

# **PUBLIC PROSECUTION SERVICE**

**Annual Accountability Report for the Fiscal Year 2009-2010**

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## **Accountability Statement**

The accountability report of the Nova Scotia Public Prosecution Service for the year ended March 31, 2010 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 business plan information for the fiscal year 2009-2010. 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 business plan for the year.

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, Q.C.**  
**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 2009-2010.

The Service has had another busy year. Our 94 Crown Attorneys across the province dealt with 43,981 criminal charges and prosecuted 7,629 provincial statute violations.

The PPS continues to grapple with the increasing complexity of prosecutions. This year, for example, the Supreme Court of Canada decision – R. v. McNeil – changed the face of disclosure practices. Now, the Crown has an obligation to disclose to defence police records relating to findings of misconduct by police officers who are involved in any investigation against the accused. This decision has proven to be challenging on many levels and necessitates specific training for all Crown Attorneys.

Continuing legal education for Crown Attorneys is always a priority. In the face of budget limitations this year, we significantly reduced the number of Crowns attending Ontario Crown School and other outside training opportunities. We also cut back our fall conference from three days to one day and held it in Halifax to reduce travel and accommodation costs.

Employee recognition and wellness continued to be a focus. The third annual Long Service Awards ceremony was held. A corporate wellness strategy is in development.

As part of the strategic planning process, the PPS continued with its succession planning initiative. Linked to succession planning and as part of the recognition and wellness initiative, the PPS launched its Crown Attorney mentoring program. Further, the PPS is embarking on a multi-year plan to conduct performance appraisals for all of its support staff.

The PPS continued to provide communications designed to enhance community understanding of the role of the Crown Attorney and of the prosecutorial process. Issues management required significant resources with regard to many high profile complex cases.

The PPS continued to develop its business continuity plan. A business continuity plan will allow the PPS to continue critical business functions in the event of an emergency or disaster.

The PPS continues to do an important job for Nova Scotians as it fulfills its role in the criminal justice system and continues to refine and improve its practices.

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**Martin E. Herschorn, Q.C.**

**Director of Public Prosecutions**

## **Introduction**

The Public Prosecution Service prosecutes offences with fairness and equal treatment of all persons making decisions based solely on fact, legal analysis and the defined policies of the Service. The Service performs a function absolutely critical to public safety in Nova Scotia.

This accountability report is based on the goals, priorities and outcomes set out in the Public Prosecution Service's business plan for 2009-2010, which should be read in conjunction with this report.

This report explains the work undertaken by the Public Prosecution Service last year on behalf of all Nova Scotians. It should help to inform and educate its readers as to the role and function of the Service and its Crown Attorneys.

## **Public Prosecution Service Progress and Accomplishments**

The priorities for the first three core business areas of the Service overlap significantly and thus are presented as a group.

- **Represent the Crown in the conduct of criminal and quasi-criminal matters before all levels of courts.**
- **Represent the Crown in the conduct of criminal appeals and quasi-criminal appeals before all levels of courts.**
- **Provide legal advice and assistance to the police and provincial law enforcement officers at their request.**

### ***Court Activity***

This year 94 Crown Attorneys in 19 offices across the province dealt with 43,981 criminal charges and 7,629 NS statute matters in both Provincial Court and the Supreme Court of Nova Scotia. (See Appendix A & B)

During 2009-2010, 25 appeals and 131 chambers motions were handled by the PPS in the Nova Scotia Court of Appeal. (See Appendix C)

### ***Education and Training***

Continuing education for Crown Attorneys as well as support staff remained a priority in order to enhance the level of expertise within the PPS and the resulting quality of prosecution services. Specifically, the PPS:

- funded the Crown Attorney Annual Conference and the Public Prosecution Service Support Staff Annual Seminar held this year in Halifax;
- funded the participation of six Crown Attorneys at the Ontario Crown Attorneys' summer school program, a valuable professional development opportunity made available to the PPS through the kind cooperation of the Ontario Ministry of the Attorney General;
- conducted a one and a half day educational session for junior Crown attorneys concentrating on advocacy skills.

PPS Crown Attorneys also play a role in providing training and professional development to police and other investigative agencies.

### ***French Language Prosecutions***

In accordance with the provincial government's French-language Services Act, the PPS is working to enhance its capacity to provide French language prosecutions. A francophone Crown Attorney based in Yarmouth acted as a liaison and a principal contact for French language prosecution training and related issues up until that Crown Attorney's appointment

to the Provincial Court. Educational opportunities for French-speaking prosecutors are provided as funding allows.

### ***Information Technology***

The PPS continued to upgrade its intranet site which is a valuable operational and communications resource to all staff.

The PPS continued enhancements to the Prosecution Information Composite System (PICS) – a comprehensive computerized offender history information system. Management information tracking is performed in addition to its primary file manager and case management functionality. Ongoing enhancements to the Service's ability to capture management information maximizes the effectiveness in planning, acquiring and deploying resources.

The Service's database of staff-generated research – Computerized Legal Education Research Centre (CLERC) continued to expand.

### ***Communications***

The PPS continued to provide communications designed to enhance community understanding of the role of the Crown Attorney and of the prosecutorial process. Issues management required significant resources with regard to several high profile complex cases.

The PPS continued its comprehensive program of media training Crown Attorneys. Crown Attorneys have daily contact with the media and follow PPS policy to use the media as a conduit to the public to ensure that prosecutorial procedure and decisions are explained.

As part of a larger plan to educate special interest groups in understanding the role of the Crown, a brochure for sexual assault victims continued development. The brochure explains the specifics and complexities of a sexual assault prosecution to this target audience. Focus testing is the next step in development.

### ***Strategic Planning***

The PPS continued the strategic planning process to ensure the Service will be better able to deliver professional prosecutorial services. Specific initiatives include the ongoing work of the Succession Planning Task Force; the establishment of a Mentoring program; and a corporate wellness strategy now in development. As part of Succession Planning, the Service is embarking on a multi-year plan to conduct performance evaluations for support staff.

### ***Business Continuity Plan***

The Business Continuity Planning Committee continued to enhance and refine the business continuity plan to ensure the continuation of critical business functions in time of emergency and disaster.

### ***Human Resources Strategy***

The PPS made progress on each of the five HR Strategy Goals:

- To make a difference through a skilled, committed and accountable public service;
- To be a preferred employer;
- To be a safe and supportive workplace;
- To be a diverse workplace;
- To be a learning organization.

Specifically, the PPS:

- ✓ provided educational opportunities for its staff;
- ✓ continued the development of a comprehensive succession plan;
- ✓ continued to support secondment opportunities;
- ✓ continued to promote internal communications;
- ✓ continued a Long Service Awards program;
- ✓ sponsored staff at respectful workplace training;
- ✓ contributed to the Department of Justice review of court house security;
- ✓ continued to participate in the Indigenous, Black & Mi'Kmaq student employment initiative;
- ✓ provided opportunities for French language training;
- ✓ continued the development of an equity and diversity policy;
- ✓ continued to support staff in leadership development training;
- ✓ continued to support the PPS Education Committee;
- ✓ held a fall educational conference for all staff;
- ✓ continued to develop best practices policy.

### ***Pre-Charge Advice***

An important element of the Crown Attorney's ongoing responsibilities is to provide pre-charge advice to police and provincial law enforcement officers upon their request. The PPS continues to deliver quality pre-charge legal opinions. The PPS also continues to explore the development of a service-wide tracking system to capture the extent and frequency of advice to police.

### ■ **Participate in the development of the criminal law and criminal prosecutions policy.**

The PPS continued contribution to the development of criminal law policies and procedures through participation in meetings with: Federal/Provincial/Territorial Ministers and Deputy Ministers responsible for Justice; CCSO (Coordinating Committee of Senior Justice Officials) and Federal/Provincial/Territorial Heads of Prosecutions; and Provincial Deputy Ministers. A PPS Crown Attorney, seconded to the Department of Justice, attended the Uniform Law Conference of Canada as Nova Scotia's representative to provide input on criminal law revisions/amendments. The PPS also participated in provincial government policy initiatives; the standardization of documents used in courts; restorative justice; and training with regard to domestic violence.

## Financial Results

Program & Service Area	2009–2010 Estimate	2009–2010 Actuals
	(\$ thousands)	(\$ thousands)
<b>Program Expenses:</b>		
Head Office - PPS	3,515	3,458
Cape Breton Region	2,600	2,657
Central Region	2,842	2,870
Halifax Region	6,275	6,401
Western Region	2,361	2,834
Appeals	1,132	1,198
<b>Total Program Expenses</b>	<b>18,725</b>	<b>19,418</b>
<b>Provincial Funded Staff (FTEs)</b>	<b>168.2</b>	<b>160.3</b>

## Measuring Our Performance

<b>OUTCOME DESCRIPTION</b>	<b>WHAT DOES THIS MEASURE TELL US?</b>	<b>WHERE ARE WE NOW?</b>	<b>WHERE DO WE WANT TO BE?</b>
<b>High quality trial work</b>	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.	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 as funding permits. A mentoring program has been developed and implementation has begun.	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. A fully implemented mentoring program would assist less experienced Crowns and help to ensure quality trial work. Continuing legal education should be a mainstay.

<p><b>High quality appeal work</b></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 as funding permits. A mentoring program has been developed and has been implemented.</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. A fully implemented mentoring program would assist less experienced Crowns and help to ensure quality appeals work. Continuing legal education should be a mainstay and not dependent on available funding.</p>
<p><b>Provide 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 should have in place an effective system of tracking advice given to police to measure both quality and quantity of advice.</p> <p>The PPS is currently studying various models in place in other jurisdictions and is developing tools to effectively document advice provided to police.</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>
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## **APPENDICES**

All statistics with the exception of 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 2009-2010**

<b>OFFENCE CATEGORIES</b>	<b>HALIFAX</b>	<b>DARTMOUTH</b>	<b>AMHERST</b>	<b>KENTVILLE</b>	<b>BRIDGEWATER</b>	<b>NEW GLASGOW</b>
Homicide & Related	5	6	0	0	3	2
Attempted Murder	18	9	1	0	0	0
Robbery	314	191	28	37	22	28
Sex Assault	56	45	7	31	33	12
Sexual Abuse	29	46	4	29	17	16
Kidnapping	50	46	9	11	4	2
Abduction	0	4	0	0	0	0
B&E	265	107	65	64	45	81
Weapons	701	530	42	36	29	38
Fraud	349	304	30	90	42	88
Major Assault	548	332	67	119	76	67
Simple Assault	747	552	90	286	213	161
Theft	1,005	607	270	302	101	176
Stolen Property	982	588	102	106	52	57
Arson	9	9	0	4	6	12
PD - Mischief	378	220	81	206	122	104
Morals - Sex	54	59	13	14	6	11
Public Order	45	39	24	26	20	7
CC Traffic	148	127	33	84	42	27
Admin Justice	4,136	3,139	377	816	549	657
Impaired Driving	698	735	229	478	217	237
Other CC	667	437	85	184	131	97
Unknown	1	1	0	4	2	1
<b>TOTAL</b>	<b>11,205</b>	<b>8,133</b>	<b>1,557</b>	<b>2,927</b>	<b>1,732</b>	<b>1,881</b>

*Continued. . .*

## Criminal Code Charges in Provincial Court by Offence Category and Judicial Centre 2009-2010

OFFENSE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide & Related	0	0	1	0	5	0	22
Attempted Murder	2	0	7	1	0	0	38
Robbery	47	168	4	9	17	28	893
Sex Assault	70	33	15	11	20	14	347
Sexual Abuse	38	18	5	5	14	22	243
Kidnapping	20	21	2	2	7	2	176
Abduction	0	0	1	0	0	2	7
B&E	114	118	39	31	85	92	1,106
Weapons	123	208	18	25	44	62	1,856
Fraud	142	71	42	6	81	54	1,299
Major Assault	279	130	50	43	65	73	1,849
Simple Assault	687	249	40	103	168	132	3,428
Theft	581	233	99	39	103	59	3,575
Stolen Property	117	173	12	5	33	53	2,280
Arson	8	10	2	2	7	3	72
PD - Mischief	370	129	53	66	118	72	1,919
Morals - Sex	24	4	7	9	4	3	208
Public Order	26	18	1	11	25	11	253
CC Traffic	58	56	11	20	24	30	660
Admin Justice	4,208	1,233	305	359	652	409	16,840
Impaired Driving	511	376	136	151	177	172	4,117
Other CC	676	170	30	83	115	103	2,778
Unknown	1	3	0	0	0	1	14
<b>TOTAL</b>	<b>8,102</b>	<b>3,421</b>	<b>880</b>	<b>981</b>	<b>1,764</b>	<b>1,397</b>	<b>43,980</b>

**APPENDIX B**

**Provincial Statute Cases by Judicial Centre 2009-2010**

	<b>MOTOR VEHICLE ACT</b>	<b>LIQUOR CONTROL ACT</b>	<b>OTHER PROVINCIAL STATUTES</b>	<b>TOTAL</b>
<b>Halifax</b>	<b>2,243</b>	<b>230</b>	<b>167</b>	<b>2,640</b>
<b>Dartmouth</b>	<b>1,527</b>	<b>39</b>	<b>85</b>	<b>1,651</b>
<b>Amherst</b>	<b>94</b>	<b>24</b>	<b>141</b>	<b>259</b>
<b>Kentville</b>	<b>522</b>	<b>45</b>	<b>106</b>	<b>673</b>
<b>Bridgewater</b>	<b>300</b>	<b>37</b>	<b>70</b>	<b>407</b>
<b>New Glasgow</b>	<b>144</b>	<b>50</b>	<b>59</b>	<b>253</b>
<b>Sydney</b>	<b>252</b>	<b>44</b>	<b>132</b>	<b>428</b>
<b>Truro</b>	<b>285</b>	<b>35</b>	<b>49</b>	<b>369</b>
<b>Antigonish</b>	<b>94</b>	<b>27</b>	<b>27</b>	<b>148</b>
<b>Port Hawkesbury</b>	<b>172</b>	<b>24</b>	<b>45</b>	<b>241</b>
<b>Yarmouth</b>	<b>149</b>	<b>51</b>	<b>55</b>	<b>255</b>
<b>Digby</b>	<b>151</b>	<b>28</b>	<b>126</b>	<b>305</b>
<b>TOTAL</b>	<b>5,933</b>	<b>634</b>	<b>1,062</b>	<b>7,629</b>

## APPENDIX C

### Appeals Branch Statistics

The following are statistics related to the operations of the Appeals Branch covering the period April 1, 2009 to March 31, 2010.

The Branch participated in 25 appeals heard by the Court of Appeal.

Of this number:

- 3 were initiated by the Crown
- 22 were initiated by offenders, including two under the Youth Criminal Justice Act and five brought by prisoners.

Of the appeals initiated by the Crown, 2 dealt with acquittal and 1 dealt with sentence.

Of the 22 appeals initiated by offenders:

- 7 dealt with conviction only
- 7 dealt with sentence only
- 4 dealt with both conviction and sentence
- 2 involved motions to adduce fresh evidence, 1 dealt with a dangerous offender declaration, and 1 concerned a solicitor-client privilege hearing

The Appeals Branch also participated in 18 appeals which were abandoned, quashed or dismissed without a full hearing in the Court of Appeal, or were ordered transferred to the summary conviction appeal court (Supreme Court of Nova Scotia). Of this number, 5 appeals had been initiated by the Crown and 13 appeals by offenders.

Counsel with the Appeals Branch conducted a 4-day McNeil motion (to adduce police disciplinary records) in the Supreme Court of Nova Scotia in June 2009.

The Appeals Branch participated in 131 Chambers motions – applications heard by a single judge of the Court of Appeal. Chambers motions include applications for hearing dates, adjournments, bail pending appeal, extension of time for appeal, directions and updates in appeals, appointment of counsel in prisoners' appeals, and striking appeals from the Court's docket.

The Appeals Branch received decisions in 3 applications for leave to appeal to the Supreme Court of Canada, all 3 initiated by offenders. The Branch received decision in 1 appeal before the Supreme Court of Canada in which it had participated as an intervener on behalf of the Attorney General of Nova Scotia.

Counsel in the Appeals Branch were involved in a number of cases of interest this past year. In the Supreme Court of Canada, in *Miazga v. Kvello Estate et al.*, the Court ruled on the liability of Crown attorneys in civil actions based on malicious prosecution, and the judgement released by the Court was favourable to the position advanced by counsel for the Attorney General of Nova Scotia.

In the Court of Appeal there were at least four appeals of note.

In *West v. R. (No. 1)*, the Court dealt with a prisoner's appeal from conviction and sentence in a bank robbery case. The offender represented himself, the appeal record was lengthy, the Court heard first a fresh evidence application spread over 2½ days, and then heard the appeal itself.

In *R. v. Hutchinson*, an appeal from acquittal on a charge of aggravated sexual assault, the Court had before it the unusual fact situation of an accused charged with endangering the life of the complainant, his former girlfriend, by poking holes in the condoms they used during sexual intercourse which resulted in her pregnancy and subsequent abortion.

In *R. v. Rhyno*, the Court considered a Crown appeal from sentence in which the offender had assaulted a Crown attorney in the courtroom.

In *Murphy v. R.*, the Court dealt with an appeal from conviction based on evidence a juror had conducted his own investigation and had discussed the fruits of that investigation in the jury room.

As noted, above, in the case argued by appeal counsel in the Supreme Court, the decision of the Supreme Court of Canada in *R. v. McNeil* was considered by a Supreme Court judge on a motion by the accused to have disciplinary records of the investigating police officers disclosed by the Crown. This was the first such application heard by a court in Nova Scotia.