



# Accountability Report 2020–21

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Public Prosecution Service



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Accountability Report 2020–2021

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## Table of Contents

Accountability Statement.....	2
Message from the Director of Public Prosecutions .....	3
Financial Results .....	5
Measuring Our Performance .....	6
Appendix A – Criminal Code Charges by Judicial Centre/Category of Offence.....	9
Appendix B – Provincial Statute Cases Prosecuted by Judicial Centre/Category of Offence .....	11
Appendix C – Appeals Branch Statistics .....	12
Appendix D – Public Interest Disclosure of Wrongdoing .....	13

## Accountability Statement

The accountability report of the Nova Scotia Public Prosecution Service for the year ended March 31, 2021 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 2020-2021 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.

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**Martin E. Herschorn QC**  
Director of Public Prosecutions

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**Date**

## Message from the Director of Public Prosecutions

I am pleased to present this accountability report of the Nova Scotia Public Prosecution Service for 2020-2021.

The Nova Scotia Public Prosecution Service experienced a challenging year in the delivery of prosecutorial services amid the global pandemic. Initially, our Crown Attorneys were focused on reducing the numbers of accused individuals 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 was likely.

However, a physical return to the court room gave way mostly to virtual appearances either by telephone or by video conference. For most of the year many of our Crown Attorneys worked from home and attended court virtually. Our support staff also worked from home where possible.

I commend our Crown Attorneys and support staff for their remarkable commitment and outstanding performance in the delivery of prosecutorial services this year in the face of unprecedented and extraordinarily difficult circumstances

In a year that saw the province on lockdown for much of the time and many Nova Scotians working from home, the number of new Criminal Code charges dropped to 39,879 from 43,777 the year before. The number of new regulatory offences dropped significantly from 6,626 in 2019-2020 to 2,865. One possible explanation for this is that hearings were not being held and courts were not collecting fines.

The year's new charges, the outstanding cases postponed to allow for in-person hearings, and the cumbersome nature of virtual appearances all combined with an ever-increasing element of legal complexity in criminal law added up to an increased workload. Management received reports of our more senior Crown Attorneys experiencing burnout and our more junior Crown Attorneys feeling overwhelmed. We have seen several early retirements and a number of medical leaves as a result.

The Department of Justice sought temporary premises to be able to continue with Halifax area jury trials in a space where social distancing is possible. This facility, located in Burnside, was attained and some modifications are being made. However, the Crown's request for adequate space to meet with witnesses was unable to be accommodated. The PPS is anticipating future difficulties as a result.

Digital evidence management, including the need to be ready for the increased police use of body-worn cameras, and the continuing evolution of e-disclosure are essential as the criminal justice system moves forward. But our efforts to advance these initiatives, as identified in the Chisholm Report of May 2018, have been frustrated. Despite encouragement from the Attorney General to advance solutions, the government have been unwilling to respond to repeated requests for funding, either within the regular budgetary process, or by a Memorandum to Cabinet (MEC). Overall, the lack of movement on digital evidence management is a looming crisis for the PPS and the Nova Scotia criminal justice system in the face of vast increases in the volume of digital evidence resulting from criminal police investigations.

Additional provincial funding saw the PPS hire a Crown Attorney dedicated to human trafficking prosecutions. This Crown Attorney is focused both on prosecuting these offences and on training Crown Attorneys and police in this growing area of criminal activity.

The PPS is frustrated by the ongoing reluctance of the provincial government to provide the Service with federal “Guns and Gangs” funding earmarked for the prosecution function. These cases are often complex and require an appropriate level of resourcing for effective prosecutions.

The PPS is also frustrated by the long outstanding lack of an independent salary-setting mechanism for our managers. In the absence of progress PPS managers have filed a complaint with the Department of Labour.

The PPS’s Equity & Diversity Committee has made good progress this year. Among the accomplishments:

- A *Policy for Fair Treatment of African Nova Scotians in Criminal Prosecutions (FTANS)* is in the final stages of development;
- A process for internal expert consultation on criminal prosecution cases involving racial justice issues was developed; and
- Training on cultural competency has been delivered to PPS staff and questions for PPS hiring processes were revamped.

With the work of the Criminal Justice Transformation Group stalled during the pandemic, the PPS notes the need is growing to change and modernize the criminal justice system to address a number of issues. Among these issues are: equipping court facilities with appropriate technology; more attention to the rights of victims; and the increasing number of jury verdicts being overturned by the Court of Appeal resulting in retrials having to be mounted years after the events which gave rise to the charges.

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Martin E. Herschorn, QC  
Director of Public Prosecutions

## Financial Table and Variance Explanation

	2020-21 Estimate	2020-21 Actuals	2020-21 Variance
<b>Public Prosecution Service</b>	<i>(\$thousands)</i>		
<b>Departmental Expenses:</b>			
Head Office	3,731	3,810	79
Cape Breton Region	3,607	3,501	(106)
Central Region	3,159	3,134	(25)
Halifax Region	8,169	9,371	1,202
Western Region	2,997	3,171	174
Appeals	1,286	1,324	38
Special Prosecutions	2,070	2,078	8
<b>Total: Departmental Expenses</b>	<b>25,019</b>	<b>26,389</b>	<b>1,370</b>
<b>Additional Information:</b>			
Ordinary Revenue	---	---	---
Fees and Other Charges	---	---	---
Ordinary Recoveries	403	241	(162)
<b>Total: Revenue, Fees and Recoveries</b>	<b>403</b>	<b>241</b>	<b>(162)</b>
TCA Purchase Requirements	---	---	---
Provincial Funded Staff (FTEs)	<b>177.8</b>	<b>180.4</b>	<b>2.6</b>
<p><b><u>Departmental Expenses Variance Explanation:</u></b>            Pressure due to higher than anticipated salary costs. It is also related to increased operating costs for office rentals, transcription, appeals, library books, per diem crown attorney fees and membership dues as well as an increase for Covid-19 related costs.</p> <p><b><u>Revenue, Fees and Recoveries Variance Explanation:</u></b>            Variance is due to lower than anticipated recoveries from NS Municipalities for summary offence tickets.</p> <p><b><u>Provincial Funded Staff (FTEs) Variance Explanation:</u></b>            Addition of FTEs for the Dechamp Prosecutions and the 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?
High quality trial work	<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.</p> <p>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>
High quality appeal work	<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.</p> <p>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><b>Provide police with high quality legal advice and assistance</b></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><b>Provide Crown representation in the development of criminal law and criminal prosecution policy</b></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 2020-2021**

OFFENCE CATEGORIES	HALIFAX	DARTMOUTH	AMHERST	KENTVILLE	BRIDGEWATER	PICTOU
Homicide	16	2	0	0	0	0
Attempted Murder	12	16	1	1	4	5
Robbery	88	59	2	5	2	0
Sexual Assault	97	70	20	53	17	40
Other Sexual Offences	125	127	22	25	37	35
Major Assault	597	508	60	129	74	117
Common Assault	704	574	137	311	149	212
Uttering Threats	494	472	90	157	69	140
Criminal Harassment	79	82	6	12	2	5
Other Crimes Against a Person	123	83	27	25	13	62
Theft of Motor Vehicle	52	28	11	17	10	4
Theft	720	490	72	87	41	53
Break and Enter	217	170	55	39	26	41
Fraud	501	213	25	35	17	14
Mischief	325	270	104	131	87	140
Possession Stolen Property	945	533	38	63	23	53
Other Property Crimes	51	26	9	18	2	5
Failure to Attend Court	214	136	10	19	5	18
Breach of Probation	1,254	858	80	100	70	116
Unlawfully at Large	2	11	0	2	1	2
Failure to Comply with Order	2,616	1,814	403	400	232	290
Other Administration of Justice	161	113	58	60	20	38
Weapons Offences	711	751	86	134	98	147
Prostitution	0	0	0	0	0	0
Disturbing the Peace	51	27	6	5	16	5
Residual Criminal Code	66	60	18	26	7	13
Impaired Driving	518	637	109	236	140	158
Other Criminal Code Traffic	160	192	36	71	20	54
<b>TOTAL</b>	<b>10,899</b>	<b>8,322</b>	<b>1,485</b>	<b>2,161</b>	<b>1,182</b>	<b>1,767</b>

*Continued...*

**APPENDIX A**  
**Criminal Code Charges in Provincial Court**  
**by Offence Category and Judicial Centre 2020-2021**

OFFENCE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide	4	0	0	0	2	0	24
Attempted Murder	4	4	1	3	1	4	56
Robbery	27	10	0	0	5	0	198
Sexual Assault	56	46	24	44	38	23	528
Other Sexual Offences	83	77	36	84	45	31	727
Major Assault	276	154	34	82	94	94	2,219
Common Assault	471	247	94	141	167	131	3,338
Uttering Threats	358	178	52	79	195	95	2,379
Criminal Harassment	13	14	3	4	3	15	238
Other Crimes Against a Person	47	54	18	21	22	21	516
Theft of Motor Vehicle	25	5	3	6	8	5	174
Theft	143	105	28	33	45	18	1,835
Break and Enter	87	118	16	24	77	27	897
Fraud	48	60	7	7	9	33	969
Mischief	311	139	36	59	125	72	1,799
Possession Stolen Property	144	106	14	9	23	24	1,975
Other Property Crimes	22	9	1	1	12	6	162
Failure to Attend Court	203	47	12	9	4	6	683
Breach of Probation	604	156	35	44	126	51	3,494
Unlawfully at Large	5	3	0	1	0	1	28
Failure to Comply with Order	2,510	535	138	336	387	218	9,879
Other Administration of Justice	136	60	7	30	51	31	765
Weapons Offences	346	152	31	72	120	95	2,743
Prostitution	0	0	0	0	0	0	0
Disturbing the Peace	15	6	3	11	5	1	151
Residual Criminal Code	45	71	4	7	27	15	359
Impaired Driving	297	331	82	135	141	79	2,863
Other Criminal Code Traffic	138	99	17	29	33	31	880
<b>TOTAL</b>	<b>6,418</b>	<b>2,786</b>	<b>696</b>	<b>1,271</b>	<b>1,765</b>	<b>1,127</b>	<b>39,879</b>

## APPENDIX B

### Provincial Statute Cases by Judicial Centre 2020- 2021 (only cases with prosecutor assigned)

	MOTOR VEHICLE ACT	LIQUOR CONTROL ACT	OTHER PROVINCIAL STATUTES	TOTAL
Halifax	502	8	243	753
Dartmouth	7	0	114	121
Amherst	47	1	23	71
Kentville	228	13	106	347
Bridgewater	103	2	27	132
Pictou	115	6	25	146
Sydney	221	7	66	294
Truro	318	4	64	386
Antigonish	73	1	62	136
Port Hawkesbury	80	3	29	112
Yarmouth	113	13	40	166
Digby	159	6	36	201
TOTAL	1,966	64	835	2,865

*1. Data includes all charges laid on an Information or Summary Offence Ticket (SOT) between April 1, 2020 and March 31, 2021 with a prosecutor assigned.*

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

*3. Due to the pandemic hearings were not being held and courts were not collecting fines. This resulted in a significant reduction in numbers over the previous years.*

**APPENDIX C**  
**Appeals Statistics**  
**2020-2021**

The following are statistics related to appeals covering the period April 1, 2020 to March 31, 2021

The section participated in 23 appeals heard by the Court of Appeal. Of this number:

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

Of the appeals initiated by the Crown:

- 1 dealt with acquittal
- 1 dealt with an appeal of an extraordinary remedy
- 2 dealt with sentence

Of the 19 appeals initiated by offenders:

- 18 dealt with conviction
- 1 dealt with sentence

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

The PPS was involved in one appeal that was abandoned, quashed or dismissed without a full hearing in the Court of Appeal. It had been initiated by the Crown.

The PPS participated in 150 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).

Seven recommendations for appeal were received from trial Crown Attorneys. Four were approved for appeal.

With regard to the Supreme Court of Canada, the PPS received no notices of appeal from an offender. The PPS sought leave to appeal to the SCC on two matters, both of which were refused. The PPS participated in one hearing before the SCC.

APPENDIX D

Public Interest Disclosure of Wrongdoing

INFORMATION REQUIRED UNDER SECTION 18 OF THE ACT	FISCAL YEAR 2020-2021
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