the early stages of potential terrorism investigations, as well as developing a dedicated team of anti-terrorism prosecutors, as this legal area is very complex, covers new legal ground and therefore requires careful consideration.

### **What role has DOJ had in improving international efforts in the fight against terrorism?**

Since the *ATA* was enacted, the Department has been engaged in a number of activities that support Canada's role as an international partner in anti-terrorism efforts. These include participating in international organizations; negotiating and providing legal advice on international instruments; handling extradition and mutual legal assistance requests; and providing advice and assistance to foreign countries on developing their own anti-terrorism legislation. Working with the international community in these areas is critical to Canada's anti-terrorism efforts, as acts of terrorism are a transnational crime. Each country has its own approach to the issue, based on its own legal and political culture. It is, therefore, important for Canada to understand other countries' systems, as well as for them to understand Canada's system. The Department serves an important role in providing this explanation, which improves Canada's ability to cooperate with other countries. It also ensures that any international commitments made by Canada meet Canadian and international legal standards.

Suggestions for how the Department could better assist these international efforts, identified by interviewees, included expanding the number of liaison counsel who are stationed in foreign capitals, as well as providing more resources so that the Department can participate in more capacity-building efforts and also attend international conferences. These activities help the Department to build a network with its international counterparts and also to improve international cooperation, in general.

**To what extent has legal aid been provided to the economically disadvantaged accused affected by public safety and anti-terrorism initiatives?**

**What has been the contribution of DOJ PSAT activities to greater access to justice?**

The Department provides contribution funding to the provinces and territories or their legal aid delivery entities to ensure that those economically disadvantaged accused affected by the PSAT Initiative have access to legal aid. While the current number of contribution agreements is not large, the significance of this funding provision cannot be underestimated. Mounting a defense to terrorism charges will be costly, and the provision of legal aid funding helps to ensure access to justice. At the same time, the funding ensures that there will be no stays of prosecutions because of lack of defence counsel. To date, there has not been a known instance of an unrepresented accused at trial in a terrorism-related case.

**6.3. Effectiveness**

**Is the level of resources allocated to the Department sufficient to address the current need in relation to the PSAT Initiative?**

**Are PSAT-related cases and resources within the Department being managed in an efficient and effective manner?**

For the summative evaluation, the RMAF defines effectiveness as, in part, “assessing the appropriateness of the level of resources allocated to the department.” Resources are an issue for some of the Department's sections, and for the last fiscal year (2005-06), the Department of Justice reports a \$1.0 million deficit for its PSAT activities. If Department of Justice sections do not have sufficient funds available to them, there are two possible impacts on the services they provide to their clients: services are provided only in a reactive manner in response to national security issues and departmental officials can only provide the minimum required level of services to their clients.

It was noted during the course of the evaluation that the Department has a limited ability to demonstrate the sufficiency of its PSAT resources. The Department currently tracks funds by business line and this does not align with the Treasury Board Secretariat's requirement that funds be tracked by program or initiative. Some sections in the Department currently use iCase, which is an information management system that provides timekeeping, billing, case management, document management and reporting functions. The data from this system does not provide a



clear overall picture of PSAT-related resource usage; use of this system and the data entered into it varies among departmental sections. As a result, some sections can only provide estimates of their PSAT-related resource use.

The formative evaluation recommended that the PSAT Steering Committee become more involved in coordinating activities under the Initiative. The summative evaluation found that the Committee has not yet fully expanded its role beyond that of resource allocation.

**Recommendation 1: The Committee should further review its role and mandate so the full implications of the PSAT work of the Department are fully understood and appropriately funded.**

**Management Response:**

Agreed. While the Committee recognizes that each sector needs to continue to be responsible for its own PSAT-related activities, it is important for the Committee to make resource allocation decisions, monitor the implementation of the PSAT activities, and facilitate the reporting of the overall impact of PSAT funding. The PSAT Steering Committee will review its mandate, as outlined in the Committee's Terms of Reference, during a future meeting.

**How effective is the ongoing performance measurement system of the PSAT Initiative?**

The formative evaluation also identified a need for an effective department-wide financial and performance measurement reporting system(s) for the Department's component of the PSAT Initiative. Since then, the Department has taken positive steps towards improving the reporting of the results of its PSAT activities. For example, the Department, through its Corporate Services, has taken a number of steps towards improving the reporting of the results of the Department's PSAT activities, in close collaboration with the TB Secretariat. Furthermore, the Department engaged a consultant to review its performance measurement strategy, to consult with key contacts in the Department, and to identify key performance indicators for each sector involved with the Initiative. As this project was conducted fairly recently, its results were not available for consideration in the evaluation.

**Recommendation 2: The Department should continue to implement the positive measures it has already undertaken to improve the measurement and reporting of results for its PSAT activities.**

**Management Response:**

Agreed. In October 2006, the Department hired a contractor to consult with Departmental employees from each sector involved with PSAT. The goal of the exercise was to improve the collection and reporting of performance measurement data to assist in demonstrating the impact of the Department's contribution to the PSAT Initiative. The Department will build on this by implementing the consultant's recommendations.

The Department has undertaken a substantial amount of work as part of its PSAT responsibilities, and there is a strong belief that this work will expand and therefore require more resources. For that reason, it is imperative that a financial management and performance measurement reporting system can demonstrate the impact of both current and future demands on the Department under the Initiative.

**Recommendation 3: The Department should continue to implement measures to improve its financial management and reporting systems to help demonstrate the impact of both current and future demands on the Department under the Initiative.**

**Management Response:**

Agreed. The Committee will work with Financial Services to determine how it could facilitate the work of managers who need to enter PSAT-related information in the Integrated Financial and Material System (IFMS), taking into account other systems used such as iCase, the Salary Management System and the Timekeeping System.

**APPENDIX A:**  
**Evaluation Framework**

**Summative Evaluation Framework Table**

Issues	Indicators	Data Sources	Data Collection / Analysis Methods
<b>Relevance</b>			
1. What is the ongoing level of need for a program that supports elevated efforts to combat public security issues and the threat of terrorism in Canada and abroad?XX	Identified needs of users of DOJ PSAT programming (departments, agencies, P/T jurisdictions, foreign jurisdictions)  Extent to which current programming and PSAT resources can address those needs	Users and departmental representatives  Documentation	Interviews  Documentation review
2. Are the Department’s PSAT objectives in line with the government-wide initiative?XX	Consistency with the government-wide PSAT Initiative	Departmental reports  Key contacts	Document review  Interviews
<b>Success</b>			
3. To what extent have the DOJ PSAT activities engaged departmental representatives, client organizations and other jurisdictions in relevant public safety and anti-terrorism activities?	List of other departmental representatives, client organizations and other jurisdictions involved in public safety and anti-terrorism activities and types of relationship  Number, nature and complexity of requests for advice / assistance on PSAT-related issues	Departmental files  Caseview	File review  Database analysis
4. In what ways is the DOJ, through its PSAT activities within the Department, in client organizations and with other jurisdictions, contributing to the development of more effective laws, regulations and policies?	Early involvement of all relevant stakeholders in the development of laws and regulations  Involvement and contribution to the development of interdepartmental initiatives  Number, nature and complexity of agreements / MOUs worked on  Assistance provided to other jurisdictions	Key contacts  Departmental files	Interviews  Documentation review

**Summative Evaluation Framework Table**

Issues	Indicators	Data Sources	Data Collection / Analysis Methods
<p>5. To what extent have DOJ PSAT activities contributed to increased knowledge and understanding among key participants in the justice system and others of laws and regulations related to public safety and anti-terrorism?</p>	<p># of training sessions</p> <p># of participants</p> <p>Change in levels of awareness by participants within the justice system of the <i>ATA</i> and other PSAT-related legislation for which the Minister of Justice is directly responsible</p> <p>Change in levels of awareness within ethno-cultural communities, DOJ and justice system practitioners about the impact of the legislation on those communities</p>	<p>Departmental files</p> <p>Key contacts and partners</p> <p>Research studies (e.g., ethno-cultural questionnaire, focus groups)</p> <p>Website statistics</p>	<p>File review</p> <p>Key contact and partner interviews</p> <p>Document review</p> <p>Statistical analysis</p>
<p>6. To what extent have DOJ PSAT activities enhanced the ability of departmental representatives, client organizations and other jurisdictions to investigate, litigate and / or prosecute cases where terrorism or other threats to public safety and anti-terrorism are involved or where disclosure of sensitive information is an issue?</p>	<p>Types of criminal charges laid under the <i>ATA</i></p> <p>Use of recognizance with conditions and investigative hearing provisions of the <i>ATA</i>.</p> <p>#, nature and complexity of requests for legal advice and support by investigative agencies</p> <p># and scope of cases where advice / assistance was provided with respect to applications of s.38 (<i>CEA</i>) of cases was used</p> <p># and scope of cases where s.38 was used or considered for use</p> <p>#, nature and complexity of litigation and prosecutions carried out by DOJ counsel</p> <p>Number of cases where entry was denied or removal from Canada occurred on national security grounds</p>	<p>Departmental files</p> <p>Caseview</p> <p>RCMP, provincial AG &amp; CCJS reports</p> <p>Annual Report to Parliament and provincial AG reports</p> <p>Key contacts and partners</p>	<p>File review</p> <p>Database analysis</p> <p>Document review</p> <p>Key contact and partner interviews</p>
<p>7. To what extent has legal aid been provided to the economically disadvantaged accused affected by public safety and anti-terrorism initiatives?</p>	<p>Number of legal aid cases by type of proceeding</p> <p>Amount of funding spent in compliance with federal / provincial / territorial agreements</p>	<p>Departmental files</p>	<p>File review</p>

**Summative Evaluation Framework Table**

Issues	Indicators	Data Sources	Data Collection / Analysis Methods
8. Are there more effective programs, use of intelligence, investigation and detection by federal / provincial / territorial governments related to public safety and anti-terrorism?	Increase in awareness of security threats / terrorist activity among intelligence and law enforcement agencies  Contribution of DOJ support to enhancing the effectiveness of programs, use of intelligence, investigation and detection	Key contacts and partners	Key contact and partner interviews
9. In what way have DOJ PSAT activities contributed to more effective litigation and prosecution?	Timeliness in bringing cases to courts / tribunals and in processing them  Trends in case outcomes / dispositions  Assessments of the effectiveness of DOJ litigation and prosecutions	Departmental files  Caseview  Key contacts	File review  Database analysis  Key contact interviews
10. What role has DOJ had in improving international efforts in the fight against terrorism?	DOJ's contribution to Canada's efforts in the global fight against terrorism  Outcomes / dispositions of mutual legal assistance requests and extradition proceedings  Membership in, and levels of support provided to foreign governments and international bodies	Key contacts  Departmental files	Key contact and partner interviews  File review
11. What has been the contribution of DOJ PSAT activities to greater access to justice?	Number and types of challenges and their outcomes / use of tools available  Number and circumstances of unrepresented defendants in terrorism-related cases  Contribution of DOJ in greater access to justice	Departmental files  Key contacts and experts	Key contact and expert interviews
12. What have been the unintended impacts, positive or negative, of DOJ PSAT activities?	Incidence of unintended impacts	Key contacts and departmental representatives	Interviews

**Summative Evaluation Framework Table**

Issues	Indicators	Data Sources	Data Collection / Analysis Methods
<b>Cost-Effectiveness and Alternatives</b>			
13. Is the level of resources allocated to the Department sufficient to address the current need in relation to the PSAT Initiative?	Planned vs. actual resource use PSAT-related workload International comparisons Number and description of activities that could not be undertaken or could not be undertaken in a timely manner	Departmental financial data Departmental operational reports Document review Key contacts	Data analysis File review Key contact interviews
14. Are PSAT-related cases and resources within the Department being managed in an efficient and effective manner	Trends in plea bargaining and use of agents Extent to which resources are allocated to areas of highest priority and workloads Comparisons with similar measures in other jurisdictions	Departmental files Key contacts Documents	File review Key contact interviews Document review
15. Are there more effective ways of achieving the objectives of the initiative?	Comparison with other jurisdictions Comparison of the effectiveness of alternative approaches	Departmental files Documents Key contacts	File review Document review Key contact interviews
<b>Performance Measurement System</b>			
16. How effective is the ongoing performance measurement system of the PSAT Initiative?	Extent to which the new RMAF performance measurement strategy has been implemented Extent to which it is useful for decision-making purposes Extent to which it is complete (i.e., that the information required is available)	Departmental representatives Departmental files	Interviews File review