



Accountability Report

2018–2019

Public Prosecution



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Accountability Statement

The accountability report of the Nova Scotia Public Prosecution Service for the year ended March 31, 2019 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 2018-2019 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 2018-2019.

This year our 101 Crown Attorneys across the province dealt with 43,644 criminal charges and prosecuted 5,552 provincial statute violations.

This year the PPS continued to address pressures associated with the delay framework established by Jordan, the 2016 Supreme Court of Canada decision. *(Under Jordan, new rules were set for an accused's right to be tried within a reasonable time period. All Nova Scotia Supreme Court cases and all trials preceded by a preliminary inquiry must be concluded within 30 months from the date charges were laid. Cases heard in Nova Scotia Provincial Court must be complete within 18 months.)*

Since Jordan and as of the end of the 2018-2019 fiscal year, 28 delay applications were initiated by defence. Of those, 19 were dismissed; three were withdrawn; two were stayed for reasons unrelated to delay; and four have been granted. It should be noted that no new delay applications were brought in the last fiscal year and I am very pleased that our Crown Attorneys continue to be vigilant regarding delay.

This year, in response to Jordan, our Dartmouth office piloted an intake team consisting of five Crown Attorneys and a legal assistant to speed up the processing of cases. The team conducts all arraignment days in Dartmouth Provincial Court performing tasks which include:

- A rigorous assessment of realistic prospect of conviction on all charges;
- Contact with complainants who appear to be hostile/recanting to assesses whether charges have realistic prospect of conviction;
- Direction to police for investigatory follow-up;
- Meaningful communication with defence counsel about possible early resolution;
- Where resolution is not possible, having discussions with defence counsel about possible admissions being made that could reduce the time set aside for trial;
- Reviewing witness lists to determine which witnesses may be required for trial.

The result has been significantly reduced wait times for trial dates. Waits have been reduced from one year to two to three months. If resources allow, the PPS will make this pilot project a permanent model in the Dartmouth office and may potentially implement the same model in Halifax.

Another tool to help combat delay is at my disposal as Director of Public Prosecutions. Preferring a direct indictment under section 577 of the Criminal Code waives the preliminary inquiry and sends the accused directly to trial. Prior to Jordan this was used sparingly. But use has increased where delay threatens the accused's right to be tried within a reasonable time. Over the past year I have preferred 25 direct indictments, an increase of 15 over the previous year.

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 increasing number of individuals on remand and specifically, the over-representation of individuals from marginalized communities.

This year the Public Prosecution Service developed a new comprehensive policy -- *The Fair Treatment of Indigenous Peoples in Criminal Prosecutions in Nova Scotia* -- to guide Nova Scotia Crown attorneys when conducting criminal prosecutions involving Indigenous peoples.

The Supreme Court of Canada has recognized the unique history of Indigenous peoples and their treatment by the criminal justice system in landmark cases R. v. Gladue and R. v. Ipeelee. As well, the Criminal Code clearly states that an Indigenous offender's unique circumstances must be considered in order to apply a fair sentence.

As Crown attorneys prepare prosecutions, the policy provides them with specific step-by-step direction as they consider unique background factors contributing to an Indigenous person's contact with the criminal justice system both as accused persons and as victims. Crown attorneys must maintain a flexible and open approach to criminal prosecutions arising in the Indigenous community. The policy also recognizes the emphasis placed by Indigenous peoples on rehabilitation, community healing and community-based penalties.

Before finalizing the policy, the PPS consulted with several Mi'kmaq lawyers familiar with the criminal justice system. The policy was presented to Crown attorneys at the 2018 fall educational conference.

The enhanced prosecution model established last year for offences of sexual violence continues to evolve and has become invaluable in prosecuting these difficult cases. Under this model, two dedicated Crown Attorneys provide legal research and brief-writing support in areas such as applications under section 276 of the Criminal Code for information on past sexual activity; children's evidence; videotaped evidence; preparing complainants to testify; sentencing; and inappropriate provision of personal records by police to Crown; provide training to Crowns, police, women's advocacy groups and other special interest groups; and provide in-court support as necessary to Crown Attorneys.

Over the past year, in addition to delivering to Crown Attorneys an outstanding conference on various aspects of sexual violence, these two Crown Attorneys have also taken on their own caseload.

This year the PPS completed an assessment of an existing case management system offered to us by another jurisdiction. Unfortunately, this system was not compatible with existing platforms. The PPS has now begun work with Internal Services to develop a case management system that can be built using existing technologies internal to and supported by ICTS.

Additionally, our efforts to digitize PPS work product overall are progressing and the implementation of electronic transfer of disclosure between partners and parties will yield significant cost and time savings.

As usual, training and education was a major priority for the PPS this year. The PPS held a spring conference devoted largely to cannabis legislation and drug impaired driving in anticipation of the legalization of cannabis in the fall of 2018. The PPS also held a fall conference for three days of education on a variety of criminal law topics. Additionally, many Crowns attended Ontario Crown School and the National Criminal Law Program.

Martin E. Herschorn, QC
Director of Public Prosecutions

Accountability Report – Financial Table and Variance Explanation

	2018-19 Estimate	2018-19 Actuals	2018-19 Variance
Public Prosecution Service	<i>(\$thousands)</i>		
Departmental Expenses:			
Head Office	2,866	3,337	471
Cape Breton Region	3,552	3,557	5
Central Region	3,051	2,951	(100)
Halifax Region	8,263	8,969	706
Western Region	2,988	3,449	461
Appeals	1,286	1,161	(125)
Special Prosecutions	2,345	2,307	(38)
Total: Departmental Expenses	24,351	25,731	1,380
Additional Information:			
Ordinary Revenue	0	0	0
Fees and Other Charges	0	0	0
Ordinary Recoveries	293	462	169
Total: Revenue, Fees and Recoveries	293	462	169
TCA Purchase Requirements	0	0	0
Provincial Funded Staff (FTEs)	173.8	174.4	0
<u>Departmental Expenses Variance Explanation:</u>			
Pressure due to higher than anticipated salary and operating costs. It is also related to increased expenditures primarily witness and expert witness fees, travel costs, transcription costs, appeal costs and membership dues.			
<u>Revenue, Fees and Recoveries Variance Explanation:</u>			
Increase in federal recoveries for a secondment to the PPSC.			
<u>Provincial Funded Staff (FTEs) Variance Explanation:</u>			

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 2018-2019

OFFENCE CATEGORIES	HALIFAX	DARTMOUTH	AMHERST	KENTVILLE	BRIDGEWATER	PICTOU
Homicide	2	2	0	0	0	1
Attempted Murder	2	3	0	0	2	0
Robbery	76	60	1	5	4	3
Sexual Assault	90	86	17	49	45	25
Other Sexual Offences	127	78	11	61	31	38
Major Assault	511	392	55	96	58	95
Common Assault	860	555	141	282	146	168
Uttering Threats	481	343	83	142	99	113
Criminal Harassment	52	62	2	14	12	5
Other Crimes Against a Person	241	250	37	52	56	28
Theft of Motor Vehicle	39	23	12	23	11	7
Theft	1,296	615	186	179	78	88
Break and Enter	184	103	130	49	42	23
Fraud	331	456	75	102	21	69
Mischief	338	268	168	120	100	83
Possession Stolen Property	1,463	779	75	85	29	37
Other Property Crimes	47	46	24	26	13	4
Failure to Attend Court	212	124	27	20	11	16
Breach of Probation	2,078	1,328	61	169	188	91
Unlawfully at Large	44	120	0	3	1	1
Failure to Comply with Order	2,566	1,503	329	525	367	338
Other Administration of Justice	259	131	37	40	33	26
Weapons Offences	503	745	119	106	58	84
Prostitution	29	4	0	8	0	7
Disturbing the Peace	68	24	14	20	11	3
Residual Criminal Code	137	74	121	24	6	20
Impaired Driving	484	532	92	234	133	131
Other Criminal Code Traffic	130	117	31	57	34	29
TOTAL	12,650	8,823	1,848	2,491	1,589	1,533

Continued . . .

APPENDIX A
Criminal Code Charges in Provincial Court
by Offence Category and Judicial Centre 2018-2019

OFFENCE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide	2	1	0	0	0	0	8
Attempted Murder	0	1	5	0	18	6	37
Robbery	11	17	7	4	14	4	206
Sexual Assault	40	52	7	55	17	19	502
Other Sexual Offences	39	39	15	35	54	22	550
Major Assault	253	127	52	88	113	55	1,895
Common Assault	472	240	84	139	193	127	3,407
Uttering Threats	323	145	41	85	126	100	2,081
Criminal Harassment	12	8	10	5	10	6	198
Other Crimes Against a Person	96	82	17	22	107	27	1,015
Theft of Motor Vehicle	30	21	3	4	18	4	195
Theft	312	229	12	65	83	89	3,282
Break and Enter	70	30	15	27	29	52	754
Fraud	155	47	12	12	73	42	1,395
Mischief	239	117	32	59	97	71	1,692
Possession Stolen Property	112	217	12	16	38	99	2,962
Other Property Crimes	16	17	0	1	10	20	224
Failure to Attend Court	154	53	0	5	12	10	644
Breach of Probation	622	207	63	64	164	151	5,186
Unlawfully at Large	42	5	0	0	9	4	229
Failure to Comply with Order	2,260	736	148	331	358	459	9,920
Other Administration of Justice	127	84	22	24	61	34	878
Weapons Offences	166	248	24	33	93	208	2,387
Prostitution	18	4	0	0	0	0	70
Disturbing the Peace	10	11	5	11	13	6	196
Residual Criminal Code	35	24	8	7	19	10	485
Impaired Driving	294	268	124	134	203	56	2,685
Other Criminal Code Traffic	70	46	10	16	28	43	611
TOTAL	5,980	3,076	728	1,242	1,960	1,724	43,644

APPENDIX B

Provincial Statute Cases by Judicial Centre 2018- 2019 (only cases with prosecutor assigned)

	MOTOR VEHICLE ACT	LIQUOR CONTROL ACT	OTHER PROVINCIAL STATUTES	TOTAL
Halifax	2,079	109	216	2,404
Dartmouth	40	0	87	127
Amherst	132	5	61	198
Kentville	303	18	68	389
Bridgewater	230	10	27	267
Pictou	180	12	11	203
Sydney	273	18	58	349
Truro	405	4	64	473
Antigonish	102	23	36	161
Port Hawkesbury	126	8	22	156
Yarmouth	325	24	83	432
Digby	328	3	62	393
TOTAL	4,523	234	795	5,552

APPENDIX C
Appeals Statistics
2018-2019

The following are statistics related to the operations of the Appeals Branch covering the period April 1, 2018 to March 31, 2019.

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

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

Of the appeals initiated by the Crown:

- 2 dealt with acquittal
- 2 dealt with sentence

Of the 18 appeals initiated by offenders:

- 15 dealt with conviction
- 3 dealt with sentence
- 4 involved a motion for fresh evidence

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

The Appeals Branch was involved in five appeals which were abandoned, quashed or dismissed without a full hearing in the Court of Appeal. Of this number, three had been initiated by the Crown and two by offenders.

The Appeals Branch participated in 160 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).

The Appeals Branch received 10 recommendations for appeal from trial Crown Attorneys, of which four were approved for appeal. Two of the four approved for appeal were later abandoned.

In the Supreme Court of Canada, the Appeals Branch filed two notices of appeal and received a notice of appeal from an offender. The Branch received decisions in all three applications for leave to appeal (one Crown application allowed). The Branch participated in one full hearing before the Court (Crown appeal allowed in part).

APPENDIX D

Public Interest Disclosure of Wrongdoing

INFORMATION REQUIRED UNDER SECTION 18 OF THE ACT	FISCAL YEAR 2018-2019
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