



Nova Scotia

Public Prosecution Service

ANNUAL REPORT

for the period April 1, 2010 to March 31, 2011

Honourable Gordie Gosse
Speaker of the Nova Scotia House of Assembly
Office of the Speaker
Province House
Halifax, Nova Scotia B3J 2Y3

Dear Mr. Speaker:

I have the honour of presenting to you, and through you to the Members of the Legislative Assembly, the Annual Report of the Public Prosecution Service of Nova Scotia, as required by Section 13 of the Public Prosecutions Act. This report covers the period from April 1, 2010 to March 31, 2011.



Martin E. Herschorn, Q.C.
Director of Public Prosecutions

CONTENTS

The Mandate of the Public Prosecution Service	1
Mission	1
Goals	2
Core Business Functions	2
Priorities and Accomplishments 2010–2011.....	3
Measuring Our Performance	6
The Role of the Attorney General	8
The Role of the Director of Public Prosecutions	9
The Role of the Crown Attorney	10
Organization Description	12
Appendix A: Criminal Code Charges Prosecuted by Category of Offence	16
Appendix B: Provincial Charges Prosecuted by Category of Offence	18
Appendix C: Appeals Branch Statistics	19
Appendix D: Budget Resources	21
Appendix E: Public Prosecutions Act	22

THE MANDATE OF THE PUBLIC PROSECUTION SERVICE

In Nova Scotia all prosecutions for criminal and provincial offences are brought in the name of the Crown because the Crown is responsible for bringing before the courts those accused of prohibited conduct that adversely affects the safety and well-being of the community.

The mandate of this prosecution service is to ensure fair and equal treatment in the prosecution of offences.

All prosecutions within the jurisdiction of the Attorney General of Nova Scotia are the responsibility of the Director of Public Prosecutions and are conducted by the Crown Attorneys of the Public Prosecution Service, independently of the Attorney General. The only limitation on the operational independence of the Director of Public Prosecutions 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.

In support of its mandate, the Public Prosecution Service has adopted the following mission and goals.

MISSION

The mission of the Public Prosecution Service of Nova Scotia is to seek justice and serve the public interest by performing prosecution duties with fairness, professionalism and integrity.

GOALS

In accomplishing its mission, the Public Prosecution Service contributes to the Government's priority of fulfilling its social responsibility of providing for public safety.

In order to accomplish its mission, the Public Prosecution Service has set the following goals:

1. provide a Public Prosecution Service that reflects excellence, dedication to public service, and high ethical standards;
2. provide a Public Prosecution Service that identifies and manages the resources required to carry out its mission;
3. provide a Public Prosecution Service that reflects the application of best business practices consistent with providing a high-quality service;
4. provide within the Public Prosecution Service, an environment that allows for the independent exercise of prosecutorial discretion;
5. provide a Public Prosecution Service that is reflective of the community it serves.

CORE BUSINESS FUNCTIONS

The Public Prosecution Service's core business functions are:

- represent the Crown in the conduct of criminal matters and quasi-criminal matters before all levels of court.
 - represent the Crown in the conduct of criminal 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.
 - participate in the development of criminal law policy and criminal prosecutions policy.
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PRIORITIES AND ACCOMPLISHMENTS FOR 2010–2011

Court Activity

This year 92 Crown Attorneys in 19 offices across the province dealt with 48,136 criminal charges and prosecuted 9,551 Nova Scotia statute matters in both Provincial Court and the Supreme Court of Nova Scotia. *(See Appendices A & B)*

During 2010–2011, 27 appeals and 136 chambers motions were handled by the Public Prosecution Service (PPS) in the Nova Scotia Court of Appeal. *(See Appendix C)*

Fiscal

Along with all government departments and agencies, this year the PPS worked to meet budget challenges brought about by the global economy. The PPS exceeded its 2010–2011 budget by about \$400,000 – a significantly smaller variance than originally forecast due to diligent efforts made by all staff. The priority in developing cost reduction strategies for 2011–2012 will be to maintain support for the in-court responsibilities of Crown Attorneys.

Education and Training

As a cost-saving measure, the PPS cut continuing legal education for Crown Attorneys during the fiscal year. The annual fall educational conference was cancelled and no Crown Attorneys were sponsored to attend the National Criminal Law Conference or Ontario Crown School. However, this is not a sustainable option. Continuing legal education must be a priority and the PPS is reinstating its professional development program for 2011–2012.

Disclosure to Accused Persons

Over the past year the PPS continued to grapple with the increasing complexity of criminal cases. The PPS also continued to refine its practices respecting disclosure to accused persons and their counsel. This builds on the disclosure agreement with Nova Scotia police agencies and responds to the expanded disclosure obligations respecting misconduct of police officers as mandated by the Supreme Court of Canada in the McNeil decision (2009).

Crown Attorney Recruitment and Mentoring

Crown Attorney recruitment efforts have been successful this year. The PPS is attracting qualified, enthusiastic young Crown Attorneys. To assist these new Crown Attorneys in performing their prosecutorial duties, the PPS has instituted a mentoring program.

Safety and Security of Crown Attorneys and Staff

In response to concerns that the Nova Scotia Crown Attorneys' Association brought to the attention of the Department of Labour and Advanced Education, the PPS has partnered with the Department of Justice in an extensive review of the level of security in court facilities, particularly in Halifax Regional Municipality (HRM). Required security enhancements were identified and the Department of Justice, in consultation with the PPS, has moved to increase the level of security in courts.

Information Technology

The PPS continues to enhance its Prosecutorial Information Composite System (PICS) to develop more information to assist with the management of the PPS and its caseload.

Communications

The PPS continued to provide communications designed to enhance community understanding of the role of the Crown Attorney and of the prosecutorial process. As was the case last year, issues management related to many ongoing high-profile cases requiring significant resources.

Business Continuity Plan

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

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 continued to deliver quality pre-charge legal opinions. The PPS also continued to explore the development of a service-wide tracking system to capture the extent and frequency of advice to police.

Criminal Law and Criminal Prosecutions Policy

The PPS continued its contribution to the development of criminal law policies and procedures through participation in meetings with: federal/provincial/territorial (FPT) ministers and deputy ministers responsible for justice; Coordinating Committee of Senior Justice Officials (CCSO) and FPT 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 development of a mental health court; restorative justice; and training with regard to domestic violence.

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	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.
High-quality appeal work	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.	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 implemented.	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.
Provide high-quality legal advice and assistance	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.	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.	The PPS must have in place an effective system of tracking advice given to police to measure both quality and quantity of advice. The PPS has studied various models in place in other jurisdictions and is developing a tool to effectively document advice provided to police. This mechanism and accompanying policy will be implemented in 2011–2012.

OUTCOME DESCRIPTION	WHAT DOES THIS MEASURE TELL US?	WHERE ARE WE NOW?	WHERE DO WE WANT TO BE?
Provide Crown representation in the development of criminal law and criminal prosecution policy	That the PPS provides input into the development of criminal law and criminal prosecution policy from both an administrative and a frontline perspective.	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.	To maintain or enhance the existing level of contribution to policy development.

THE ROLE OF THE ATTORNEY GENERAL

In Nova Scotia, the Minister of Justice is also the Attorney General and superintends all matters connected with the administration of justice in the province, except those within the jurisdiction of the Attorney General of Canada. The Attorney General's functions and powers include legislative responsibility for affairs and matters relating to courts and prosecutions. The Attorney General is the Law Officer of the Crown and the Chief Public Prosecutor.

By virtue of this role, the Attorney General has the right to be informed about the conduct of police activities and individual criminal prosecutions. This right is normally only exercised in exceptional cases. No such right exists for any other member of the Executive Council or of Government. This not only protects the integrity of the criminal justice system, but serves to shield Government members and their staff from the accusation of attempting to interfere in the administration of justice.

The Public Prosecutions Act ensures the accountability to the Legislative Assembly of the Attorney General in his or her capacity as Chief Public Prosecutor. Section 6 of the Act provides that the Attorney General is responsible for the Public Prosecution Service and is accountable to the Assembly for all prosecutions. This ensures that ultimate control over prosecutions remains in the hands of an elected official.

By virtue of subsection 6 (a) of the *Public Prosecutions Act*, the Attorney General is entitled to issue general instructions or guidelines in respect of all prosecutions, or a class of prosecutions, to the Public Prosecution Service after consultations with the Director of Public Prosecutions. During the period April 1, 2010 to March 31, 2011, the Attorney General did not have occasion to exercise his authority with this provision.

By virtue of subsection 6 (b) of the *Public Prosecutions Act*, the Attorney General is entitled to issue instructions or guidelines in a particular prosecution after consultation with the Director of Public Prosecutions. During the period April 1, 2010 to March 31, 2011, the Attorney General did not have occasion to exercise his authority with this provision.

By virtue of subsection 6 (e) of the *Public Prosecutions Act*, the Attorney General is entitled to exercise all statutory functions with respect to prosecutions after consultation with the Director of Public Prosecutions. During the period April 1, 2010 to March 31, 2011, the Attorney General did not have occasion to exercise his authority under this provision.

THE ROLE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The Director of Public Prosecutions is the head of the Public Prosecution Service, which conducts all prosecutions independently of the Attorney General on behalf of the Crown in right of Nova Scotia. This includes the prosecution of offences under the Criminal Code, certain other federal statutes (e.g., *Migratory Birds Convention Act*, *Canada Shipping Act*, *Small Vessel Regulations*, *Explosives Act*), and most offences under provincial statutes. Prosecutions for violations of other federal statutes are conducted by agents of the Attorney General of Canada.

The Director of Public Prosecutions, as the lawful Deputy of the Attorney General with respect to prosecutions under the Criminal Code and under the *Summary Proceedings Act*, can exercise any of the powers conferred upon the Attorney General. These include the preferring of direct indictments or consenting to the laying of a new information following a discharge of an accused at a preliminary inquiry. When these powers are exercised in indictable matters, a report can be provided to the Attorney General at his or her request or upon the initiative of the Director of Public Prosecutions. This would allow the Attorney General to be in a knowledgeable position should any of these decisions be questioned in the House of Assembly, or should the Attorney General wish to exercise any of the powers conferred by section 6 of the *Public Prosecutions Act*.

The Director of Public Prosecutions also has the status of deputy head and the provisions of the *Civil Service Act* and regulations relating to a deputy or a deputy head apply to the Director of Public Prosecutions.

The Director of Public Prosecutions must be a barrister of at least 10 years' standing. If from another province, he or she must become a practising member of the Nova Scotia Barristers' Society within one year of appointment. The Director of Public Prosecutions holds office during good behaviour and may be removed from office for cause by a resolution of the Assembly.

THE ROLE OF THE CROWN ATTORNEY

Crown Attorneys in Nova Scotia are responsible to the Director of Public Prosecutions through a Chief Crown Attorney for the conduct of prosecutions. The conduct of a prosecution involves not only the conduct of the trial itself, but also a myriad of other activities essential to a fair prosecution. Crown Attorneys therefore conduct arraignments, show cause (bail) hearings, preliminary inquiries, sentencings, appeals to the Supreme Court of Nova Scotia, appeals to the Court of Appeal, appeals to the Supreme Court of Canada, disposition and review hearings before the Criminal Code Review Board, and fatality inquiries. In addition, they provide pre-charge advice to the police and provincial government enforcement officials, participate in the formulation of policy advice on the criminal law, participate in management activities aimed at improving the delivery of prosecutorial services to our community, prepare professional papers, and conduct and participate in public-speaking engagements. In short, they discharge a number of responsibilities of fundamental importance to our community.

In discharging these responsibilities a Crown Attorney must be guided by the law, codes of professional ethics, and the public interest. The public interest involves many considerations. It encompasses the need to protect citizens by convicting criminals and deterring crime. The community is entitled to have those charged with offences prosecuted firmly and efficiently, but it also expects them to be prosecuted fairly. Properly balanced, the public interest in the conviction of the guilty does not conflict with the principles of fundamental justice.

The notion that all accused should receive fair and equal prosecutorial treatment by the Crown is an aspect of the rule of law. Canada's judicial system operates on an adversarial trial model. It is left up to the parties to frame the issues before the court and lead the evidence relied on in support of their case. The role of defence counsel in this model is to do everything that can be ethically done to secure an acquittal for an accused who has chosen to plead not guilty. The role of Crown Attorney, on the other hand, excludes any notion of winning or losing. The Supreme Court of Canada has expressed the proper frame of mind of those who represent the Crown in the following words:

“...the situation which the Crown occupies is not that of an advocate in a civil case. His functions are quasi-judicial. He should not seek so much to obtain a verdict of guilty as assist the judge and jury to render the most complete justice. Moderation and impartiality should always characterize his conduct before the court. He will in fact have honestly fulfilled his duty and will be beyond reproach, if, putting aside any appeal to emotions, in a dignified manner consistent with his role, he exposes the evidence to the jury without going beyond what it actually reveals.”

Boucher v. Her Majesty the Queen [1955] S.C.R. 16

On March 31, 2011, there were 92 Crown Attorneys employed by the Public Prosecution Service. They were assisted in their duties by 66 support staff.

ORGANIZATION DESCRIPTION

The head office of the Public Prosecution Service comprises its senior management, including the Director of Public Prosecutions, the Deputy Director, the Director of Communications, the Director of Business Affairs, and their support staff.

The Deputy Director assists the Director and is primarily responsible for the legal operations of the Public Prosecution Service. All Chief Crown Attorneys report through the Deputy Director to the Director and are resident in the Western, Cape Breton, Halifax, and Central regions. In the Halifax Region, two Regional Crown Attorneys (Administrative) supervise the activities of Crown Attorneys and their support staff. In the Western, Central, and Cape Breton regions, a Chief Crown Attorney supervises the activities of Crown Attorneys and their support staff. The regional offices respond to requests from the police for pre-charge legal advice and conduct preliminary inquiries and trials before the various trial courts of the province. Chief Crown Attorneys also head the Appeals Branch and the Special Prosecutions Section.

Special Prosecutions Section

The Special Prosecutions Section focuses on commercial crime; cybercrime; fraud; extraordinary, unusual or historical sexual assaults; charges under the province's *Revenue Act* or other provincial statutes; and Aboriginal law. Members of this unit also prosecute cases that present conflicts for regional offices, or may be involved where a law enforcement officer is the subject of a police investigation or a prosecution.

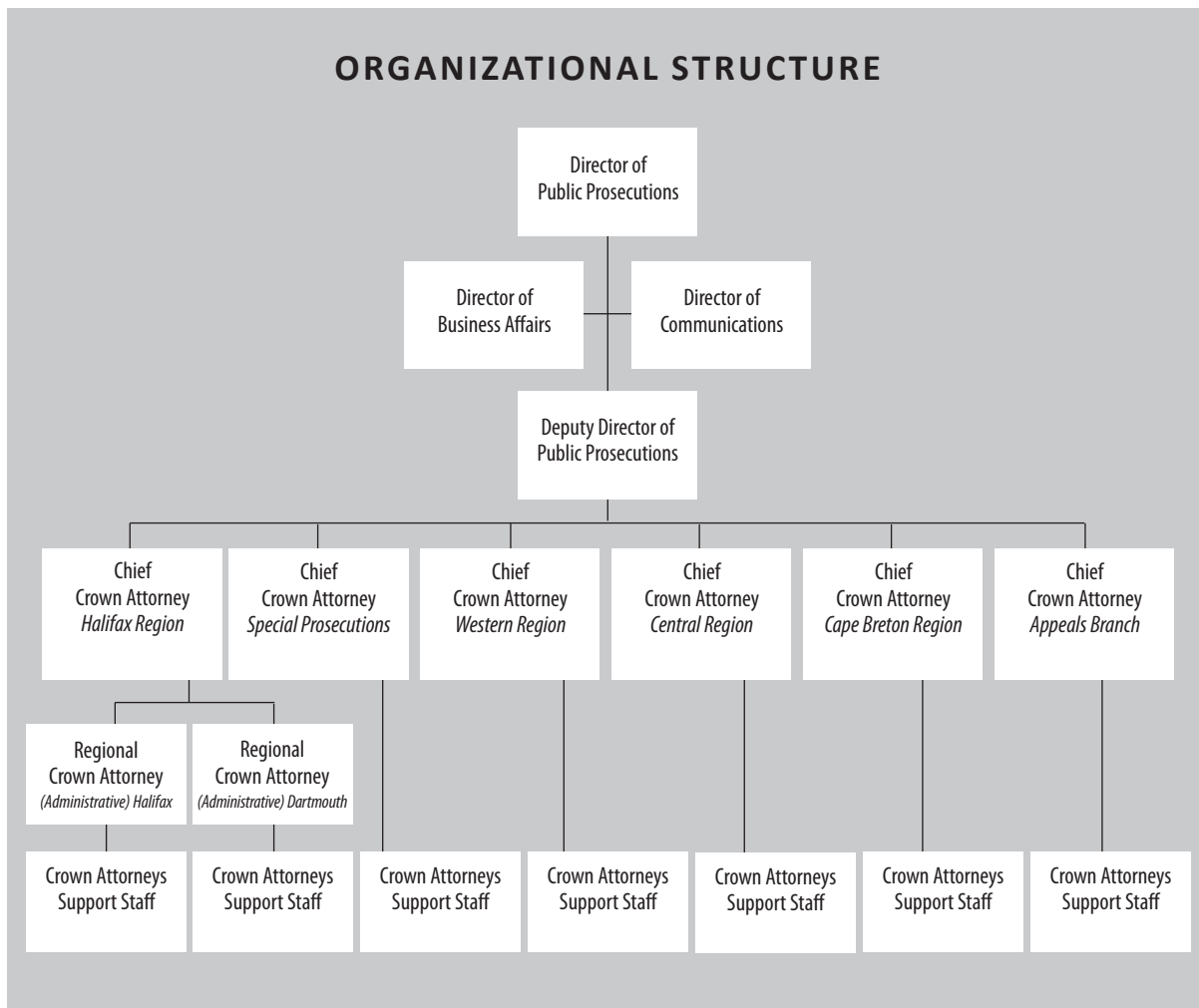
Appeals Branch

The Appeals Branch is responsible for conducting all criminal and quasi-criminal appeals to which the Attorney General is a party in the Nova Scotia Court of Appeal and the Supreme Court of Canada. The Appeals Branch also conducts all proceedings required before an appeal is heard by the court. These proceedings include Chambers motions in the Court of Appeal and applications for leave to appeal in the Supreme Court of Canada.

Freedom of Information and Protection of Privacy Act

The Public Prosecution Service's coordinator for the *Freedom of Information and Protection of Privacy Act* is also located in the head office. For the period April 1, 2010 to March 31, 2011, the PPS received 12 applications for records under this Act.

The organizational structure of the Public Prosecution Service is illustrated by the chart below.



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 2010–2011

OFFENCE CATEGORIES	HALIFAX	DARTMOUTH	AMHERST	KENTVILLE	BRIDGEWATER	NEW GLASGOW
Homicide & Related	7	5	1	8	1	1
Attempted Murder	20	4	0	0	3	1
Robbery	127	53	12	9	6	3
Sexual Assault	59	74	12	34	31	15
Sexual Abuse	27	42	30	18	7	6
Kidnapping	48	37	8	10	4	10
Abduction	0	0	0	2	1	0
Break & Enter	307	260	106	72	40	47
Weapons	1,013	922	90	101	88	53
Fraud & Identity Theft	976	593	23	98	41	52
Major Assault	530	296	50	79	72	58
Simple Assault	758	628	158	288	226	170
Theft	1,247	672	124	331	113	174
Stolen Property	1,231	611	35	78	63	49
Arson	27	8	1	1	6	3
Property Damage – Mischief	433	330	112	185	144	74
Morals – Sex	85	56	2	14	3	6
Public Order	76	97	39	31	10	20
Criminal Code – Traffic	129	171	36	81	37	25
Administrative Justice	5,067	4,075	492	777	534	561
Impaired Driving	836	782	228	393	233	182
Other Criminal Code	334	244	37	61	35	22
Uttering Threats	474	320	84	114	120	106
Unknown	0	4	1	3	3	0
TOTAL	13,811	10,284	1,681	2,788	1,821	1,638

APPENDIX A (continued)
CRIMINAL CODE CHARGES IN PROVINCIAL COURT
by Offence Category and Judicial Centre 2010–2011

OFFENCE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide & Related	2	10	1	0	0	0	36
Attempted Murder	1	1	0	0	0	4	34
Robbery	43	22	1	0	1	1	278
Sexual Assault	55	27	8	10	68	31	424
Sexual Abuse	31	24	6	3	18	18	230
Kidnapping	26	7	5	2	7	6	170
Abduction	1	0	0	0	0	0	4
Break & Enter	147	89	17	63	63	59	1,270
Weapons	127	353	8	22	46	141	2,964
Fraud & Identity Theft	100	97	10	6	13	30	2,039
Major Assault	251	107	32	31	72	31	1,609
Simple Assault	664	208	91	95	183	137	3,606
Theft	511	376	81	50	157	91	3,927
Stolen Property	196	333	16	20	31	86	2,749
Arson	22	11	4	0	3	6	92
Property Damage – Mischief	347	107	37	52	105	57	1,983
Morals – Sex	3	1	11	6	6	8	201
Public Order	12	24	13	14	24	18	378
Criminal Code – Traffic	58	41	18	18	22	23	659
Administrative Justice	4,071	863	422	280	699	369	18,210
Impaired Driving	467	387	173	166	164	143	4,154
Other Criminal Code	163	47	15	14	32	26	1,030
Uttering Threats	501	114	28	53	91	67	2,072
Unknown	3	1	0	0	2	0	17
TOTAL	7,802	3,250	997	905	1,807	1,352	48,136

APPENDIX B
PROVINCIAL STATUTE CASES
by Judicial Centre, 2010–2011

	MOTOR VEHICLE ACT	LIQUOR CONTROL ACT	OTHER PROVINCIAL STATUTES	TOTAL
HALIFAX	3,315	225	205	3,745
DARTMOUTH	2,014	26	107	2,147
AMHERST	167	20	62	249
KENTVILLE	493	29	59	581
BRIDGEWATER	474	36	113	623
NEW GLASGOW	237	34	44	315
SYDNEY	297	27	53	377
TRURO	350	54	65	469
ANTIGONISH	168	21	15	204
PORT HAWKESBURY	190	20	31	241
YARMOUTH	257	28	32	317
DIGBY	211	17	55	283
TOTAL	8,173	537	841	9,551

APPENDIX C

APPEALS BRANCH STATISTICS

The following are statistics related to the operations of the Appeals Branch covering the period April 1, 2010 to March 31, 2011.

The Branch participated in 27 appeals heard by the Court of Appeal. Of this number:

- 6 were initiated by the Crown
- 21 were initiated by offenders

Of the appeals initiated by the Crown, four dealt with acquittal and two dealt with sentence.

Of the 21 appeals initiated by offenders:

- 11 dealt with conviction
- 9 dealt with sentence
- 1 involved a motion to adduce fresh evidence

The Appeals Branch also participated in seven appeals that 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). All seven appeals had been initiated by offenders.

The Appeals Branch participated in 136 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. 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 the decision in an application for leave to appeal by the Crown to the Supreme Court of Canada. The Branch received one application for leave to appeal from an offender. The Branch filed two notices of appeal to the Supreme Court of Canada decisions of the Court of Appeal. One of those appeals was argued in the Supreme Court of Canada in February 2011.

Counsel in the Appeals Branch were involved in a number of cases of interest this past year. In the Court of Appeal there were at least four cases of note.

In *Hawkins v. R.*, the Court dealt with an appeal from conviction and parole ineligibility in a second degree murder case. The killing was particularly heinous to cover up a robbery. The court dismissed the appeal from conviction, but reduced the period of parole ineligibility from 20 years to 15 years.

In *R. v. Adams*, the Crown appealed the sentence imposed on an offender who had been involved in a major theft ring. The court substantially increased the sentence and, in doing so, instructed judges on the proper approach to imposing consecutive sentences in cases of multiple offences.

In *R. v. Ryan*, the Crown appealed the acquittal of an accused who had arranged with a “hit man,” who was actually an undercover RCMP officer, to kill her husband. The Court upheld the trial judge’s decision to acquit the accused on the basis of the defence of duress. (The Crown has filed an application for leave to appeal to the Supreme Court of Canada in this case.)

In *R. v. R.E.W.*, the Crown appealed the order of the trial judge to stay proceedings against an accused charged with historic sex offences. The stay of proceedings was based on delay in bringing the charges on for trial as a breach of the Charter right to trial within a reasonable time. The Crown’s appeal was dismissed.

APPENDIX D BUDGET RESOURCES

PROGRAM & SERVICE AREA	2010-2011 ESTIMATE (\$ thousands)	2010-2011 ACTUAL (\$ thousands)
PROGRAM EXPENSES		
Head Office — PPS	2,693	2,216
Cape Breton Region	2,589	2,696
Central Region	2,655	2,849
Halifax Region	6,420	6,802
Western Region	2,451	2,659
Special Prosecutions	1,411	1,450
Appeals	1,113	1,007
TOTAL PROGRAM EXPENSES	19,332	19,679
Provincial Funded Staff (Full Time Employees)	169.8	157.5

APPENDIX E PUBLIC PROSECUTIONS ACT

Formatting of this version may differ from the official version. An official copy of this statute is available from Nova Scotia Government Publications.

An Act to Provide for an Independent Director of Public Prosecutions

Short Title

- 1 This Act may be cited as the *Public Prosecutions Act*.

Purpose of Act

- 2 The purpose of this Act is to ensure fair and equal treatment in the prosecution of offences by
 - (a) establishing the position of Director of Public Prosecutions;
 - (b) providing for a public prosecution service; and
 - (c) providing for the independence of the Director of Public Prosecutions and the public prosecution service.

Interpretation

- 3 In this Act, “prosecution” includes the decision whether to prosecute or not, the prosecution proceeding itself and matters arising therefrom, and appeals.
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Director of Public Prosecutions

- 4 There shall be a Director of Public Prosecutions who
- (a) is the head of the public prosecution service and is responsible for all prosecutions within the jurisdiction of the Attorney General conducted on behalf of the Crown;
 - (b) may conduct all prosecutions independently of the Attorney General except that the Director of Public Prosecutions shall comply with all instructions or guidelines issued by the Attorney General in writing and published pursuant to this Act;
 - (c) is, for the purpose of the Criminal Code (Canada) and the *Summary Proceedings Act*, the Attorney General's lawful deputy in respect of prosecutions;
 - (d) shall advise police officers in respect of prosecutions generally or in respect of a particular investigation that may lead to a prosecution when the police request such assistance;
 - (e) may issue general instructions or guidelines to a chief Crown attorney, a regional Crown attorney or a Crown attorney in respect of all prosecutions or a class of prosecutions, and shall cause such instructions or guidelines to be published.
 - (f) may issue instructions or guidelines to a chief Crown attorney, a regional Crown attorney or a Crown attorney in a particular prosecution.
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Qualifications and appointment

- 5 (1) The Director of Public Prosecutions
- (a) shall be a barrister of at least ten years standing at the Bar of Nova Scotia or of another province of Canada, and if of another province, shall, within one year of appointment, become a practising member of the Bar of Nova Scotia;
 - (b) shall be appointed by the Governor in Council after consultation with the Chief Justice of Nova Scotia, the Chief Justice of the Trial Division of the Supreme Court and the Executive of the Nova Scotia Barristers' Society;
 - (c) holds office during good behaviour;
 - (d) has the status of deputy head and the provisions of the Civil Service Act and regulations relating to a deputy or a deputy head apply to the Director of Public Prosecutions; and
 - (e) shall be paid the same salary as the Chief Judge of the provincial court.
- (2) The Director of Public Prosecutions may be removed from office for cause by a resolution of the Assembly.
- (3) Where, while the Assembly is not sitting, the Director of Public Prosecutions fails to be of good behaviour, or is unable to perform the duties of office, the Governor in Council may appoint a person to be Acting Director of Public Prosecutions who shall take over the duties of the Director of Public Prosecutions until the Governor in Council sooner rescinds the appointment of the Acting Director of Public Prosecutions. *As amended by 1999 (2nd session), c.16, s.1(1).*
- (4) Where a vacancy occurs in the office of the Director of Public Prosecutions in a manner other than that referred to in subsection (2), the Governor in Council may appoint a person to be Acting Director of Public Prosecutions until a Director of Public Prosecutions is appointed pursuant to this Act. *As amended by 1999 (2nd session) c.16, s.1(2).*
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Power and duties of Attorney General

- 6 The Attorney General is the minister responsible for the prosecution service and is accountable to the Assembly for all prosecutions to which this Act applies and
- (a) after consultation with the Director of Public Prosecutions, may issue general instructions or guidelines in respect of all prosecutions, or a class of prosecutions, to the prosecution service and shall cause all such instructions or guidelines to be in writing and to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette;
 - (b) after consultation with the Director of Public Prosecutions, may issue instructions or guidelines in a particular prosecution, and shall cause such instructions or guidelines to be in writing and to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette except where, in the opinion of the Director of Public Prosecutions, publication would not be in the best interests of the administration of justice, in which case the Director of Public Prosecutions, instead, shall publish as much information concerning the instructions or guidelines as the Director of Public Prosecutions considers appropriate in the next annual report of the Director of Public Prosecutions to the Assembly;
 - (c) may consult with the Director of Public Prosecutions and may provide advice to the Director of Public Prosecutions and, subject to clauses (a) and (b), the Director of Public Prosecutions is not bound by such advice;
 - (d) may consult with members of the Executive Council regarding general prosecution policy but not regarding a particular prosecution;
 - (e) may exercise statutory functions with respect to prosecutions, including consenting to a prosecution, preferring an indictment or authorizing a stay of proceedings, after consultation with the Director of Public Prosecutions and shall cause notice of such action to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette. *As amended by 1999 (2nd session) c.16, s.2.*
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Meeting between Attorney General and Director

- 6A The Attorney General and the Director of Public Prosecutions shall meet at least twelve times a year, on a monthly basis if possible, to discuss policy matters, including existing and contemplated major prosecutions. *As amended by 1999 (2nd session) c.16, s.3.*

Extraordinary prosecution

- 6B (1) In this Section, “extraordinary prosecution” means an unexpected or unforeseen prosecution that cannot be undertaken within the budget appropriated for the public prosecution service but is of such a magnitude and importance that, in the opinion of the Director of Public Prosecutions, the prosecution should be undertaken notwithstanding the lack of financial resources.
- (2) The Director of Public Prosecutions may spend in any fiscal year an amount that is not more than five per cent more than the amount appropriated for the public prosecution service for that year for the purpose of undertaking an extraordinary prosecution.
- (3) The Governor in Council shall provide the additional funds referred to in subsection (2) through a supplementary appropriation.
- (4) Where the Governor in Council has provided the funds referred to in subsection (3) and deems it advisable to conduct a review of the need for the additional funds, the Governor in Council may appoint a qualified person to conduct the review. *As amended by 1999 (2nd session) c.16, s.3.*
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Deputy Director of Public Prosecutions

- 7 The Director of Public Prosecutions may, from time to time, designate a barrister in the public service to be Deputy Director of Public Prosecutions who is responsible to the Director of Public Prosecutions and who may exercise all of the powers and authority of the Director of Public Prosecutions and, for that purpose, is a lawful deputy of the Attorney General.

Crown attorneys

- 8 There shall be Crown attorneys to conduct prosecutions and the Crown attorneys are responsible to the Director of Public Prosecutions and, where applicable, to a chief Crown attorney or a regional Crown attorney.

Regional Crown attorneys

- 9 There may be a regional Crown attorney to supervise Crown attorneys within a geographic area determined by the Director of Public Prosecutions, and a regional Crown attorney is responsible to the Director of Public Prosecutions.

Chief Crown attorneys

- 10 There may be a chief Crown attorney to supervise Crown attorneys and, where applicable, regional Crown attorneys, and a chief Crown attorney is responsible to the Director of Public Prosecutions.

Powers, authorities and duties

- 11 A chief Crown attorney, a regional Crown attorney and a Crown attorney have all the powers, authorities and duties provided by the criminal law of Canada for prosecutors, for prosecuting officers or for counsel acting on behalf of the Attorney General.
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Qualifications

- 12 All chief Crown attorneys, all regional Crown attorneys and all full-time Crown attorneys shall be barristers appointed pursuant to the *Civil Service Act* upon the recommendation of the Director of Public Prosecutions after a competition.

Annual report

- 13 The Director of Public Prosecutions shall report annually to the Assembly in respect of prosecutions.

Appointment of barrister

- 14 (1) The Director of Public Prosecutions may appoint a barrister to take charge of and conduct a particular prosecution or to take charge of and conduct criminal business to the extent specified in the terms of the appointment.
- (2) A barrister appointed pursuant to this Section shall be known and designated as a Crown attorney and, when acting within the terms of the appointment, has all the powers and authority of a Crown attorney.
- (3) The Director of Public Prosecutions may, from time to time, vary the terms of appointment of a Crown attorney pursuant to this Section or may, at any time, revoke the appointment.

Existing prosecuting officers

- 15 Notwithstanding Section 12, all prosecuting officers and assistant prosecuting officers employed by the Province immediately before the coming into force of this Act are Crown attorneys for the purpose of this Act.
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House of Assembly Act amended

- 16 Clause (c) of subsection (1) of Section 30 of Chapter 210 of the Revised Statutes, 1989, the *House of Assembly Act*, is amended by striking out the punctuation and words “prosecuting officer” in the second and third lines thereof.

Repeal of Prosecuting Officers Act

- 17 Chapter 362 of the Revised Statutes, 1989, the Prosecuting Officers Act, is repealed.

Proclamation

- 18 This Act comes into force on and not before such day as the Governor in Council order and declares by proclamation.

Proclaimed July 24, 1990

In force September 1, 1990

Amended by Chapter 16, 1999 (Second Session), which received Royal Assent on November 23, 1999
