



Nova Scotia

Public Prosecution Service

ANNUAL REPORT

for the period April 1, 2009 to March 31, 2010



Public Prosecution Service

ANNUAL REPORT

for the period April 1, 2009 to March 31, 2010

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, 2009 to March 31, 2010.



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 2009–2010	3
Measuring Our Performance	7
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 in Provincial Court	16
by Offence Category and Judicial Centre	
Appendix B: Provincial Statute Cases	18
by Judicial Centre	
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. 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:

MISSION

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 social responsibility to provide for public safety.

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

To provide a public prosecution service that:

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

CORE BUSINESS FUNCTIONS

The Public Prosecution Service:

- represents the Crown in the conduct of criminal matters and quasi-criminal matters before all levels of court
 - represents the Crown in the conduct of criminal and quasi-criminal appeals before all levels of court
 - provides legal advice and assistance to the police and provincial law enforcement officers at their request
 - participates in the development of criminal law policy and criminal prosecutions policy
-

PRIORITIES AND ACCOMPLISHMENTS FOR 2009–2010

The priorities for the first three core business functions of the Public Prosecution Service overlap significantly, and are therefore presented as a group.

- Represent the Crown in the conduct of criminal and quasi-criminal matters before all levels of court.
- Represent the Crown in the conduct of criminal appeals 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.

Court Activity

This year 94 Crown Attorneys in 19 offices across the province dealt with 43,980 criminal charges and 7,629 Nova Scotia statute matters. (*See Appendix A & B*)

During 2009–2010, 25 appeals and 131 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. Specifically, the Public Prosecution Service:

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

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 is working to enhance its capacity to provide French-language prosecutions. A francophone Crown Attorney based in Yarmouth acted as a liaison and a principal contact for French-language prosecution training and related issues up until that Crown Attorney's appointment as a judge to the provincial court. Educational opportunities for French-speaking prosecutors are provided as funding allows.

Information Technology

The Public Prosecution Service continued to upgrade its intranet site, which is a valuable operational and communications resource to all staff.

Enhancements continued to the Prosecution Information Composite System, a comprehensive, computerized, offender-history information system. This system also performs management information tracking 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 its effectiveness in planning, acquiring, and deploying resources.

The Public Prosecution Service's database of staff-generated research, known as the Computerized Legal Education Research Centre, continued to expand.

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 for 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.

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

Strategic Planning

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

Business Continuity Plan

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

Human Resources Strategy

The Public Prosecution Service made progress on each of the five human resource strategy goals, which are to

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

Specifically, the Public Prosecution Service:

- provided educational opportunities for its staff
 - continued the development of a comprehensive succession plan
 - continued to support secondment opportunities
 - continued to promote internal communications
 - continued a long service awards program
-

- sponsored staff at respectful workplace training
- contributed to the Department of Justice's review of court house security
- continued to participate in the Indigenous Blacks & Mi'kmaq Initiative for student employment
- provided opportunities for French-language training
- continued the development of an equity and diversity policy
- continued to support staff in leadership development training
- continued to support the Public Prosecution Service Education Committee
- held a fall educational conference for all staff
- continued to develop best practices policy

Pre-Charge Advice

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

The following are priorities and accomplishments for the fourth core business function:

- Participate in the development of 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, the Coordinating Committee of Senior Justice Officials and federal/provincial/territorial heads of prosecutions, and provincial deputy ministers.

A Public Prosecution Service Crown Attorney, who had been 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 Public Prosecution Service also participated in provincial government policy initiatives, the standardization of documents used in courts, 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 Public Prosecution Service 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. This ensures evidence is presented thoroughly and fairly at trial 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 Crown Attorneys prepare for and deliver their cases in court. A fully implemented mentoring program would assist less-experienced Crown Attorneys and help to ensure quality trial work. Continuing legal education should be a mainstay.
High-quality appeals work	That the Public Prosecution Service 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. This ensures evidence is presented thoroughly and fairly at appeal 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 implementation has begun.	Crown Attorney performance evaluations would be enhanced by in-court monitoring. A case management information system would maximize efficiencies as Crown Attorneys prepare for and deliver their cases in court. A fully implemented mentoring program would assist less-experienced Crown Attorneys and help to ensure quality appeals work. Continuing legal education should be a mainstay.
Provide high-quality legal advice and assistance	That the Public Prosecution Service 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 Public Prosecution Service 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.	An effective system to measure both quality and quantity of service should be in place for tracking advice given to police. Various models in place in other jurisdictions are currently being studied and tools are being developed to effectively document advice provided to police.
Provide Crown representation in the development of criminal law and criminal prosecution policy	That the Public Prosecution Service provides input into the development of criminal law and criminal prosecution policy from both an administrative and a frontline perspective.	The Public Prosecution Service 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 Public Prosecution Service 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 consultation with the Director of Public Prosecutions. During the period April 1, 2009 to March 31, 2010, 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, 2009 to March 31, 2010, 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, 2009 to March 31, 2010, 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*, 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 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. 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, and, if from another province, 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.

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 myriad 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.” *

On March 31, 2010, there were 94 Crown Attorney positions at the Public Prosecution Service.

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

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 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 the Special Prosecutions Section and the Appeals Branch.

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 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.

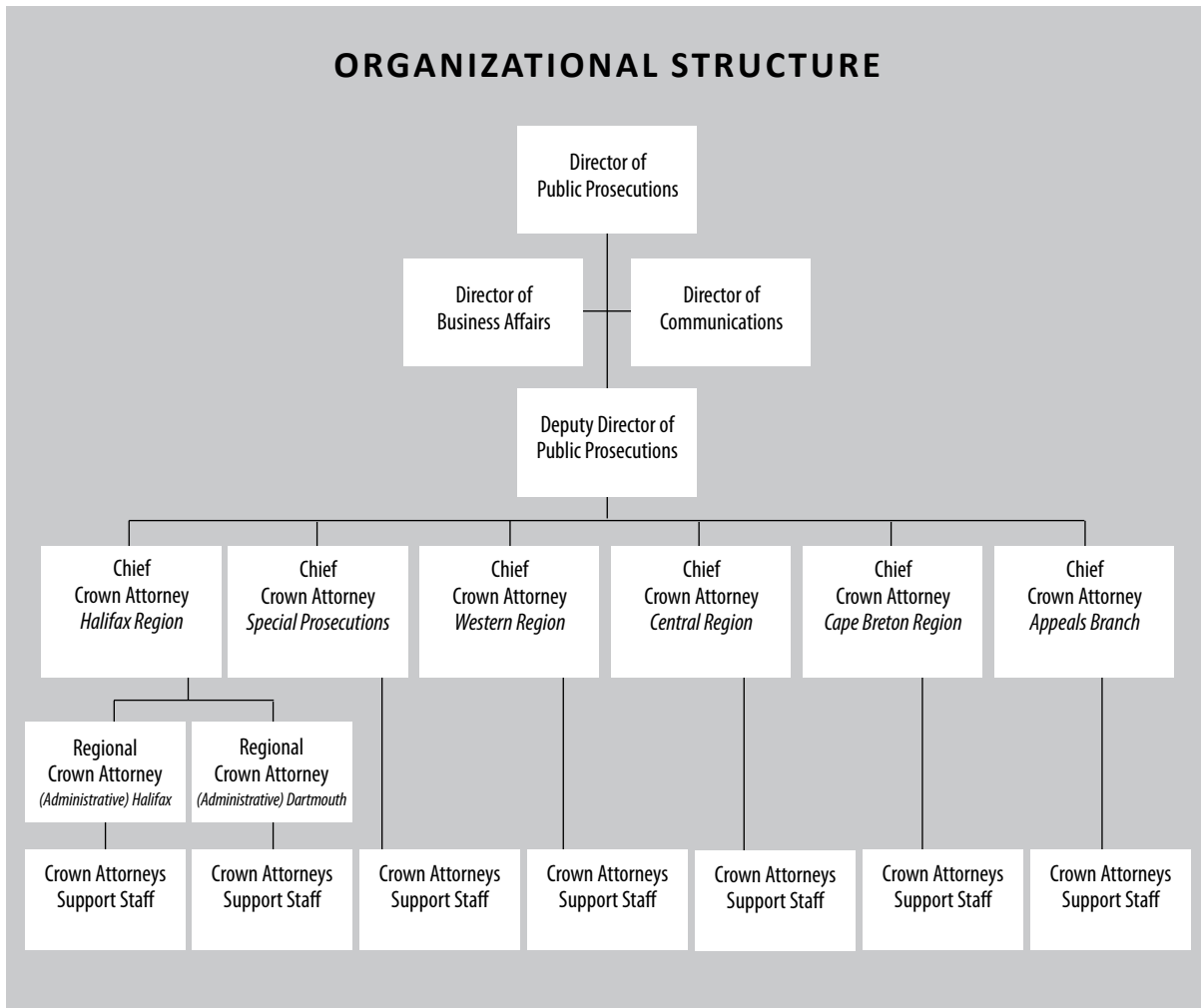
Appeals Branch

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 Services’ coordinator for the *Freedom of Information and Protection of Privacy Act* is also located in the head office. For the period April 1, 2009 to March 31, 2010, 17 applications were received 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 2009–2010

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

APPENDIX A (continued)
CRIMINAL CODE CHARGES IN PROVINCIAL COURT
by Offence Category and Judicial Centre 2009–2010

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

APPENDIX B
PROVINCIAL STATUTE CASES
by Judicial Centre, 2009–2010

	MOTOR VEHICLE ACT	LIQUOR CONTROL ACT	OTHER PROVINCIAL STATUTES	TOTAL
HALIFAX	2,243	230	167	2,640
DARTMOUTH	1,527	39	85	1,651
AMHERST	94	24	141	259
KENTVILLE	522	45	106	673
BRIDGEWATER	300	37	70	407
NEW GLASGOW	144	50	59	253
SYDNEY	252	44	132	428
TRURO	285	35	49	369
ANTIGONISH	94	27	27	148
PORT HAWKESBURY	172	24	45	241
YARMOUTH	149	51	55	255
DIGBY	151	28	126	305
TOTAL	5,933	634	1,062	7,629

APPENDIX C

APPEALS BRANCH STATISTICS

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

The branch participated in 25 appeals heard by the Court of Appeal. Of this number:

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

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

Of the 22 appeals initiated by offenders:

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

The Appeals Branch also participated 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). Of this number, five appeals had been initiated by the Crown and 13 appeals by offenders.

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

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

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

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

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

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

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

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

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

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

APPENDIX D BUDGET RESOURCES

PROGRAM & SERVICE AREA	2009-2010 ESTIMATE (\$ thousands)	2009-2010 ACTUALS (\$ thousands)
PROGRAM EXPENSES		
Head Office and Special Prosecutions	3,515	3,458
Cape Breton Region	2,600	2,657
Central Region	2,842	2,870
Halifax Region	6,275	6,401
Western Region	2,361	2,834
Appeals	1,132	1,198
TOTAL PROGRAM EXPENSES	18,725	19,418
Provincial Funded Staff (Full Time Employees)	168.2	160.3

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.
-

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.
-

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).*
-

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.*
-

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.*

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.

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.

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)
