



NOVA SCOTIA
PUBLIC
PROSECUTION
SERVICE

ANNUAL REPORT

FOR THE PERIOD APRIL 1, 2019 TO MARCH 31, 2020

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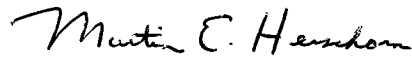
Public Prosecution Service Annual Report
for the period April 1, 2019 to March 31, 2020
Public Prosecution Service
September 2020

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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, 2019, to March 31, 2020.



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 2019–2020

This has been a challenging year for the Nova Scotia Public Prosecution Service. The PPS experienced a Crown attorney strike in the fall and ended the year rising to the challenge of delivering prosecutorial services in the face of a global pandemic.

Court Activity

At the same time, our 101 Crown attorneys across the province dealt with 43,777 new criminal charges and prosecuted 6,626 new provincial statute violations.

Crown Attorney Labour Disruption

On October 16, 2019, without any prior consultation with my office and as the Nova Scotia Crown Attorneys Association (NSCAA) was in the process of negotiating its latest contract, the Government introduced Bill 203, the Crown Attorneys' Labour Relations Act. The legislation would have removed one of the indicators of institutional independence, i.e. the availability of binding arbitration as the final dispute resolution mechanism respecting Crown attorneys' compensation, something that had been in place for nearly 20 years.

I appeared before the legislature's Law Amendments Committee to voice my opposition to this Bill and to explain my view that this legislation was not in the best interest of a statutorily created, independent provincial prosecution service which, up until the introduction of this Bill, had enjoyed an extended period of positive labour relations. The Bill was subsequently enacted, but not proclaimed.

On October 23, many Crown attorneys walked off the job and took to the picket lines for only the second time ever in the history of the PPS. The NSCAA committed to ensuring that court cases involving personal violence such as homicides and sexual assault would not be jeopardized, and Crowns assigned to those cases were in court. For other matters, the PPS contracted with private law firms to cover courts. In most cases adjournments were sought.

Following a positive intervention by the Premier, the negotiating parties returned to the bargaining table and the strike ended. A four-year agreement was reached in December. As part of that agreement, Bill 203 was repealed.

Delay

The PPS continues to be vigilant when it comes to delay. We were able to expand the intake team in Dartmouth Provincial Court. This model continues to reduce wait times for trials from one year to as little as two to three months. When resources permit, the PPS will apply this model in other provincial courts.

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 over-representation of individuals from marginalized communities on remand in provincial jails awaiting preliminary inquiry or trial.

Equity and Diversity

Just as last year we introduced a new comprehensive policy – The Fair Treatment of Indigenous Peoples in Criminal Prosecutions in Nova Scotia – this year our Equity and Diversity Committee began work on a policy to address the fair treatment of African Nova Scotians, other visible minorities and racialized communities in criminal prosecutions. This policy will hopefully be finalized in 2020.

Crown Attorney Dedicated to Human Trafficking Offences

Late this year we received approval to hire a Crown attorney dedicated to the prosecution of human trafficking offences. That Crown will also provide training on human trafficking issues to other Crown attorneys and to police agencies. The new Crown is expected to be in place this summer.

Internal Reorganization

This year the divisions of Appeals and Special Prosecutions were merged under one Chief Crown Attorney. The Office of Special Initiatives was created to propel the PPS forward in best business practices and technology, including case management technology and digital evidence management. Special Initiatives is headed by a Chief Crown Attorney.

Continuing Legal Education

As usual, training and education was a major priority for the PPS this year. The PPS held a fall conference for three days of education on a variety of criminal law topics. Additionally, the PPS held a one-day conference on sexual violence.

Pandemic Response

As the year was ending, the Covid-19 global pandemic caused a state of emergency being declared in Nova Scotia and much of the work force began to work from home. Our Crown attorneys and other court room participants had to conduct matters by phone or video. The immediate focus at the outset was to reduce the numbers of accused on remand to avoid an outbreak of Covid-19 in the jails and to adjourn matters where possible to a date when a physical return to the court room is likely.

I am proud to say our Crown attorneys and their support staff worked long hard hours in the interests of public health and safety while at the same time maintaining the integrity and viability of criminal prosecutions.

Martin E. Herschorn, QC
Director of Public Prosecution

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, 2019, to March 31, 2020, 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, 2019, to March 31, 2020, 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, 2019, to March 31, 2020, 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, 2020, there were 101 Crown attorneys and 11 managers employed by the Public Prosecution Service. They were assisted in their duties by 67.9 support staff.

ORGANIZATION DESCRIPTION

Head Office

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 the newly formed Office of Special Initiatives plus their support staff.

Regional Offices

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.

Appeals & Special Prosecutions

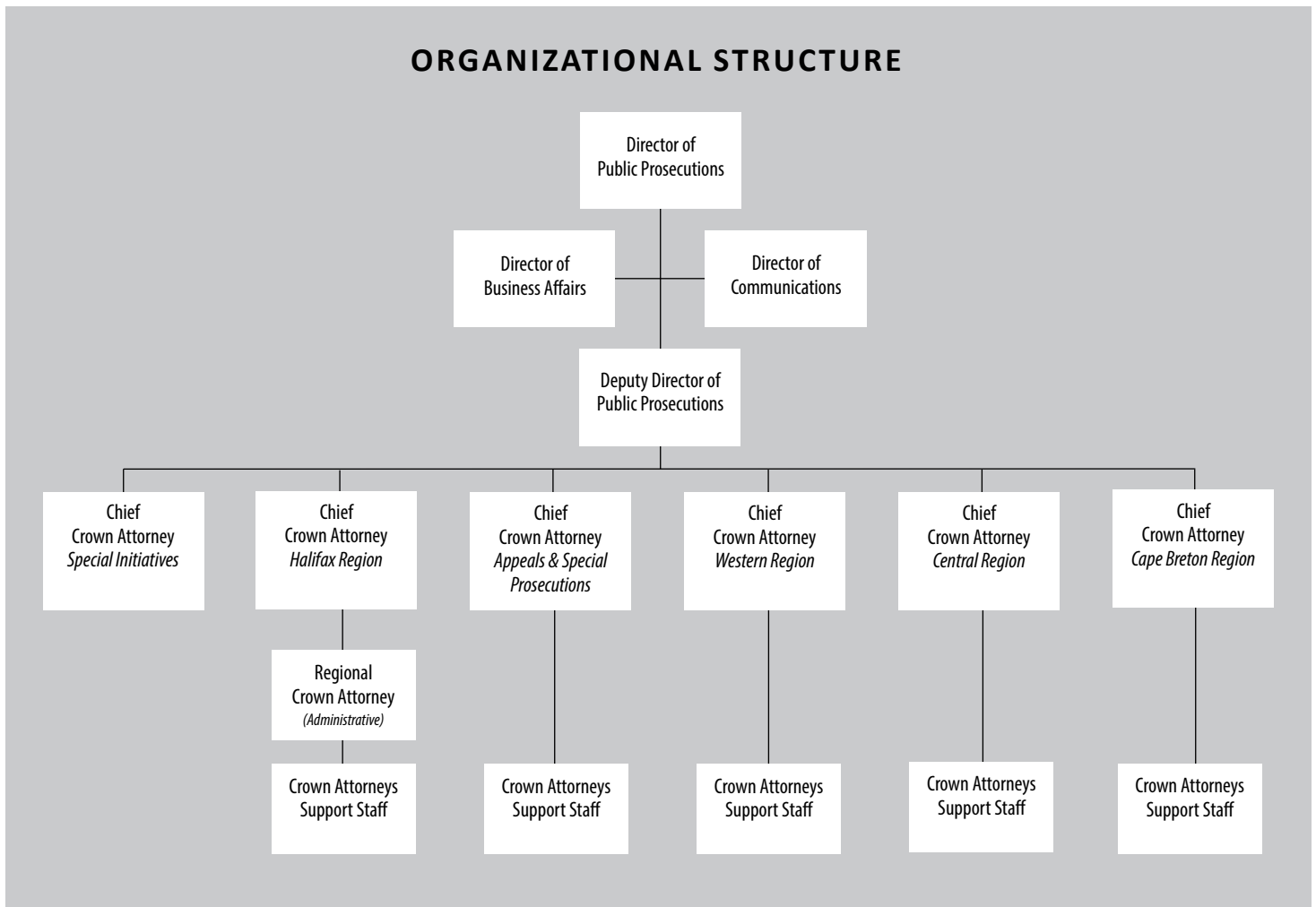
Appeals is responsible for conducting all criminal and quasicriminal appeals to which the Attorney General is a party in the Nova Scotia Court of Appeal and the Supreme Court of Canada. Appeals Crown attorneys also conduct all proceedings required before an appeal is heard by the court. These proceedings include Chambers motions in the Court of Appeal and applications for leave to appeal in the Supreme Court of Canada.

Special Prosecutions focuses on commercial crime, cybercrime, fraud, extraordinary, unusual or historical sexual assaults, charges under the province's Occupational Health and Safety Act, environmental prosecutions, charges under the province's Revenue Act and Aboriginal law. Special Prosecutions Crown attorneys also prosecute complex major cases including those which may involve dangerous offender applications as well as cases that present conflicts for regional offices, or where a law enforcement officer is the subject of a police investigation or a prosecution.

Freedom of Information and Protection of Privacy Act

For the period April 1, 2019, to March 31, 2020, the PPS received 14 applications for records under this Act.

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



APPENDICES

All Criminal Code and provincial statute statistics 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 2019–2020

OFFENCE CATEGORIES	HALIFAX	DARTMOUTH	AMHERST	KENTVILLE	BRIDGEWATER	PICTOU
Homicide	5	2	0	0	0	0
Attempted Murder	18	41	4	3	1	0
Robbery	101	39	0	6	9	3
Sexual Assault	130	81	26	60	18	29
Other Sexual Offences	128	114	17	78	30	25
Major Assault	556	454	58	142	71	99
Common Assault	779	584	147	342	157	208
Uttering Threats	462	439	64	162	87	120
Criminal Harassment	68	47	7	11	2	8
Other Crimes Against a Person	185	101	24	32	17	28
Theft of a Motor Vehicle	105	41	14	10	15	17
Theft	1,186	538	92	168	59	76
Break and Enter	169	114	50	42	51	42
Fraud	688	189	59	87	50	135
Mischief	391	272	81	150	45	140
Possession of Stolen Property	1,416	612	85	78	35	75
Other Property Crimes	68	18	38	17	16	4
Failure to Attend Court	223	136	22	28	11	18
Breach of Probation	1,926	1,026	102	123	92	123
Unlawfully at Large	27	71	2	1	3	5
Failure to Comply with Order	2,986	1,648	473	539	281	408
Other Administration of Justice	244	179	58	62	19	29
Weapons Offences	678	495	69	136	67	107
Prostitution	2	1	0	0	0	0
Disturbing the Peace	62	11	11	9	5	8
Residual Criminal Code	77	99	26	39	36	44
Impaired Driving	862	934	128	352	191	172
Other Criminal Code Traffic	7	10	0	2	4	1
TOTAL	13,549	8,296	1,657	2,679	1,372	1,924

APPENDIX A (continued)
CRIMINAL CODE CHARGES IN PROVINCIAL COURT
by Offence Category and Judicial Centre 2019–2020

OFFENCE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide	2	0	0	1	0	0	10
Attempted Murder	6	1	0	5	0	1	80
Robbery	27	7	3	0	3	1	199
Sexual Assault	50	68	23	53	44	21	603
Other Sexual Offences	71	67	13	87	67	25	722
Major Assault	221	157	27	75	102	51	2,013
Common Assault	439	259	72	157	212	130	3,486
Uttering Threats	312	146	40	81	124	76	2,113
Criminal Harassment	20	6	3	2	4	7	185
Other Crimes Against a Person	44	46	14	20	22	12	545
Theft of a Motor Vehicle	11	21	6	12	12	3	267
Theft	247	145	40	44	96	69	2,760
Break and Enter	58	65	12	21	22	31	677
Fraud	77	48	7	4	36	30	1,410
Mischief	290	124	44	60	95	59	1,751
Possession of Stolen Property	165	126	26	13	35	29	2,695
Other Property Crimes	18	10	1	2	3	3	198
Failure to Attend Court	128	28	11	8	8	6	627
Breach of Probation	653	243	71	99	176	90	4,724
Unlawfully at Large	3	4	5	0	2	6	129
Failure to Comply with Order	2,596	613	159	322	392	306	10,723
Other Administration of Justice	120	52	12	23	59	31	888
Weapons Offences	185	113	40	67	117	71	2,145
Prostitution	0	0	0	0	0	0	3
Disturbing the Peace	17	8	3	1	7	5	147
Residual Criminal Code	52	14	10	12	37	24	470
Impaired Driving	391	371	135	226	252	147	4,161
Other Criminal Code Traffic	6	3	1	8	0	4	46
TOTAL	6,209	2,745	778	1,403	1,927	1,238	43,777

APPENDIX B
PROVINCIAL STATUTE CASES
by Judicial Centre, 2019–2020
 (only cases with prosecutor assigned)

	MOTOR VEHICLE ACT	LIQUOR CONTROL ACT	OTHER PROVINCIAL STATUTES	TOTAL
HALIFAX	3,056	149	305	3,150
DARTMOUTH	30	0	175	205
AMHERST	134	2	50	186
KENTVILLE	232	28	81	341
BRIDGEWATER	178	4	70	252
PICTOU	171	11	21	203
SYDNEY	284	13	44	341
TRURO	458	8	74	540
ANTIGONISH	101	46	10	157
PORT HAWKESBURY	129	7	26	162
YARMOUTH	232	25	75	332
DIGBY	293	5	99	397
TOTAL	5,298	298	1,030	6,626

1. Data includes all charges laid on an Information or Summary Offence Ticket (SOT) between April 12, 2019 and March 31, 2020 with a prosecutor assigned.
2. The count for provincial statute offences includes those which were handled by the summary offence court.

APPENDIX C

APPEALS STATISTICS

2019–2020

The following are statistics related to Appeals covering the period April 1, 2019 to March 31, 2020.

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

- 3 were initiated by the Crown
- 19 were initiated by offenders

Of the appeals initiated by the Crown:

- 1 dealt with acquittal
- 2 dealt with sentence

Of the 19 appeals initiated by offenders:

- 17 dealt with conviction
- 2 dealt with sentence

Three of these 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.

PPS Appeals Crown attorneys were involved in three appeals which were abandoned, quashed or dismissed without a full hearing in the Court of Appeal. All three had been initiated by the Crown.

PPS Appeals Crown attorneys participated in 158 Chambers motions heard by a single Judge of the Court of Appeal. Chambers motions include motions for a hearing date and the filing of the 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).

PPS Appeals received 12 recommendations for appeal from trial Crown attorneys, of which four were approved for appeal. One of the four approved for appeal was later abandoned.

In the Supreme Court of Canada, PPS Appeals received two notices of appeal from an offender. Decisions were received in both applications for leave to appeal (both dismissed). PPS Appeals participated in no hearings before the Court.

APPENDIX D BUDGET RESOURCES

PROGRAM & SERVICE AREA	2019–2020 ESTIMATE (\$ thousands)	2019–2020 ACTUAL (\$ thousands)	2019–2020 VARIANCE (\$ thousands)
DEPARTMENTAL EXPENSES			
Head Office	3,221	3,655	434
Cape Breton Region	3,526	3,684	158
Central Region	3,046	2,936	(110)
Halifax Region	8,296	8,982	686
Western Region	2,929	3,626	697
Special Prosecutions	2,319	2,242	(77)
Appeals	1,256	1,315	59
TOTAL DEPARTMENTAL EXPENSES	24,593	26,440	1,847
ADDITIONAL INFORMATION			
Ordinary Revenue	0	0	0
Fees and Other Charges	0	0	0
Ordinary Recoveries	293	438	145
TOTAL: REVENUE, FEES AND RECOVERIES	293	438	145
TCA Purchase Requirements	0	0	0
Provincial Funded Staff (Full Time Employees)	176.8	177.9	1.1

Departmental Expenses Variance Explanation:

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

An additional pressure includes the salary and operating costs related to the Dechamp prosecution.

Revenue, Fees and Recoveries Variance Explanation:

Increase in Municipal Recoveries related to the prosecution of Summary Offence Tickets.

Provincial Funded Staff (FTEs) Variance Explanation:

FTEs from Youth Opportunity Initiative Program within the PSC.

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;
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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
