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# Public Prosecution Service

## **ANNUAL REPORT**

*for the period April 1, 2011 to March 31, 2012*



**Nova Scotia**

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# Public Prosecution Service

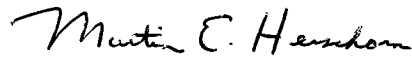
## **ANNUAL REPORT**

*for the period April 1, 2011 to March 31, 2012*

Honourable Kevin Murphy  
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, 2011 to March 31, 2012.



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

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## **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.

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## 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 court.
  - 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 2011–2012**

### **Court Activity**

This year 92 Crown attorneys in 19 offices across the province dealt with 48,850 criminal charges and prosecuted 12,522 Nova Scotia statute matters in both Provincial Court and the Supreme Court of Nova Scotia. (See Appendices A & B)

During 2011–2012, 49 appeals and 153 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 2011–2012 budget by \$1.9 million. This overage was driven by historical accumulated cost pressures. Although the PPS achieved limited cost savings by managing position vacancies, salary and benefit overspending was \$1,316,000. Other historical accumulated pressures include per diem Crown attorney fees (\$249,000); office security services (\$73,000); printing and general office supplies (\$67,000); expert witness/witness fees (\$59,000); subscription/renewal costs for legal research tools (\$57,000); sexual offence assessments performed by Capital District Health Authority (\$43,000); telecommunications (\$34,000); and office leases (\$32,000).

### **Education and Training**

Education is a major priority for the PPS. Continuing legal education for Crown attorneys and professional development for support staff is vital as criminal law evolves and changes. This year a three-day in-house educational conference was held and many Crown attorneys were sent to outside conferences and training programs.

### **Electronic Disclosure**

Electronic disclosure (e-disclosure) became an important priority over the last year. A standardized format of e-disclosure coming to the Crown from all police agencies in the province is vital to the efficient and effective prosecution of criminal and regulatory offences. The PPS formed a committee to revise the existing disclosure protocol. This major cross-sectoral project will take several years to complete.

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**Safety and Security of Crown Attorneys and Staff**

Security for Crown attorneys and staff remains an important focus. The PPS is working with the Department of Justice on courthouse security measures and continues to address security in its offices across the province.

**Information Technology**

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

**Communications**

The PPS continued to provide communications to enhance community understanding of the role of the Crown attorney and of the prosecutorial process. As in the previous year, issues management related to ongoing and high-profile cases required significant resources.

**Pre-Charge Advice**

The PPS instituted a new policy requiring Crown attorneys to record all legal advice provided to police. This is essential not only to accurately measure workload but also to ensure that quality legal advice is delivered.

**Criminal Law and Criminal Prosecutions Policy**

The PPS contributed 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; CCSO (Coordinating Committee of Senior Justice Officials) and FPT heads of prosecutions; and provincial deputy ministers.

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## MEASURING OUR PERFORMANCE

OUTCOME DESCRIPTION	WHAT DOES THIS MEASURE TELL US?	WHERE ARE WE NOW?	WHERE DO WE WANT TO BE?
<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 is in place.	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.
<b>High-quality appeal work</b>	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 is in place.	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.
<b>Provide high-quality legal advice and assistance</b>	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.  During 2011–12 the PPS implemented a policy requiring Crown attorneys to record all advice given to police so that the PPS may measure both quality and quantity of advice.	All advice to police should be examined and evaluated to determine volume and Crown workload. Quality analysis should also be undertaken.

OUTCOME DESCRIPTION	WHAT DOES THIS MEASURE TELL US?	WHERE ARE WE NOW?	WHERE DO WE WANT TO BE?
<b>Provide Crown representation in the development of criminal law and criminal prosecution policy</b>	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 also 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, 2011 to March 31, 2012 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, 2011 to March 31, 2012 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, 2011 to March 31, 2012 the Attorney General did not have occasion to exercise his authority under this provision.

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## **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.

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## 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 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 on 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

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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, 2012, there were 92 Crown attorneys employed by the Public Prosecution Service. They were assisted in their duties by 75 support staff.

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## **ORGANIZATION DESCRIPTION**

The head office of the PPS 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 PPS. 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, along with the chief Crown attorney, a regional Crown attorney (administrative) supervises 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 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

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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 2011–2012

OFFENCE CATEGORIES	HALIFAX	DARTMOUTH	AMHERST	KENTVILLE	BRIDGEWATER	NEW GLASGOW
Homicide & Related	17	5	1	0	1	0
Attempted Murder	14	30	1	1	0	0
Robbery	226	74	0	35	25	3
Sexual Assault	69	47	15	43	27	17
Other Sexual Offences	52	34	18	52	29	16
Kidnapping	66	59	12	11	11	2
Abduction	0	0	0	5	0	0
Break & Enter	311	272	104	107	63	31
Weapons	1,408	1,082	61	91	75	97
Fraud & Identity Theft	683	785	63	70	98	38
Major Assault	633	387	57	114	84	47
Simple Assault	749	585	138	279	224	162
Theft	1,216	702	134	229	225	195
Stolen Property	1,209	668	65	88	75	103
Arson	7	15	1	1	13	6
Property Damage – Mischief	589	348	110	158	131	92
Morals – Sex	40	37	5	13	7	22
Public Order	51	44	14	21	21	7
Criminal Code – Traffic	113	146	44	40	43	19
Administrative Justice	5,308	3,989	479	744	584	473
Impaired Driving	788	773	205	299	187	175
Uttering Threats	468	365	66	118	116	92
Criminal Harassment	60	27	4	8	6	8
Trespassing at Night	134	45	2	1	3	41
Intimidation	21	14	1	1	7	1
Conspiracy	62	67	10	0	0	3
Other Criminal Code	39	19	3	15	14	10
<b>TOTAL</b>	<b>14,333</b>	<b>10,619</b>	<b>1,613</b>	<b>2,544</b>	<b>2,069</b>	<b>1,660</b>

**APPENDIX A (continued)**  
**CRIMINAL CODE CHARGES IN PROVINCIAL COURT**  
**by Offence Category and Judicial Centre 2011–2012**

OFFENCE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide & Related	2	2	0	0	0	0	28
Attempted Murder	15	2	0	0	0	0	63
Robbery	29	28	0	16	7	1	444
Sexual Assault	43	23	5	8	12	14	323
Sexual Abuse	54	18	5	10	23	5	316
Kidnapping	41	19	2	2	19	6	250
Abduction	0	0	0	1	0	5	11
Break & Enter	234	151	19	45	59	60	1,456
Weapons	192	221	61	72	61	315	3,736
Fraud & Identity Theft	84	88	25	19	213	32	2,198
Major Assault	234	132	17	40	60	43	1,848
Simple Assault	632	205	41	96	159	112	3,382
Theft	468	224	47	49	94	67	3,650
Stolen Property	141	234	15	25	46	42	2,711
Arson	14	1	0	0	1	0	59
Property Damage – Mischief	422	142	20	47	98	98	2,255
Morals – Sex	262	2	2	1	11	2	404
Public Order	36	16	3	4	15	9	241
Criminal Code – Traffic	63	52	26	21	24	15	606
Administrative Justice	4,203	830	216	289	596	381	18,092
Impaired Driving	424	333	147	135	174	189	3,829
Uttering Threats	473	108	27	62	84	73	2,052
Criminal Harassment	45	10	2	0	8	4	182
Trespassing at Night	20	67	7	1	7	1	329
Intimidation	2	4	0	1	0	0	52
Conspiracy	4	5	0	0	0	0	151
Other Criminal Code	29	31	0	1	11	10	182
<b>TOTAL</b>	<b>8,166</b>	<b>2,948</b>	<b>687</b>	<b>945</b>	<b>1,782</b>	<b>1,484</b>	<b>48,850</b>

**APPENDIX B**  
**PROVINCIAL STATUTE CASES**  
**by Judicial Centre, 2011–2012**

	MOTOR VEHICLE ACT	LIQUOR CONTROL ACT	OTHER PROVINCIAL STATUTES	TOTAL
HALIFAX	6,477	301	229	7,007
DARTMOUTH	2,909	31	179	3,119
AMHERST	116	12	47	175
KENTVILLE	331	29	43	403
BRIDGEWATER	258	32	46	336
NEW GLASGOW	129	38	21	188
SYDNEY	112	34	36	182
TRURO	183	11	38	232
ANTIGONISH	67	32	18	117
PORT HAWKESBURY	157	14	25	196
YARMOUTH	220	24	48	292
DIGBY	171	36	68	275
<b>TOTAL</b>	<b>11,130</b>	<b>594</b>	<b>798</b>	<b>12,522</b>

## **APPENDIX C**

### **APPEALS BRANCH STATISTICS**

The following are statistics related to the operations of the Appeals Branch covering the period April 1, 2011 to March 31, 2012.

The Branch participated in 49 appeals heard by the Court of Appeal. Of this number:

- 5 were initiated by the Crown
- 44 were initiated by offenders

Of the appeals initiated by the Crown, one dealt with acquittal, three dealt with sentence, and one dealt with a special order made by the summary conviction appeal court.

Of the 44 appeals initiated by offenders:

- 23 dealt with conviction
- 16 dealt with sentence
- 3 involved a motion to adduce fresh evidence
- 2 involved a special order made by the trial court

Of the appeals initiated by offenders, three fell under the Youth Criminal Justice Act and four were argued by self-represented inmates.

The Appeals Branch was also involved in 18 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). Two had been initiated by the Crown and 16 by offenders.

The Appeals Branch participated in 153 Chambers motions heard by a single judge of the Court of Appeal. Chambers motions include motions for a hearing date; the filing of appeal books and factums; adjournments; bail pending appeal; extension of time to 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).

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The Appeals Branch received 13 recommendations for appeal from trial Crown attorneys of which six were approved.

The Appeals Branch received decisions in five applications for leave to appeal to the Supreme Court of Canada, two filed by the Crown and three by offenders. Offenders filed three applications for leave to appeal in the Supreme Court of Canada, and the Crown filed one. The Crown filed one notice of appeal in the Court, participated in one full hearing before the Court, and received judgment in two appeals.

## APPENDIX D BUDGET RESOURCES

PROGRAM & SERVICE AREA	2011-2012 ESTIMATE (\$ thousands)	2011-2012 ACTUAL (\$ thousands)
PROGRAM EXPENSES		
Head Office — PPS	3,006	2,723
Cape Breton Region	2,708	2,955
Central Region	2,452	2,790
Halifax Region	6,145	6,878
Western Region	2,359	2,780
Special Prosecutions	1,333	1,759
Appeals	921	1,028
<b>TOTAL PROGRAM EXPENSES</b>	<b>18,924</b>	<b>20,913</b>
Provincial Funded Staff (Full Time Employees)	166.2	167.3

## **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.

## **Removal from office**

- (2) The Director of Public Prosecutions may be removed from office for cause by a resolution of the Assembly.
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### **Acting Director of Public Prosecutions**

- (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).*

### **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;
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- (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.*

### **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.
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- (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.*

### **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.
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### **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.

### **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.
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**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.

**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

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