



Accountability Report 2019–20

Public Prosecution Service



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Accountability Statement

The accountability report of the Nova Scotia Public Prosecution Service for the year ended March 31, 2020 is prepared pursuant to the Finance Act and government policies and guidelines. These authorities require the reporting of outcomes against the Public Prosecution Service's Statement of Mandate for the fiscal year just ended. The reporting of the Public Prosecution Service outcomes necessarily includes estimates, judgments and opinions by the Public Prosecution Service.

We acknowledge that this accountability report is the responsibility of the Nova Scotia Public Prosecution Service. This report is, to the extent possible, a complete and accurate representation of outcomes relative to the goals and priorities set out in the Public Prosecution Service 2019-2020 Business Plan.

In terms of accountability, it should be noted that the Nova Scotia Public Prosecution Service was established in 1990 as the first statutorily based independent prosecution service in Canada. All prosecutions within the jurisdiction of the Attorney General of Nova Scotia are the responsibility of the Director of Public Prosecutions. Crown Attorneys responsible to the Director conduct prosecutions independently of the Minister. The only limitation on the operational independence of the Director permitted by the Public Prosecutions Act arises when the Attorney General issues written instructions to the Director of Public Prosecutions. These instructions are binding and must be made public. This procedure preserves the ultimate prosecutorial authority of the Attorney General. It is a means of ensuring accountability to the electorate for the manner in which public prosecutions are conducted.

Martin E. Herschorn QC
Director of Public Prosecutions

Date

Message from the Director of Public Prosecutions

I am pleased to present this accountability report of the Nova Scotia Public Prosecution Service for 2019-2020.

This has been a difficult year for the Nova Scotia Public Prosecution Service. The Service experienced a Crown Attorney strike in the fall and ended the year rising to the challenge of delivering prosecutorial services in the face of a global pandemic.

At the same time, our 101 Crown Attorneys across the province dealt with 43,777 criminal charges and prosecuted 6,626 provincial statute violations.

On October 16, 2019, without any prior consultation with my office and as the Nova Scotia Crown Attorneys Association was in the process of negotiating its latest contract, the Government introduced Bill 203, the *Crown Attorneys' Labour Relations Act*. The legislation would have removed one of the indicators of institutional independence, i.e. the availability of binding arbitration as the final dispute resolution mechanism respecting Crown Attorneys' compensation, something that had been in place for nearly 20 years.

I appeared before the legislature's Law Amendments Committee to voice my opposition to this Bill and to explain my view that this legislation was not in the best interest of a statutorily created, independent provincial prosecution service which, up until the introduction of this Bill, had enjoyed an extended period of positive labour relations. The Bill was subsequently enacted, but not proclaimed.

On October 23 many Crown Attorneys walked off the job and took to the picket lines for only the second time ever in the history of the PPS. The NSCAA committed to ensuring that court cases involving personal violence such as homicides and sexual assault would not be jeopardized, and Crowns assigned to those cases were in court. For other matters, the PPS contracted with private law firms to cover courts. In most cases adjournments were sought.

Following a positive intervention by the Premier, the negotiating parties returned to the bargaining table and the strike ended. A four-year agreement was reached in December. As part of that agreement, Bill 203 was repealed.

The PPS continues to be vigilant when it comes to delay. We were able to expand the intake team in Dartmouth Provincial Court. This model continues to reduce wait times for trials from one year to as little as two to three months. When resources permit, the PPS will apply this model in other provincial courts.

The PPS continues to be an active partner in the provincial government's Criminal Justice Transformation Group. The focus for the past year has been on the over-representation of individuals from marginalized communities on remand in provincial jails awaiting preliminary inquiry or trial.

Just as last year we introduced a new comprehensive policy – *The Fair Treatment of Indigenous Peoples in Criminal Prosecutions in Nova Scotia* – this year we began work on a policy to address the fair treatment of African Nova Scotians, other visible minorities and racialized communities in criminal prosecutions. This policy will hopefully be finalized in 2020.

Late this year we received approval to hire a Crown Attorney dedicated to the prosecution of human trafficking offences. That Crown will also provide training on human trafficking issues to other Crown Attorneys and to police agencies. The new Crown is expected to be in place this summer.

As usual, training and education was a major priority for the PPS this year. The PPS held a fall conference for three days of education on a variety of criminal law topics. Additionally, the PPS held a one-day conference on sexual violence.

As the year was ending, the Covid-19 global pandemic caused a state of emergency being declared in Nova Scotia and much of the work force began to work from home. Our Crown Attorneys and other court room participants had to conduct matters by phone or video. The immediate focus at the outset was to reduce the numbers of accused on remand to avoid an outbreak of Covid-19 in the jails and to adjourn matters where possible to a date when a physical return to the court room is likely.

I am proud to say our Crown Attorneys and their support staff worked long hard hours in the interests of public health and safety while at the same time maintaining the integrity and viability of criminal prosecutions.

Martin E. Herschorn, QC
Director of Public Prosecutions

Financial Table and Variance Explanation

	2019-20 Estimate	2019-20 Actuals	2019-20 Variance
Public Prosecution Service	<i>(\$thousands)</i>		
Departmental Expenses:			
Head Office	3,221	3,655	434
Cape Breton Region	3,526	3,684	158
Central Region	3,046	2,936	(110)
Halifax Region	8,296	8,982	686
Western Region	2,929	3,626	697
Appeals	1,256	1,315	59
Special Prosecutions	2,319	2,242	(77)
Total: Departmental Expenses	24,593	26,440	1,847
Additional Information:			
Ordinary Revenue	0	0	0
Fees and Other Charges	0	0	0
Ordinary Recoveries	293	438	145
Total: Revenue, Fees and Recoveries	293	438	145
TCA Purchase Requirements	0	0	0
Provincial Funded Staff (FTEs)	176.8	177.9	1.1
<u>Departmental Expenses Variance Explanation:</u>			
<p>Pressure due to higher than anticipated salary and operating costs. It is also related to increased expenditures primarily per diem crown attorney fees, witness and expert witness fees, travel costs, transcription costs, appeal costs and membership dues.</p> <p>An additional pressure includes the salary and operating costs related to the Dechamp prosecution.</p>			
<u>Revenue, Fees and Recoveries Variance Explanation:</u>			
<p>Increase in Municipal Recoveries related to the prosecution of Summary Offence Tickets.</p>			
<u>Provincial Funded Staff (FTEs) Variance Explanation:</u>			
<p>FTEs from Youth Opportunity Initiative Program within the PSC.</p>			

Measuring Our Performance

OUTCOME DESCRIPTION	WHAT DOES THIS MEASURE TELL US?	WHERE ARE WE NOW?	WHERE DO WE WANT TO BE?
<p>High quality trial work</p>	<p>That the PPS is delivering high quality trial work by Crown Attorneys who attain a performance evaluation of competent or higher; are provided with adequate preparation time for in-court work; are supported by continuing legal education; and, where applicable, are mentored by senior colleagues. These elements ensure the delivery of high-quality trial work in presenting the evidence thoroughly and fairly to ensure the proper verdict is reached.</p>	<p>All Nova Scotia Crown Attorneys have achieved a performance rating of competent or higher. They are generally given adequate time to prepare cases for court. They are provided with continuing legal education. A mentoring program has been developed and is in place.</p>	<p>Crown Attorney performance evaluations would be enhanced by in-court monitoring. A case management information system would maximize efficiencies as Crowns prepare for and deliver their cases in court.</p>
<p>High quality appeal work</p>	<p>That the PPS is delivering high quality appeals work by Crown Attorneys who attain a performance evaluation of competent or higher; are provided with adequate preparation time for in-court work; are supported by continuing legal education; and, where applicable, are mentored by senior colleagues. These elements ensure the delivery of high-quality appeal work in presenting the evidence thoroughly and fairly to ensure the proper decision is reached.</p>	<p>All Appeals Crown Attorneys have achieved a performance rating of competent or higher. They are always given adequate time to prepare cases for court. They are provided with continuing legal education. A mentoring program has been developed and is in place.</p>	<p>Crown Attorney performance evaluations would be enhanced by in-court monitoring. A case management information system would maximize efficiencies as Crowns prepare for and deliver their cases in court.</p>

<p>Provide police with high quality legal advice and assistance</p>	<p>That the PPS is providing police with high quality legal advice and assistance when requested during the course of police investigations. This helps police in collecting evidence and laying appropriate charges. Ultimately, high quality legal advice to police helps to ensure quality trial work when the case goes to court.</p>	<p>The PPS continues to provide timely responses to requests from police and provincial enforcement officers for legal advice on particular cases or direction on matters of criminal law.</p> <p>The PPS requires Crown Attorneys to record all advice given to police so that the PPS may measure both quality and quantity of advice.</p>	<p>All advice to police should be examined and evaluated to make a determination on volume and Crown workload. As well, a quality assessment analysis should be undertaken.</p>
<p>Provide Crown representation in the development of criminal law and criminal prosecution policy</p>	<p>That the PPS provides input into the development of criminal law and criminal prosecution policy from both an administrative and a frontline perspective.</p>	<p>The PPS participates in joint meetings, including Federal/Provincial/Territorial (FPT) Ministers and Deputy Ministers meetings, Coordinating Committee of Senior Justice Officials and FPT Heads of Prosecutions, meetings of the Provincial Justice Partners Committee and the International Association of Prosecutors. Crown Attorneys also participate in provincial policy initiatives. The PPS continues to liaise with other prosecution services to maintain awareness of best practices for delivery of prosecution services.</p>	<p>To maintain or enhance the existing level of contribution to policy development.</p>

APPENDICES

*All statistics except for Appeals received
through the kind co-operation of the Nova Scotia Department of Justice*

APPENDIX A
Criminal Code Charges in Provincial Court
by Offence Category and Judicial Centre 2019-2020

OFFENCE CATEGORIES	HALIFAX	DARTMOUTH	AMHERST	KENTVILLE	BRIDGEWATER	PICTOU
Homicide	5	2	0	0	0	0
Attempted Murder	18	41	4	3	1	0
Robbery	101	39	0	6	9	3
Sexual Assault	130	81	26	60	18	29
Other Sexual Offences	128	114	17	78	30	25
Major Assault	556	454	58	142	71	99
Common Assault	779	584	147	342	157	208
Uttering Threats	462	439	64	162	87	120
Criminal Harassment	68	47	7	11	2	8
Other Crimes Against a Person	185	101	24	32	17	28
Theft of Motor Vehicle	105	41	14	10	15	17
Theft	1,186	538	92	168	59	76
Break and Enter	169	114	50	42	51	42
Fraud	688	189	59	87	50	135
Mischief	391	272	81	150	45	140
Possession Stolen Property	1,416	612	85	78	35	75
Other Property Crimes	68	18	38	17	16	4
Failure to Attend Court	223	136	22	28	11	18
Breach of Probation	1,926	1,026	102	123	92	123
Unlawfully at Large	27	71	2	1	3	5
⁵ Failure to Comply with Order	2,986	1,648	473	539	281	408
Other Administration of Justice	244	179	58	62	19	29
Weapons Offences	678	495	69	136	67	107
Prostitution	2	1	0	0	0	0
Disturbing the Peace	62	11	11	9	5	8
Residual Criminal Code	77	99	26	39	36	44
Impaired Driving	862	934	128	352	191	172
Other Criminal Code Traffic	7	10	0	2	4	1
TOTAL	13,549	8,296	1,657	2,679	1,372	1,924

Continued . . .

APPENDIX A
Criminal Code Charges in Provincial Court
by Offence Category and Judicial Centre 2019-2020

OFFENCE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide	2	0	0	1	0	0	10
Attempted Murder	6	1	0	5	0	1	80
Robbery	27	7	3	0	3	1	199
Sexual Assault	50	68	23	53	44	21	603
Other Sexual Offences	71	67	13	87	67	25	722
Major Assault	221	157	27	75	102	51	2,013
Common Assault	439	259	72	157	212	130	3,486
Uttering Threats	312	146	40	81	124	76	2,113
Criminal Harassment	20	6	3	2	4	7	185
Other Crimes Against a Person	44	46	14	20	22	12	545
Theft of Motor Vehicle	11	21	6	12	12	3	267
Theft	247	145	40	44	96	69	2,760
Break and Enter	58	65	12	21	22	31	677
Fraud	77	48	7	4	36	30	1,410
Mischief	290	124	44	60	95	59	1,751
Possession Stolen Property	165	126	26	13	35	29	2,695
Other Property Crimes	18	10	1	2	3	3	198
Failure to Attend Court	128	28	11	8	8	6	627
Breach of Probation	653	243	71	99	176	90	4,724
Unlawfully at Large	3	4	5	0	2	6	129
Failure to Comply with Order	2,596	613	159	322	392	306	10,723
Other Administration of Justice	120	52	12	23	59	31	888
Weapons Offences	185	113	40	67	117	71	2,145
Prostitution	0	0	0	0	0	0	3
Disturbing the Peace	17	8	3	1	7	5	147
Residual Criminal Code	52	14	10	12	37	24	470
Impaired Driving	391	371	135	226	252	147	4,161
Other Criminal Code Traffic	6	3	1	8	0	4	46
TOTAL	6,209	2,745	778	1,403	1,927	1,238	43,777

APPENDIX B

Provincial Statute Cases by Judicial Centre 2019- 2020 (only cases with prosecutor assigned)

	MOTOR VEHICLE ACT	LIQUOR CONTROL ACT	OTHER PROVINCIAL STATUTES	TOTAL
Halifax	3,056	149	305	3,510
Dartmouth	30	0	175	205
Amherst	134	2	50	186
Kentville	232	28	81	341
Bridgewater	178	4	70	252
Pictou	171	11	21	203
Sydney	284	13	44	341
Truro	458	8	74	540
Antigonish	101	46	10	157
Port Hawkesbury	129	7	26	162
Yarmouth	232	25	75	332
Digby	293	5	99	397
TOTAL	5,298	298	1,030	6,626

1. Data includes all charges laid on an Information or Summary Offence Ticket (SOT) between April 12, 2019 and March 31, 2020 with a prosecutor assigned.

2. The count for provincial statute offences includes those which were handled by the summary offence court.

APPENDIX C
Appeals Statistics
2019-2020

The following are statistics related to Appeals covering the period April 1, 2019 to March 31, 2020

The PPS participated in 22 appeals heard by the Nova Scotia Court of Appeal. Of this number:

- 3 were initiated by the Crown
- 19 were initiated by offenders

Of the appeals initiated by the Crown:

- 1 dealt with acquittal
- 2 dealt with sentence.

Of the 19 appeals initiated by offenders:

- 17 dealt with conviction
- 2 dealt with sentence
- 3 involved a motion for fresh evidence

Of the appeals initiated by the offenders, none fell under the *Youth Criminal Justice Act* and one was argued by a self-represented inmate.

PPS Appeals Crown Attorneys were involved in three appeals which were abandoned, quashed or dismissed without a full hearing in the Court of Appeal. All three had been initiated by the Crown.

PPS Appeals Crown Attorneys participated in 158 Chambers motions heard by a single Judge of the Court of Appeal. Chambers motions include motions for a hearing date and the filing of the appeal books and factums, adjournments, bail pending appeal, extension of time to appeal, directions and status updates in appeals, appointment of counsel in prisoners' appeals and striking appeals from the Court's docket. Uncontested motions are usually conducted over the telephone (teleconference Chambers), and both contested and uncontested motions are heard in open court (regular Chambers).

PPS Appeals received 12 recommendations for appeal from trial Crown Attorneys, of which four were approved for appeal. One of the four approved for appeal was later abandoned.

In the Supreme Court of Canada, PPS Appeals received two notices of appeal from an offender. Decisions were received in both applications for leave to appeal (both dismissed). PPS Appeals participated in no hearings before the Court.

APPENDIX D

Public Interest Disclosure of Wrongdoing

INFORMATION REQUIRED UNDER SECTION 18 OF THE ACT	FISCAL YEAR 2019-2020
The number of disclosures received	0
The number of findings of wrongdoing	0
Details of each wrongdoing	N/A
Recommendations and actions taken on each wrongdoing	N/A