



Nova Scotia

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# Public Prosecution Service

## **ANNUAL REPORT**

*for the period April 1, 2008, to March 31, 2009*



Honourable Charlie Parker  
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 of April 1, 2008, to March 31, 2009.

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.

To accomplish its mission, the Public Prosecution Service has set the following goals:

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

## CORE BUSINESS FUNCTIONS

- 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 2008–2009 IN RELATION TO THE SERVICE’S BUSINESS FUNCTIONS**

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 90 Crown attorneys in 19 offices across the province dealt with 44,088 criminal charges and 5,771 NS statute matters in both Provincial Court and the Supreme Court of Nova Scotia. (*See Appendix A & B*)

During 2008–2009, 37 appeals and 94 chambers motions were handled by the Public Prosecution Service 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 Public Prosecution Service and the resulting quality of prosecution services. More than \$250,000 was spent on education and training during the fiscal year. Specifically, the Public Prosecution Service :

- funded the attendance of 30 Crown attorneys at the Federation of Law Societies National Criminal Law Program in Charlottetown, PEI.
  - funded the Crown Attorney Annual Conference and the Public Prosecution Service Support Staff Annual Seminar held this year in Baddeck, Nova Scotia;
  - funded the participation of 19 Crown attorneys at the Ontario Crown attorneys’ summer school program, a valuable professional development opportunity made available to the Public Prosecution Service through the kind cooperation of the Ontario Ministry of the Attorney General;
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- conducted a one-day spring educational conference for all Crowns attorneys and support staff.
- continued additional training as required on new Public Prosecution Service policies;
- supported the requirements of the Education Development Committee to insure that Public Prosecution Service staff received required training.

Public Prosecution Service 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 Public Prosecution Service continues to enhance the ability to provide French-language prosecutions. A francophone Crown attorney based in Yarmouth acted as a liaison and a principal contact for Frenchlanguage prosecution training and related issues. Four Crown attorneys attended French-language training in Vancouver.

### **Information Technology**

The Public Prosecution Service continued to upgrade its intranet site, which is a valuable operational and communications resource to all staff. The content of the *Best Practices Manual for Support Staff* initially populated the site, but the site is now gradually expanding and will eventually allow for much more content including internal discussion forums, podcasting, and videostreaming.

The Public Prosecution Service 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 function of file and case management. Ongoing enhancements to the Public Prosecution Service's ability to capture management information maximizes the effectiveness in planning, acquiring, and deploying resources.

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

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## **Communications**

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

The Employee Recognition and Wellness Committee established employee milestone recognition standards and held the Public Prosecution Service's second annual Long Service Awards program.

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 in development. The brochure explains the specifics and complexities of a sexual assault prosecution to this target audience.

## **Strategic Planning**

The Public Prosecution Service continued the strategic planning process to ensure that it will be better able to deliver professional prosecutorial services. Specific initiatives include establishing a Succession Planning Task Force, establishing a Mentoring program, and developing a rationale for the development of a case management tool. Other initiatives that fall under the strategic planning umbrella include the programs being developed and launched by the Employee Recognition and Wellness Committee.

As a basis for planning wellness programs, the Public Prosecution Service offered health risk assessments to its employees: 108 employees participated. The average wellness score for this group was 48 out of 100, which is in the "needs improving" category. The top health needs included fitness, weight management, better nutrition, managing cholesterol levels, and coronary risk: 70 participants showed a need for improving fitness levels, 65 participants were overweight and showed need for making nutritional changes, 38 had cholesterol over recommended levels, and 36 exhibited moderate to high coronary risk.

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As part of the health risk assessment, an organizational health perception survey was conducted. The results indicate that the top organizational health issues fall under work-life balance, with 30 per cent unable to complete all important tasks within scheduled work hours; work content and characteristics, with 20 per cent of the participants unhappy with their work environment; and development and involvement, with 15 per cent reporting they did not feel good about the opportunities to learn and grow within the Public Prosecution Service. On a positive note, 75 per cent of participants reported they felt empowered to make decisions affecting their work performance, 91 per cent reported having clear job expectations, and 87 per cent had a very positive perception of communication with their colleagues.

Based on these results, a corporate wellness strategy is being developed.

### **Business Continuity Plan**

The Business Continuity Planning Committee continued development of a business continuity plan to ensure the continuation of critical business functions in time of emergency and disaster. With a continuity policy drafted and training of key personnel completed, a business impact analysis is underway.

### **Human Resources Strategy**

The Public Prosecution Service 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 Public Prosecution Service:

- provided educational opportunities for its staff
  - continued to develop 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
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- continued to participate in the Indigenous, Black and Mi'Kmaq student employment initiative
- provided opportunities for French language training
- continued to develop an equity and diversity policy
- continued to support staff in leadership development training
- continued to support the Public Prosecution Service Education Committee
- held spring and fall educational conferences 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 Public Prosecution Service continues to deliver quality pre-charge legal opinions. The Public Prosecution Service also continues to explore the development of a service-wide tracking system to capture the extent and frequency of advice to police.

The priorities for the fourth core business area:

- Participate in the development of the criminal law and criminal prosecutions policy.

The Public Prosecution Service continued to contribute 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 Public Prosecution Service Crown attorney attended the Uniform Law Conference of Canada as Nova Scotia's representative to provide input on criminal law revisions/amendments.

The Public Prosecution Service also participated in provincial government policy initiatives, the standardization of documents used in courts, restorative justice, and training with regard to the domestic violence.

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## MEASURING OUR PERFORMANCE

OUTCOME	High quality trial work	High quality appeal work	Provide high quality legal advice and assistance	Provide Crown representation in the development of criminal law and criminal prosecution policy
INDICATOR	Majority of Crown attorneys attain competent or higher designation	Majority of Crown attorneys attain competent or higher designation	Consistent high quality	Provide representation on committees as requested
MEASURE	Performance evaluation of Crown attorneys	Performance evaluation of Crown attorneys	Supervisory assessment of legal advice ( <i>to be developed</i> )	Number of Crowns who participate
BASE YEAR MEASURE 2005-06	100%	100%	<i>(to be determined)</i>	50 Crown attorneys
TARGET 2008-09	Maintain majority attainment	Maintain majority attainment	Maintain consistent high quality	Maintain representation
STRATEGIES	<ul style="list-style-type: none"> <li>• in-court monitoring</li> <li>• develop tool to assist in-court monitoring</li> <li>• provide continuing education to all Crowns and support staff</li> <li>• implement a case management information system</li> </ul>	<ul style="list-style-type: none"> <li>• in-court monitoring</li> <li>• develop tool to assist in-court monitoring</li> <li>• provide continuing education to all Crowns and support staff</li> <li>• implement a case management information system</li> </ul>	<ul style="list-style-type: none"> <li>• develop method to record advice and assistance</li> </ul>	<ul style="list-style-type: none"> <li>• contribute to the development of the criminal law policies and procedures in conjunction with federal and provincial Departments of Justice and liaise with law enforcement agencies, government, the judiciary, and professional associations on policy and procedural matters</li> </ul>
RESULTS	Largely achieved	Largely achieved	Strategies in progress	Achieved

## 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. He or she 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, 2008, to March 31, 2009, 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, 2008, to March 31, 2009, 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, 2008, to March 31, 2009, 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, and 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 practicing 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

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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.” \*

On March 31, 2009, there were 90 Crown attorneys employed by the Public Prosecution Service. They were assisted in their duties by 67 support staff.

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

## **ORGANIZATION DESCRIPTION**

The head office of the 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 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 together with 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 Appeals and Special Prosecutions.

### **Special Prosecutions Section**

This 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 on 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**

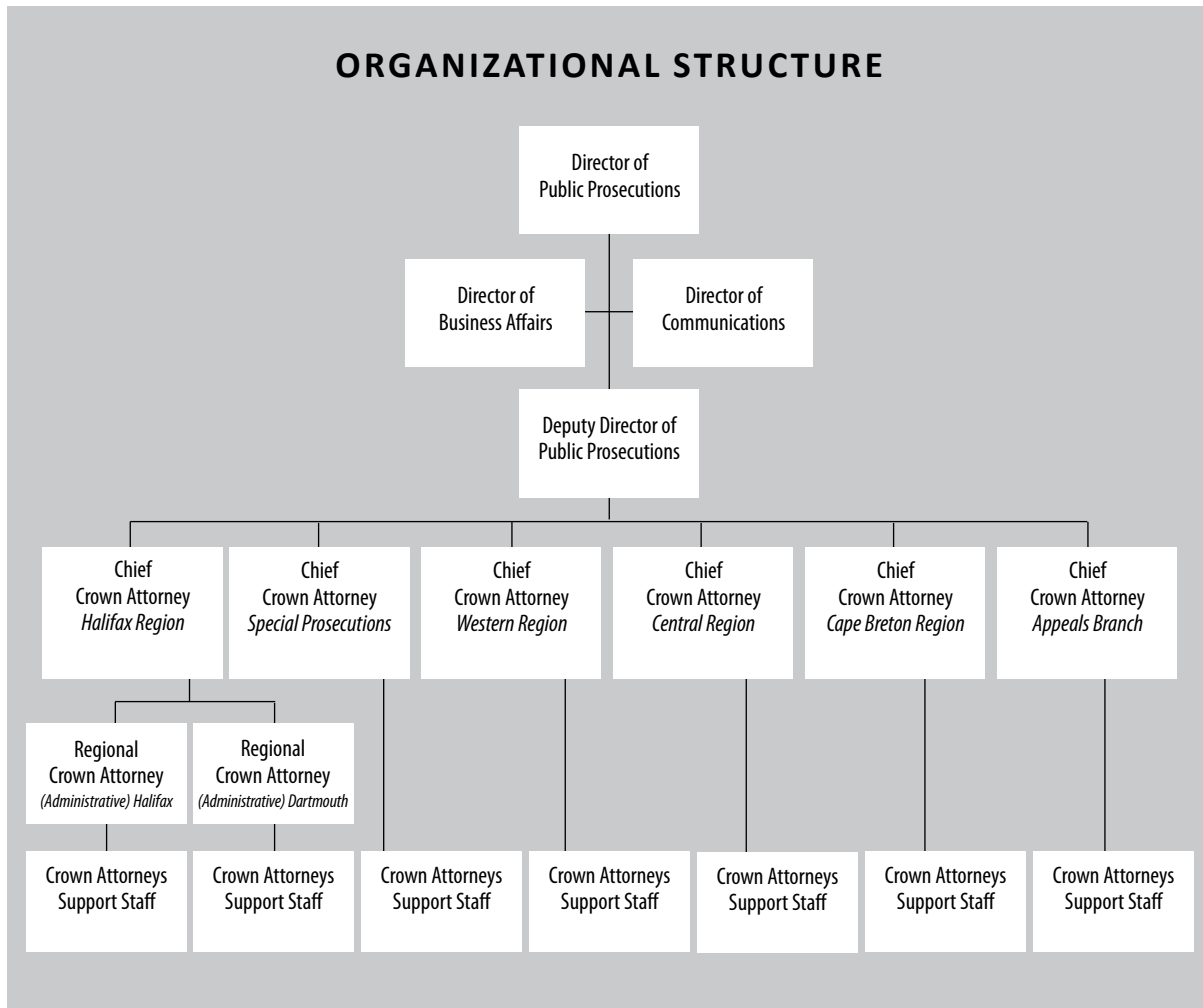
This branch is responsible for conducting all criminal and quasi-criminal appeals to which the Attorney General is a party in the Nova Scotia Court of Appeal and the Supreme Court of Canada. The Appeals Branch also conducts all proceedings required before an appeal is heard by the court. These proceedings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

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### 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, 2008, to March 31, 2009, the Public Prosecution Service received 19 applications for records under this act.

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



## APPENDICES

**APPENDIX A**  
**CRIMINAL CODE CHARGES IN PROVINCIAL COURT**  
**by Offence Category and Judicial Centre 2008–09**

<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	6	3	0	1	1	2
Attempted Murder	21	13	1	0	0	0
Robbery	182	82	6	7	10	13
Sex Assault	80	42	3	39	22	15
Sexual Abuse	38	46	4	22	10	7
Kidnaping	53	38	3	16	4	14
Abduction	0	0	0	0	0	1
Break & Enter	425	152	40	75	41	40
Weapons	932	800	29	63	81	64
Fraud	751	530	241	133	53	63
Major Assault	585	361	47	89	85	56
Simple Assault	784	543	82	277	186	148
Theft	1312	580	119	240	161	129
Stolen Property	1477	536	49	88	40	57
Arson	11	4	5	4	19	0
PD – Mischief	395	170	82	183	110	99
Morals – Sex	53	39	6	8	3	4
Public Order	44	17	18	17	21	6
CC Traffic	108	110	26	59	37	29
Admin Justice	4792	3250	450	739	533	591
Impaired Driving	682	576	125	482	270	261
Other CC	778	473	87	173	133	100
Unknown	1	0	0	0	0	0
<b>TOTAL</b>	<b>13,510</b>	<b>8,365</b>	<b>1,423</b>	<b>2,715</b>	<b>1,820</b>	<b>1,699</b>

**APPENDIX A (continued)**  
**CRIMINAL CODE CHARGES IN PROVINCIAL COURT**  
**by Offence Category and Judicial Centre 2008–09**

OFFENCE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide & Related	4	1	0	17	0	0	35
Attempted Murder	2	0	0	0	0	0	37
Robbery	29	20	3	2	2	0	356
Sex Assault	40	21	6	8	25	23	324
Sexual Abuse	41	21	1	3	11	29	233
Kidnaping	20	5	2	5	7	6	173
Abduction	1	0	0	0	0	0	2
Break & Enter	160	43	25	65	105	91	1262
Weapons	157	171	21	35	103	39	2495
Fraud	90	56	61	44	39	49	2110
Major Assault	256	88	57	49	87	52	1812
Simple Assault	634	232	67	106	166	134	3359
Theft	413	159	60	49	169	93	3484
Stolen Property	111	200	13	20	42	51	2684
Arson	8	4	0	2	3	0	60
PD – Mischief	340	83	43	52	114	82	1753
Morals – Sex	10	5	3	1	4	3	139
Public Order	23	24	5	6	33	22	236
CC Traffic	51	56	40	13	30	27	586
Admin Justice	3512	770	275	323	639	394	16,268
Impaired Driving	387	385	164	129	155	154	3,770
Other CC	663	129	60	64	132	117	2,909
Unknown	0	0	0	0	0	0	1
<b>TOTAL</b>	<b>6,952</b>	<b>2,473</b>	<b>906</b>	<b>993</b>	<b>1,866</b>	<b>1,366</b>	<b>44,088</b>

**APPENDIX B**  
**PROVINCIAL STATUTE CASES**  
**by Judicial Centre, 2008–09**

	<b>MOTOR VEHICLE ACT</b>	<b>LIQUOR CONTROL ACT</b>	<b>OTHER PROVINCIAL STATUTES</b>	<b>TOTAL</b>
<b>HALIFAX</b>	1394	89	99	1582
<b>DARTMOUTH</b>	1210	20	104	1334
<b>AMHERST</b>	60	23	126	209
<b>KENTVILLE</b>	448	66	76	590
<b>BRIDGEWATER</b>	230	25	198	453
<b>NEW GLASGOW</b>	156	37	42	235
<b>SYDNEY</b>	189	29	59	277
<b>TRURO</b>	188	18	46	252
<b>ANTIGONISH</b>	82	19	33	134
<b>PORT HAWKESBURY</b>	75	27	30	132
<b>YARMOUTH</b>	117	40	86	243
<b>DIGBY</b>	176	44	110	330
<b>TOTAL</b>	<b>4,325</b>	<b>437</b>	<b>1,009</b>	<b>5,771</b>



## **APPENDIX C**

### **APPEALS BRANCH STATISTICS**

The following are statistics related to the operations of the Appeals Branch covering the period April 1, 2008, to March 31, 2009.

The Branch participated in 37 appeals heard by the Court of Appeal. Of this number,

- 2 were initiated by the Crown
- 35 were initiated by the offender, including 4 under the Youth Criminal Justice Act and 5 brought by prisoners

Of the appeals initiated by the Crown, both dealt with sentence.

Of the 35 appeals initiated by offenders,

- 10 dealt with conviction only
- 7 dealt with sentence only
- 14 dealt with conviction and sentence
- 2 concerned fresh evidence applications
- 1 dealt with a Review Board proceeding
- 1 dealt with a review of a Youth Court judge's decision

The Appeals Branch also participated in 10 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, one appeal had been initiated by the Crown and nine appeals had been initiated by offenders.

The Appeals Branch participated in 94 Chambers motions – applications heard by a single judge of the Court of Appeal. Chambers motions include applications for hearing dates, adjournments, bail pending appeal, extensions of time for appeal, directions in appeals, and striking appeals from the Court's docket.

The Appeals Branch received decisions in two applications for leave to the Supreme Court of Canada, both initiated by offenders. The Branch participated in one appeal before the Supreme Court of Canada as an intervener. The Branch participated in three appeals heard by the Supreme Court of Canada, all initiated by offenders.

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Counsel in the Appeals Branch were involved in a number of cases presenting important legal issues. In the Supreme Court of Canada, for example, one appeal – *Miazga v. Kvello Estate et al.* – was concerned with the liability of Crown attorneys in civil actions based on malicious prosecution. In the Court of Appeal, there were at least two appeals of note. In *G.D.S. v. R.*, the Court dismissed an appeal by an offender from his sentence for his horrific and savage attack on his pregnant girlfriend using a sword as a weapon.

## APPENDIX D BUDGET RESOURCES

<b>CORE BUSINESS AREAS</b>	<b>2008–2009 BUDGET \$000</b>	<b>2008–2009 ACTUAL \$000</b>
Represent the Crown in the conduct of criminal and quasi-criminal matters before all levels of court.	17,139.1	17,240.4
Represent the Crown in the conduct of criminal appeals before all levels of courts.	1,082.0	1,078.3
Provide legal advice and assistance to police and provincial law enforcement officers at their request.	Included	Included
Participate in the development of criminal law and criminal prosecutions policy.	Included	Included
<b>TOTAL EXPENDITURES</b>	<b>18,221.0</b>	<b>18,318.7</b>
Salaries and Benefits	14,308.3	15,782.1
Funded Staff (FTEs)	165	157

**APPENDIX E**  
**PUBLIC PROSECUTIONS ACT**  
**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.
  - 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;
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- (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.

## **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.
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### **Removal from office**

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

### **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
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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.*
- 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.*
- 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.
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### **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.

### **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.
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### **Powers and authority of barrister**

- (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.

### **Terms of appointment**

- (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.

### **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.
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## **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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