



NOVA SCOTIA
PUBLIC PROSECUTION
SERVICE

ANNUAL REPORT

FOR THE PERIOD APRIL 1, 2017 TO MARCH 31, 2018

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Public Prosecution Service Annual Report
for the period April 1, 2017 to March 31, 2018
Public Prosecution Service
April 2019

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Honourable Kevin Murphy
Speaker of the Nova Scotia House of Assembly
Office of the Speaker
Province House
Halifax, NS 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 Nova Scotia Public Prosecution Service, as required by Section 13 of the *Public Prosecutions Act*. This report covers the period from April 1, 2017, to March 31, 2018.



Martin E. Herschorn, QC
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 Nova Scotia Public Prosecution Service is to seek justice and serve the public interest by performing prosecution duties with fairness, professionalism, and integrity.

GOALS

In accomplishing its mission, the Public Prosecution Service contributes to the Government's priority of fulfilling its social responsibility to provide 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:

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

PRIORITIES AND ACCOMPLISHMENTS IN 2017–2018

Court Activity

This year 104 Crown attorneys across the province dealt with 42,356 criminal charges and prosecuted 5,626 provincial statute violations.

Fiscal

The PPS worked to meet its budget challenges as usual this year but exceeded its 2017-2018 budget by \$621,000. This overage was driven by operational pressures in the area of expert witness/witness fees of \$181,600; transcription costs of \$134,400; membership dues and fees (NS Barristers' Society) of \$97,800; photocopy charges of \$69,600; per diem prosecuting services fees of \$57,600; legal services (DOJ) charges of \$39,300; appeals costs of \$19,300; overtime costs of \$12,100; and warehousing and storage (NS Records Centre) charges of \$9,300.

Delay – Jordan

This year the PPS addressed pressures associated with the delay framework established by Jordan, the 2016 Supreme Court of Canada decision.

(Under Jordan new rules were set for an accused's right to be tried within a reasonable time period. All Nova Scotia Supreme Court cases and all trials preceded by a preliminary inquiry must be concluded within 30 months from the date charges were laid. Cases heard in Nova Scotia Provincial Court must be complete within 18 months.)

In September, two term Crown attorney positions were added specifically to alleviate pressures caused by Jordan. Further, all Crown attorneys continue to monitor their cases regarding delay and, should delay threaten to jeopardize any case, Crowns notify their chief Crown attorney so remedial action can be taken. Since Jordan and as of the end of the 2017-2018 fiscal year, 26 delay applications were initiated by defence. Of those, 17 were dismissed; two were withdrawn; two were stayed for reasons unrelated to delay; one was pending; and four were granted.

The PPS continues its ongoing collaboration with other justice system partners on additional and varied strategies to ensure that the criminal justice system is operating within the Jordan framework.

Enhanced Prosecution Model – Sexual Offences

Complementary to the province’s sexual violence strategy, the PPS added two permanent Crown attorneys to implement an enhanced prosecution model for sexual offences. These two new Crowns:

- Are creating decision databases and other resources for their colleagues;
- Are providing legal research and brief-writing support in areas such as applications under section 276 of the Criminal Code for information on past sexual activity; children’s evidence; videotaped evidence; preparing complainants to testify; sentencing; and inappropriate provision of personal records by police to Crown;
- Have provided and continue to provide training to Crowns, police, women’s advocacy groups and other special interest groups;
- Are providing in-court support as necessary to Crown attorneys.

Domestic Violence Court

The PPS is an integral part of the province’s Domestic Violence Court. This initiative launched as a pilot in 2011-2012 in Sydney and term Crown attorney and legal assistant positions were established. This year those positions were made permanent providing stability to this specialty court. Further, the PPS added one Crown attorney position this year to accommodate the province’s Domestic Violence Court expansion to Halifax.

Education and Training

As usual, training and education was a major priority for the PPS this year. Crown attorneys attended the PPS’s annual fall conference for three days of education on a variety of criminal law topics. Additionally, many Crowns attended Ontario Crown School and the National Criminal Law Program.

Case Management

Work continued on establishing a comprehensive electronic case management system. This system will be vital to the PPS in tracking cases and measuring workload.

Communications

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

MEASURING OUR PERFORMANCE

OUTCOME DESCRIPTION	WHAT DOES THIS MEASURE TELL US?	WHERE ARE WE NOW?	WHERE DO WE WANT TO BE?
High-quality trial work	That the PPS is delivering high-quality trial work by Crown attorneys who attain a performance evaluation of competent or higher; are provided with adequate preparation time for in-court work; are supported by continuing legal education; and, where applicable, are mentored by senior colleagues. These elements ensure the delivery of high-quality trial work in presenting the evidence thoroughly and fairly to ensure the proper verdict is reached.	All Nova Scotia Crown attorneys have achieved a performance rating of competent or higher. They are generally given adequate time to prepare cases for court. They are provided with continuing legal education as funding permits. A mentoring program has been developed and 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.
High-quality appeal work	That the PPS is delivering high-quality appeal 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.
Provide high-quality legal advice and assistance	That the PPS is providing police with high-quality legal advice and assistance when requested during the course of police investigations. This helps police in collecting evidence and laying appropriate charges. Ultimately, high-quality legal advice to police helps to ensure quality trial work when the case goes to court.	The PPS continues to provide timely responses to requests from police and provincial enforcement officers for legal advice on particular cases or direction on matters of criminal law. The PPS requires 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 make a determination on volume and Crown workload. As well, a quality analysis should be undertaken.

OUTCOME DESCRIPTION	WHAT DOES THIS MEASURE TELL US?	WHERE ARE WE NOW?	WHERE DO WE WANT TO BE?
Provide Crown representation in the development of criminal law and criminal prosecution policy	That the PPS provides input into the development of criminal law and criminal prosecution policy from both an administrative and a front-line 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.	The existing level of contribution to policy development should be maintained and enhanced.

THE ROLE OF THE ATTORNEY GENERAL

In Nova Scotia, the Minister of Justice is also the Attorney General and in this role 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 to the Public Prosecution Service in respect of all prosecutions or a class of prosecutions, after consultations with the Director of Public Prosecutions. During the period April 1, 2017, to March 31, 2018, the Attorney General did not have occasion to exercise this authority under 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, 2017, to March 31, 2018, the Attorney General did not have occasion to exercise this authority under 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, 2017, to March 31, 2018, the Attorney General did not have occasion to exercise this authority under this provision.

THE ROLE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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

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

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

The Director of Public Prosecutions must be a barrister of at least 10 years' standing. If from another province, he or she must become a practicing member of the Nova Scotia Barristers' Society within one year of appointment. The Director of Public Prosecutions holds office during good behavior 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 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 precharge 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 while 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 a key 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 in the following words the proper frame of mind of those who represent the Crown:

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

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

On March 31, 2018, there were 104 Crown attorneys employed by the Public Prosecution Service. They were assisted in their duties by 72 support staff.

ORGANIZATION DESCRIPTION

The head office of the Public Prosecution Service comprises its senior management, including the Director of Public Prosecutions, the Deputy Director, the Director of Communications, and the Director of Business Affairs, plus 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, 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 precharge 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

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 they may be involved where a law enforcement officer is the subject of a police investigation or a prosecution.

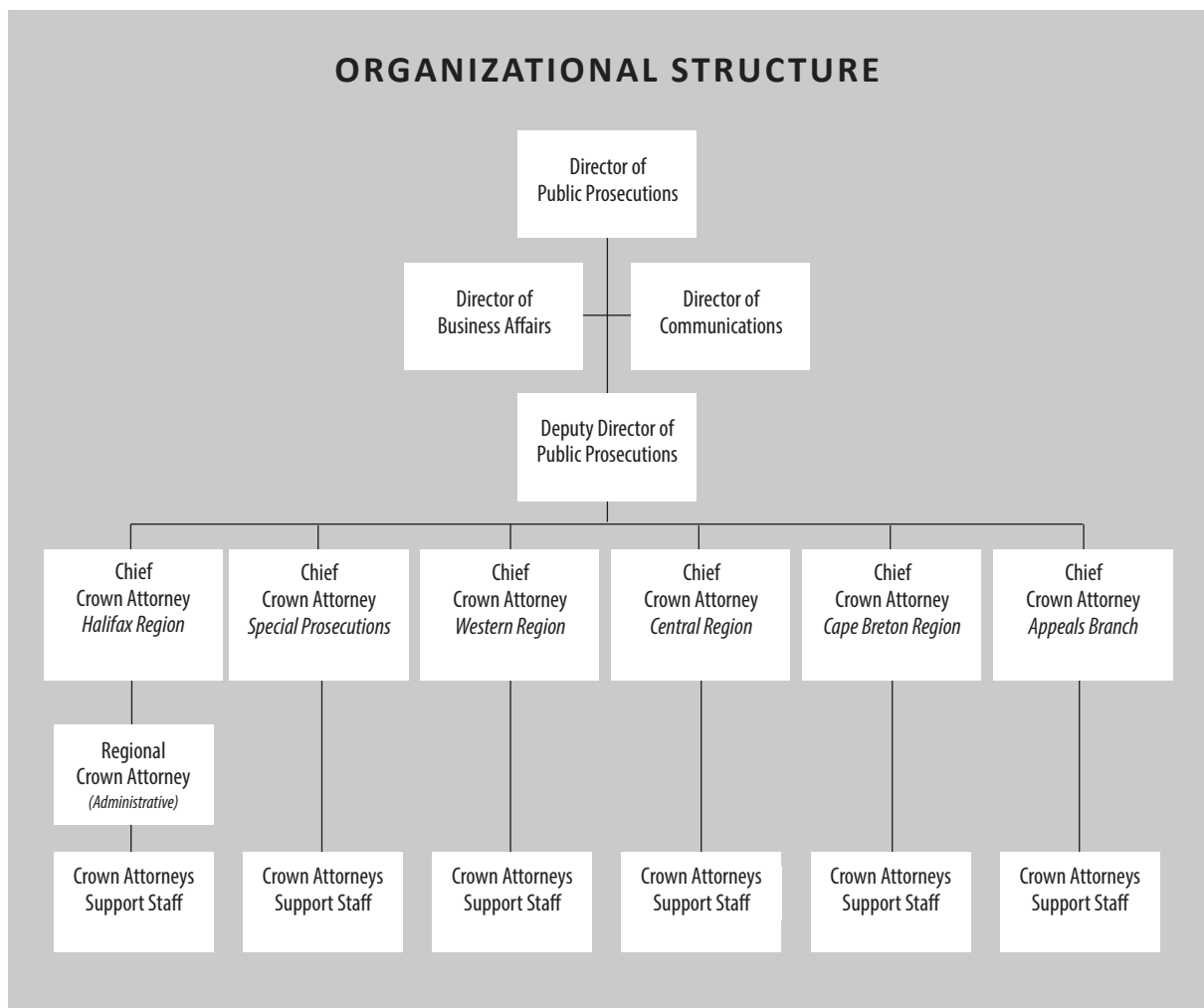
Appeals Branch

The Appeals Branch is responsible for conducting all criminal and quasicriminal 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

For the period April 1, 2017, to March 31, 2018, the PPS received 18 applications for records under this Act.

The organizational structure of the Public Prosecution Service is illustrated by the following chart:



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 2017–2018

OFFENCE CATEGORIES	HALIFAX	DARTMOUTH	AMHERST	KENTVILLE	BRIDGEWATER	PICTOU
Homicide	5	14	0	0	1	0
Attempted Murder	4	12	2	0	0	0
Robbery	165	77	0	10	4	3
Sexual Assault	94	44	16	57	24	19
Other Sexual Offences	127	63	10	74	43	14
Major Assault	506	476	56	123	48	57
Common Assault	673	614	160	269	184	190
Uttering Threats	439	391	90	142	85	81
Criminal Harassment	59	90	9	15	13	4
Other Crimes Against a Person	97	108	16	25	13	19
Theft of a Motor Vehicle	45	26	6	17	3	1
Theft	1,211	673	73	155	113	70
Break and Enter	182	96	53	111	33	36
Fraud	505	364	77	78	30	35
Mischief	310	305	101	110	105	88
Possession of Stolen Property	1,311	660	56	201	61	28
Other Property Crimes	37	32	5	15	12	6
Failure to Attend Court	189	125	10	17	5	17
Breach of Probation	2,352	1,365	88	158	133	69
Unlawfully at Large	43	139	0	4	3	2
Failure to Comply with Order	2,554	2,009	304	453	293	289
Other Administration of Justice	225	162	32	45	31	28
Weapons Offences	580	1,071	137	80	58	64
Prostitution	103	17	0	3	0	2
Disturbing the Peace	45	19	22	11	21	3
Residual Criminal Code	73	37	21	35	7	27
Impaired Driving	570	620	109	243	185	134
Other Criminal Code Traffic	135	190	36	72	29	31
TOTAL	12,639	9,799	1,489	2,523	1,537	1,317

APPENDIX A (continued)
CRIMINAL CODE CHARGES IN PROVINCIAL COURT
by Offence Category and Judicial Centre 2017–2018

OFFENCE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide	3	2	0	0	0	0	25
Attempted Murder	4	7	0	0	5	4	38
Robbery	39	6	4	4	2	6	320
Sexual Assault	61	49	14	19	20	16	433
Other Sexual Offences	77	69	3	24	39	31	574
Major Assault	221	117	37	43	45	68	1,797
Common Assault	473	258	58	92	161	151	3,283
Uttering Threats	303	165	29	58	91	98	1,972
Criminal Harassment	18	18	5	7	8	4	250
Other Crimes Against a Person	26	41	3	7	19	14	388
Theft of a Motor Vehicle	29	33	3	6	8	10	187
Theft	303	178	35	49	98	51	3,009
Break and Enter	102	49	5	21	45	23	756
Fraud	111	76	7	4	71	52	1,410
Mischief	351	122	33	47	77	96	1,745
Possession of Stolen Property	154	117	13	16	36	15	2,668
Other Property Crimes	38	12	0	0	22	3	182
Failure to Attend Court	96	33	4	5	14	7	522
Breach of Probation	531	331	66	75	199	72	5,439
Unlawfully at Large	11	2	1	0	3	0	208
Failure to Comply with Order	1,969	596	149	281	296	225	9,418
Other Administration of Justice	103	51	9	20	36	14	756
Weapons Offences	188	149	7	90	78	117	2,619
Prostitution	0	6	0	0	0	0	131
Disturbing the Peace	11	10	5	9	21	2	179
Residual Criminal Code	54	20	2	8	18	2	304
Impaired Driving	309	288	89	121	203	95	2,966
Other Criminal Code Traffic	106	91	14	20	31	22	777
TOTAL	5,691	2,896	595	1,026	1,646	1,198	42,356

APPENDIX B
PROVINCIAL STATUTE CASES
by Judicial Centre, 2017–2018
 (only cases with prosecutor assigned)

	MOTOR VEHICLE ACT	LIQUOR CONTROL ACT	OTHER PROVINCIAL STATUTES	TOTAL
HALIFAX	1,884	75	442	2,401
DARTMOUTH	146	0	165	311
AMHERST	149	4	36	189
KENTVILLE	349	43	28	420
BRIDGEWATER	260	10	26	296
PICTOU	197	24	18	239
SYDNEY	281	9	33	323
TRURO	379	7	55	441
ANTIGONISH	129	41	23	193
PORT HAWKESBURY	100	10	26	136
YARMOUTH	266	19	78	363
DIGBY	261	6	47	314
TOTAL	4,401	248	977	5,626

APPENDIX C

APPEALS STATISTICS

2017–2018

The following statistics relate to the operations of the Appeals Branch covering the period April 1, 2017, to March 31, 2018.

The Branch participated in 28 appeals heard by the Court of Appeal. Of this number:

- 4 were initiated by the Crown
- 24 were initiated by offenders

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

Of the 24 appeals initiated by offenders:

- 14 dealt with conviction
- 6 dealt with sentence
- 4 involved a motion for fresh evidence

Of the appeals initiated by offenders, none fell under the *Youth Criminal Justice Act* and one was argued by a self-represented inmate.

The Appeals Branch was involved in nine appeals which were abandoned, quashed or dismissed without a full hearing in the Court of Appeal. Of this number, four had been initiated by the Crown and five by offenders.

The Appeals Branch participated in 149 Chambers motions heard by a single judge of the Court of Appeal. Chambers motions include motions for a hearing date and the filing of appeal books and factums, adjournments, bail pending appeal, extension of time to appeal, directions and status updates in appeals, appointment of counsel in prisoners' appeals, and striking appeals from the Court's docket. Uncontested motions are usually conducted over the telephone (teleconference Chambers), and both contested and uncontested motions are heard in open court (regular Chambers).

The Appeals Branch received 11 recommendations for appeal from trial Crown Attorneys, of which six were approved for appeal.

In the Supreme Court of Canada, the Appeals Branch filed one notice of appeal and received a notice of appeal from an offender. The Branch received decision in one application for leave to appeal (dismissed), and one motion to extend time to file an application for leave to appeal (dismissed). The Branch participated in one full hearing before the Court (awaiting decision).

APPENDIX D BUDGET RESOURCES

PROGRAM & SERVICE AREA	2017-2018 ESTIMATE (\$ thousands)	2017-2018 ACTUAL (\$ thousands)	2017-2018 VARIANCE (\$ thousands)
GROSS DEPARTMENTAL EXPENSES			
Head Office	2,608	2,824	216
Cape Breton Region	3,549	3,557	8
Central Region	3,059	2,917	(142)
Halifax Region	7,964	8,583	619
Western Region	3,031	3,141	110
Special Prosecutions	2,490	2,310	(180)
Appeals	1,079	1,068	(11)
TOTAL GROSS DEPARTMENTAL EXPENSES	23,780	24,400	620
ADDITIONAL INFORMATION			
Ordinary Revenue	0	0	0
Fees and Other Charges	0	0	0
Ordinary Recoveries	262	426	164
TOTAL: REVENUE, FEES AND RECOVERIES	262	426	164
TCA Purchase Requirements	0	0	0
Provincial Funded Staff (Full Time Employees)	173.3	170.3	(3)

Departmental Expenses Variance Explanation:

Pressure due to higher than anticipated operating costs. It is also related to increased expenditures primarily training, brochures, and travel costs resulting from increased Federal and Interprovincial recoveries.

Revenue, Fees and Recoveries Variance Explanation:

Increase in federal recoveries for the Federal Victims Strategy, National Flagging System Program and a secondment as well as increased recoverable travel costs from the Province of Newfoundland and Labrador.

Provincial Funded Staff (FTEs) Variance Explanation:

Variance due to vacancy savings.

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).*

Powers 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 orders 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
