



NOVA SCOTIA
PUBLIC PROSECUTION
SERVICE

ANNUAL REPORT

FOR THE PERIOD APRIL 1, 2018 TO MARCH 31, 2019

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



Martin E. Herschorn, QC
Director of Public Prosecutions

CONTENTS

The Mandate of the Public Prosecution Service	1
Mission	1
Goals	2
Core Business Functions	2
Priorities and Accomplishments 2018–2019	3
Measuring Our Performance	7
The Role of the Attorney General	9
The Role of the Director of Public Prosecutions	10
The Role of the Crown Attorney	11
Organization Description	13
Appendix A: Criminal Code Charges by Judicial Centre/Category of Offence.....	16
Appendix B: Provincial Statute Charges by Judicial Centre/Category of Offence	18
Appendix C: Appeals Statistics	19
Appendix D: Budget Resources	21
Appendix E: Public Prosecutions Act	23

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 2018–2019

Court Activity

This year 101 Crown attorneys across the province dealt with 43,644 criminal charges and prosecuted 5,552 provincial statute violations.

Delay – Jordan

This year the PPS continued to address 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.)*

Since Jordan and as of the end of the 2018-2019 fiscal year, 28 delay applications were initiated by defence. Of those, 19 were dismissed; three were withdrawn; two were stayed for reasons unrelated to delay; and four have been granted. It should be noted that no new delay applications were brought in the last fiscal year and I am very pleased that our Crown Attorneys continue to be vigilant regarding delay.

This year, in response to Jordan, our Dartmouth office piloted an intake team consisting of five Crown Attorneys and a legal assistant to speed up the processing of cases. The team conducts all arraignment days in Dartmouth Provincial Court performing tasks which include:

- A rigorous assessment of realistic prospect of conviction on all charges;
- Contact with complainants who appear to be hostile/recanting to assess whether charges have a realistic prospect of conviction;
- Direction to police for investigatory follow-up;
- Meaningful communication with defence counsel about possible early resolution;
- Where resolution is not possible, having discussions with defence counsel about possible admissions being made that could reduce the time set aside for trial;
- Reviewing witness lists to determine which witnesses may be required for trial.

The result has been significantly reduced wait times for trial dates. Waits have been reduced from one year to two to three months. If resources allow, the PPS will make this pilot project a permanent model in the Dartmouth office and may potentially implement the same model in Halifax.

Another tool to help combat delay is at the disposal of the Director of Public Prosecutions. Preferring a direct indictment under section 577 of the Criminal Code waives the preliminary inquiry and sends the accused directly to trial. Prior to Jordan this was used sparingly. But use has increased where delay threatens the accused's right to be tried within a reasonable time. Over the past year the DPP has preferred 25 direct indictments, an increase of 15 over the previous year.

Criminal Justice Transformation Group

The PPS continues to be an active partner in the provincial government's Criminal Justice Transformation Group. The focus for the past year has been on the increasing number of individuals on remand and specifically, the over-representation of individuals from marginalized communities.

Prosecution Policy – Fair Treatment of Indigenous Peoples

This year the Public Prosecution Service developed a new comprehensive policy – *The Fair Treatment of Indigenous Peoples in Criminal Prosecutions in Nova Scotia* – to guide Nova Scotia Crown attorneys when conducting criminal prosecutions involving Indigenous peoples.

The Supreme Court of Canada has recognized the unique history of Indigenous peoples and their treatment by the criminal justice system in landmark cases *R. v. Gladue* and *R. v. Ipeelee*. As well, the Criminal Code clearly states that an Indigenous offender's unique circumstances must be considered in order to apply a fair sentence.

As Crown attorneys prepare prosecutions, the policy provides them with specific step-by-step direction as they consider unique background factors contributing to an Indigenous person's contact with the criminal justice system both as accused persons and as victims. Crown attorneys must maintain a flexible and open approach to criminal prosecutions arising in the Indigenous community. The policy also recognizes the emphasis placed by Indigenous peoples on rehabilitation, community healing and community-based penalties.

Before finalizing the policy, the PPS consulted with several Mi'kmaq lawyers familiar with the criminal justice system. The policy was presented to Crown attorneys at the 2018 fall educational conference.

Enhanced Prosecution Model for Sexual Offences

The enhanced prosecution model established last year for offences of sexual violence continues to evolve and has become invaluable in prosecuting these difficult cases. Under this model, two dedicated Crown attorneys provide 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. They provide training to Crowns, police, women's advocacy groups and other special interest groups. They also provide in-court support as necessary to Crown attorneys.

Over the past year, in addition to delivering to Crown attorneys an outstanding conference on various aspects of sexual violence, these two Crown attorneys have also taken on their own caseload.

Case Management

This year the PPS completed an assessment of an existing case management system offered to us by another jurisdiction. Unfortunately, the system was not compatible with existing platforms. The PPS has now begun work with Internal Services to develop a case management system that can be built using existing technologies internal to and supported by ICTS.

Additionally, our efforts to digitize PPS work product overall are progressing and the implementation of electronic transfer of disclosure between partners and parties will yield significant cost and time savings.

Education and Training

As usual, training and education was a major priority for the PPS this year. The PPS held a spring conference devoted largely to cannabis legislation and drug impaired driving in anticipation of the legalization of cannabis in the fall of 2018. The PPS also held a 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.

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, 2018, to March 31, 2019, 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, 2018, to March 31, 2019, 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, 2018, to March 31, 2019, 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 the 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, 2019, there were 95 Crown attorneys and 11 managers employed by the Public Prosecution Service. They were assisted in their duties by 70 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.

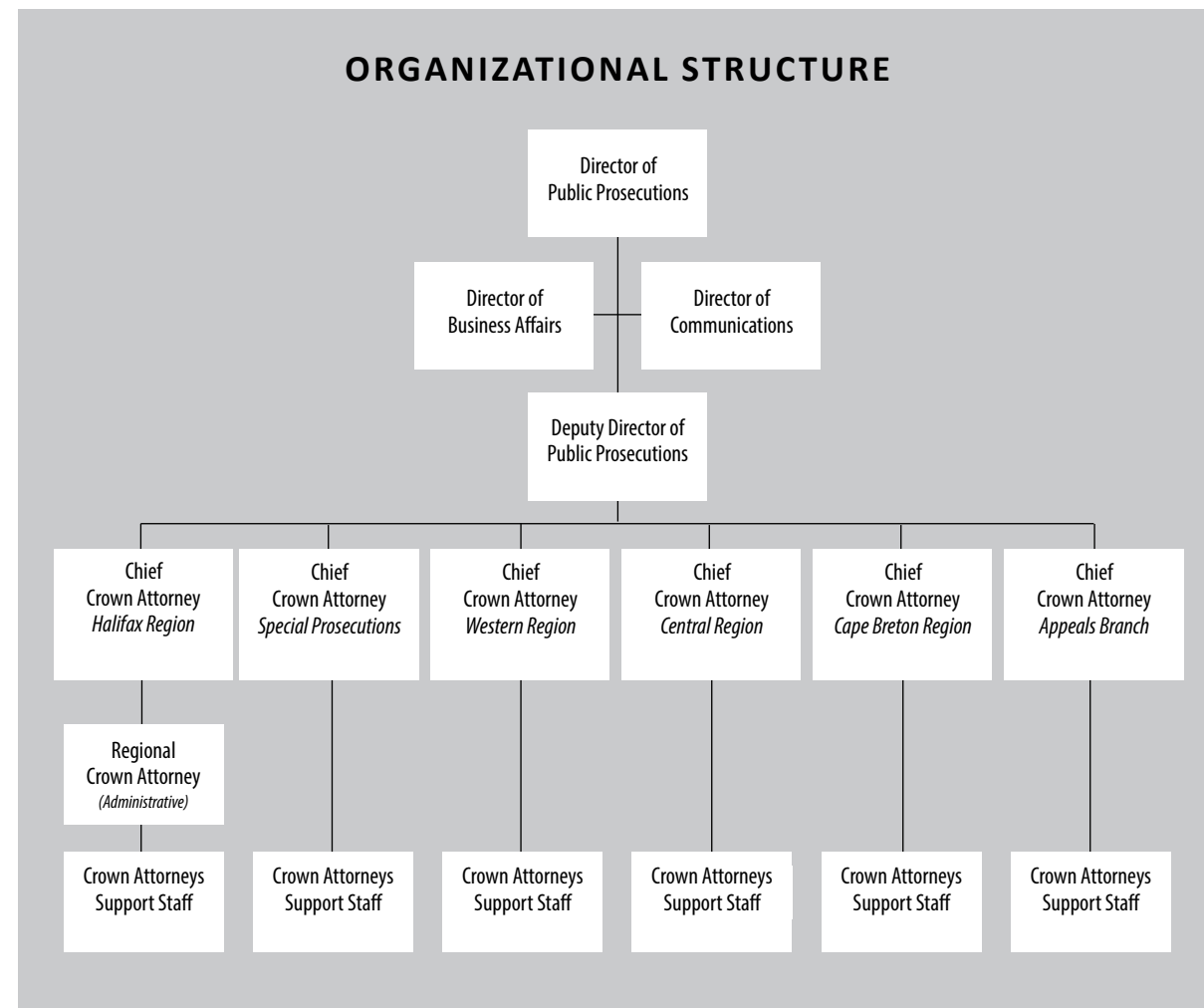
Appeals Branch

The Appeals Branch is responsible for conducting all criminal and 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

For the period April 1, 2018, to March 31, 2019, the PPS received 11 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 2018–2019

OFFENCE CATEGORIES	HALIFAX	DARTMOUTH	AMHERST	KENTVILLE	BRIDGEWATER	PICTOU
Homicide	2	2	0	0	0	1
Attempted Murder	2	3	0	0	2	0
Robbery	76	60	1	5	4	3
Sexual Assault	90	86	17	49	45	25
Other Sexual Offences	127	78	11	61	31	38
Major Assault	511	392	55	96	58	95
Common Assault	860	555	141	282	146	168
Uttering Threats	481	343	83	142	99	113
Criminal Harassment	52	62	2	14	12	5
Other Crimes Against a Person	241	250	37	52	56	28
Theft of a Motor Vehicle	39	23	12	23	11	7
Theft	1,296	615	186	179	78	88
Break and Enter	184	103	130	49	42	23
Fraud	331	456	75	102	21	69
Mischief	338	268	168	120	100	83
Possession of Stolen Property	1,463	779	75	85	29	37
Other Property Crimes	47	46	24	26	13	4
Failure to Attend Court	212	124	27	20	11	16
Breach of Probation	2,078	1,328	61	169	188	91
Unlawfully at Large	44	120	0	3	1	1
Failure to Comply with Order	2,566	1,503	329	525	367	338
Other Administration of Justice	259	131	37	40	33	26
Weapons Offences	503	745	119	106	58	84
Prostitution	29	4	0	8	0	7
Disturbing the Peace	68	24	14	20	11	3
Residual Criminal Code	137	74	121	24	6	20
Impaired Driving	484	532	92	234	133	131
Other Criminal Code Traffic	130	117	31	57	34	29
TOTAL	12,650	8,823	1,848	2,491	1,589	1,533

APPENDIX A (continued)
CRIMINAL CODE CHARGES IN PROVINCIAL COURT
by Offence Category and Judicial Centre 2018–2019

OFFENCE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide	2	1	0	0	0	0	8
Attempted Murder	0	1	5	0	18	6	37
Robbery	11	17	7	4	14	4	206
Sexual Assault	40	52	7	55	17	19	502
Other Sexual Offences	39	39	15	35	54	22	550
Major Assault	253	127	52	88	113	55	1,895
Common Assault	472	240	84	139	193	127	3,407
Uttering Threats	323	145	41	85	126	100	2,081
Criminal Harassment	12	8	10	5	10	6	198
Other Crimes Against a Person	96	82	17	22	107	27	1,015
Theft of a Motor Vehicle	30	21	3	4	18	4	195
Theft	312	229	12	65	83	89	3,282
Break and Enter	70	30	15	27	29	52	754
Fraud	155	47	12	12	73	42	1,395
Mischief	239	117	32	59	97	71	1,692
Possession of Stolen Property	112	217	12	16	38	99	2,962
Other Property Crimes	16	17	0	1	10	20	224
Failure to Attend Court	154	53	0	5	12	10	664
Breach of Probation	622	207	63	64	164	151	5,186
Unlawfully at Large	42	5	0	0	9	4	229
Failure to Comply with Order	2,260	736	148	331	358	459	9,920
Other Administration of Justice	127	84	22	24	61	34	878
Weapons Offences	166	248	24	33	93	208	2,387
Prostitution	18	4	0	0	0	0	70
Disturbing the Peace	10	11	5	11	13	6	196
Residual Criminal Code	35	24	8	7	19	10	485
Impaired Driving	294	268	124	134	203	56	2,685
Other Criminal Code Traffic	70	46	10	16	28	43	611
TOTAL	5,980	3,076	728	1,242	1,960	1,724	43,644

APPENDIX B
PROVINCIAL STATUTE CASES
by Judicial Centre, 2018–2019
 (only cases with prosecutor assigned)

	MOTOR VEHICLE ACT	LIQUOR CONTROL ACT	OTHER PROVINCIAL STATUTES	TOTAL
HALIFAX	2,079	109	216	2,404
DARTMOUTH	40	0	87	127
AMHERST	132	5	61	198
KENTVILLE	303	18	68	389
BRIDGEWATER	230	10	27	267
PICTOU	180	12	11	203
SYDNEY	273	18	58	349
TRURO	405	4	64	473
ANTIGONISH	102	23	36	161
PORT HAWKESBURY	126	8	22	156
YARMOUTH	325	24	83	432
DIGBY	328	3	62	393
TOTAL	4,523	234	795	5,552

APPENDIX C
APPEALS STATISTICS
2018–2019

The following statistics relate to the operations of the Appeals Branch covering the period April 1, 2018, to March 31, 2019.

The Branch participated in 22 appeals heard by the Court of Appeal. Of this number:

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

Of the appeals initiated by the Crown:

- 2 dealt with acquittal
- 2 dealt with sentence

Of the 18 appeals initiated by offenders:

- 15 dealt with conviction
- 3 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 two were argued by a self-represented inmate.

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

The Appeals Branch participated in 160 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 10 recommendations for appeal from trial Crown Attorneys, of which four were approved for appeal. Two of the four approved for appeal were later abandoned.

In the Supreme Court of Canada, the Appeals Branch filed two notices of appeal and received a notice of appeal from an offender. The Branch received decisions in all three applications for leave to appeal (one Crown application allowed). The Branch participated in one full hearing before the Court (Crown appeal allowed in part).

APPENDIX D BUDGET RESOURCES

PROGRAM & SERVICE AREA	2018-2019 ESTIMATE (\$ thousands)	2018-2019 ACTUAL (\$ thousands)	2018-2019 VARIANCE (\$ thousands)
GROSS DEPARTMENTAL EXPENSES			
Head Office	2,866	3,337	471
Cape Breton Region	3,552	3,557	5
Central Region	3,051	2,951	(100)
Halifax Region	8,263	8,969	706
Western Region	2,988	3,449	461
Special Prosecutions	2,345	2,307	(38)
Appeals	1,286	1,161	(125)
TOTAL GROSS DEPARTMENTAL EXPENSES	24,351	25,731	1,380
ADDITIONAL INFORMATION			
Ordinary Revenue	0	0	0
Fees and Other Charges	0	0	0
Ordinary Recoveries	293	462	169
TOTAL: REVENUE, FEES AND RECOVERIES	293	462	169
TCA Purchase Requirements	0	0	0
Provincial Funded Staff (Full Time Employees)	173.8	174.4	0

Departmental Expenses Variance Explanation:

Pressure due to higher than anticipated salary and operating costs. It is also related to increased expenditures primarily witness and expert witness fees, travel costs, transcription costs, appeal costs and membership dues.

Revenue, Fees and Recoveries Variance Explanation:

Increase in federal recoveries for a secondment to the PPSC.

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.

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).*

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;

- (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 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
