



**NOVA SCOTIA
PUBLIC
PROSECUTION
SERVICE**

ANNUAL REPORT

FOR THE PERIOD APRIL 1, 2020 TO MARCH 31, 2021

© Crown copyright, Province of Nova Scotia, 2021

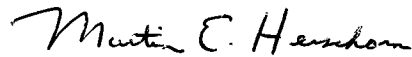
Public Prosecution Service Annual Report
for the period April 1, 2020 to March 31, 2021
Public Prosecution Service
September 2021

ISBN 978-1-77448-255-1

Honourable Keith Bain
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, 2020, to March 31, 2021.



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 2020–2021	3
Measuring Our Performance	6
The Role of the Attorney General	8
The Role of the Director of Public Prosecutions	9
The Role of the Crown Attorney	10
Organization Description	12
Appendix A: Criminal Code Charges 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	22

THE MANDATE OF THE PUBLIC PROSECUTION SERVICE

In Nova Scotia all prosecutions for criminal and provincial offences are brought in the name of the Crown, 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 2020–2021

I am pleased to present this Annual Report of the Nova Scotia Public Prosecution Service for 2020-2021.

The Nova Scotia Public Prosecution Service experienced a challenging year in the delivery of prosecutorial services amid the global pandemic. Initially, our Crown attorneys were focused on reducing the numbers of accused individuals 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 was likely.

However, a physical return to the court room gave way mostly to virtual appearances either by telephone or by video conference. For most of the year many of our Crown attorneys worked from home and attended court virtually. Our support staff also worked from home where possible.

I commend our Crown attorneys and support staff for their remarkable commitment and outstanding performance in the delivery of prosecutorial services this year in the face of unprecedented and extraordinarily difficult circumstances

In a year that saw the province on lockdown for much of the time and many Nova Scotians working from home, the number of new Criminal Code charges dropped to 39,879 from 43,777 the year before. The number of new regulatory offences dropped significantly from 6,626 in 2019-2020 to 2,865. One possible explanation for this is that hearings were not being held and courts were not collecting fines.

The year's new charges, the outstanding cases postponed to allow for in-person hearings, and the cumbersome nature of virtual appearances all combined with an ever-increasing element of legal complexity in criminal law added up to an increased workload. Management received reports of our more senior Crown attorneys experiencing burnout and our more junior Crown attorneys feeling overwhelmed. We have seen several early retirements and a number of medical leaves as a result.

The Department of Justice sought temporary premises to be able to continue with Halifax area jury trials in a space where social distancing is possible. This facility, located in Burnside, was attained and some modifications are being made. However, the Crown's request for adequate space to meet with witnesses was unable to be accommodated. The PPS is anticipating future difficulties as a result.

Digital evidence management, including the need to be ready for the increased police use of body-worn cameras, and the continuing evolution of e-disclosure are essential as the criminal justice system moves forward. But our efforts to advance these initiatives, as identified in the Chisholm Report of May 2018, have been frustrated. Despite encouragement from the Attorney General to advance solutions, the government has been unwilling to respond to repeated requests for funding, either within the regular budgetary process, or by a Memorandum to Cabinet (MEC). Overall, the lack of movement on digital evidence management is a looming crisis for the PPS and the Nova Scotia criminal justice system in the face of vast increases in the volume of digital evidence resulting from criminal police investigations.

This year a new managerial position joined the executive team. Following a model in place in other large law firms, the position of Director of Legal Support Services was added to oversee all support staff within the 16 PPS offices. This will ensure consistent Service-wide business practices and effectively address support staff training needs across the province.

Additional provincial funding saw the PPS hire a Crown attorney dedicated to human trafficking prosecutions. This Crown attorney is focused both on prosecuting these offences and on training Crown attorneys and police in this growing area of criminal activity.

The PPS has been frustrated by the ongoing reluctance of the provincial government to provide the Service with federal "Guns and Gangs" funding earmarked for the prosecution function. These cases are often complex and require an appropriate level of resourcing for effective prosecutions.

The PPS is also frustrated by the long outstanding lack of an independent salary-setting mechanism for our managers. In the absence of progress PPS managers have filed a complaint with the Department of Labour.

The PPS's Equity & Diversity Committee has made considerable progress this year. Among the accomplishments:

- A *Policy for Fair Treatment of African Nova Scotians in Criminal Prosecutions (FTANS)* is in the final stages of development;
- A process for internal expert consultation on criminal prosecution cases involving racial justice issues was developed; and
- Training on cultural competency has been delivered to PPS staff and questions for PPS hiring processes were revamped.

With the work of the Criminal Justice Transformation Group stalled during the pandemic, the PPS notes the need is growing to change and modernize the criminal justice system to address a number of issues. Among these issues are: equipping court facilities with appropriate technology; more attention to the rights of victims; and the increasing number of jury verdicts being overturned by the Court of Appeal resulting in retrials having to be mounted years after the events which gave rise to the charges.

Martin E. Herschorn, QC
Director of Public Prosecutions

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?
<p>Provide Crown representation in the development of criminal law and criminal prosecution policy</p>	<p>That the PPS provides input into the development of criminal law and criminal prosecution policy from both an administrative and a front-line perspective.</p>	<p>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 Criminal Justice Transformation Group 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.</p>	<p>The existing level of contribution to policy development should be maintained and enhanced.</p>

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, 2020, to March 31, 2021, 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, 2020, to March 31, 2021, 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, 2020, to March 31, 2021, 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.

By virtue of section 6B of the *Public Prosecutions Act*, the Director of Public Prosecutions has the prerogative to exceed the fiscal year's budget appropriation by an amount of not more than 5% in the case of an extraordinary prosecution. This is done when, in the opinion of the DPP, the prosecution is of such magnitude and importance that the prosecution should be undertaken notwithstanding the lack of financial resources.

The DPP made that decision this year in the face of the murder case against Tyrell Dechamp. Mr. Dechamp was accused of two murders and an attempted murder in three different transactions

taking place in April 2016. He was arraigned on these charges on December 6, 2018 beginning a complex multi-year prosecutorial process. This required three experienced prosecutors to be taken out of the rotation to work on the case. This, in turn, necessitated replacing those prosecutors with term Crown attorneys.

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, 2021, there were 98 Crown attorneys and 12 managers employed by the Public Prosecution Service. They were assisted in their duties by 71 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 Senior Director of Strategic Communications, the Director of Business Affairs, the Director of Legal Support Services, and the 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 pre charge legal advice and conduct preliminary inquiries and trials before the various trial courts of the province. A chief Crown attorney also heads Appeals and Special Prosecutions.

Appeals & Special Prosecutions

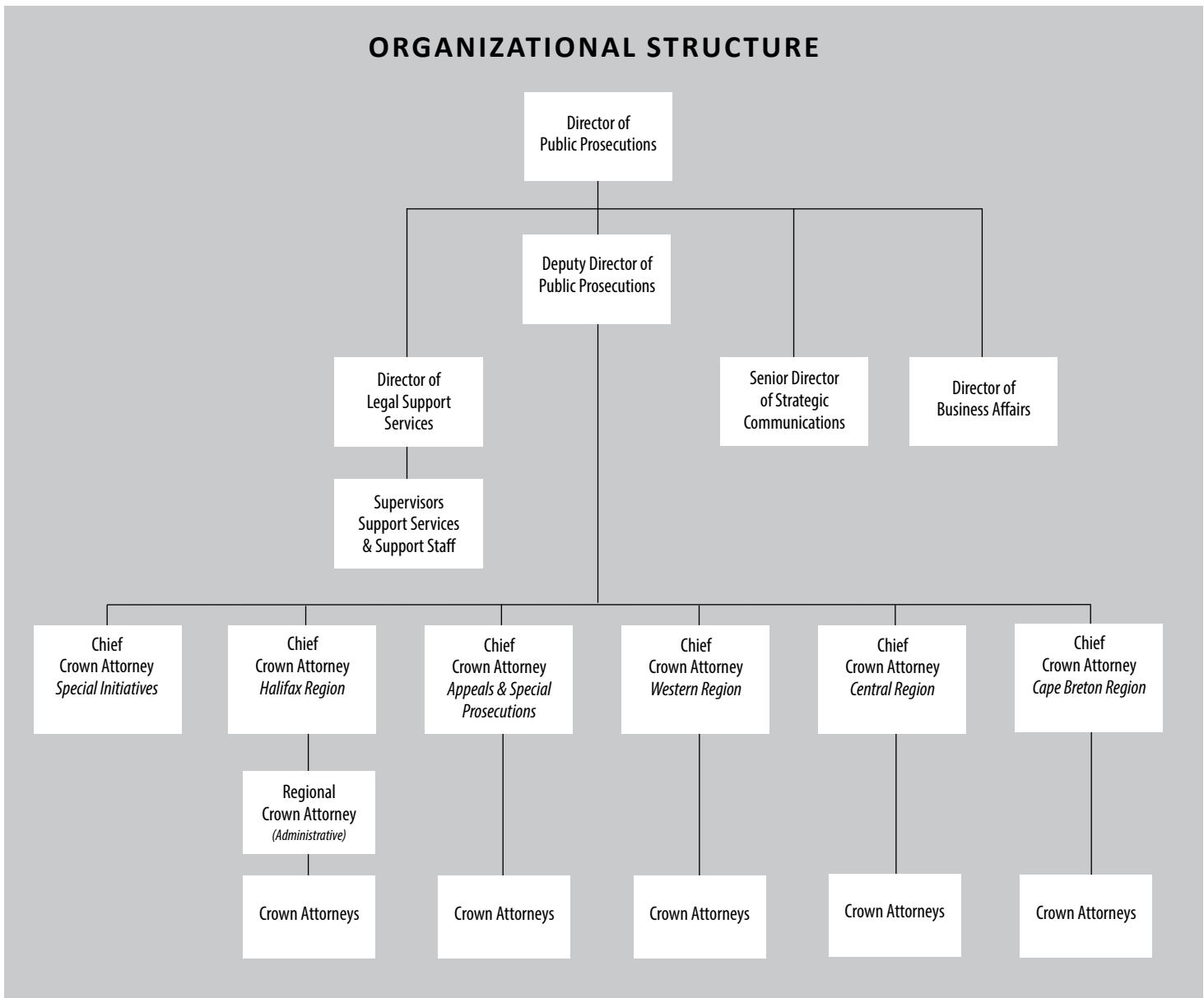
Appeals is responsible for conducting all criminal and quasi criminal appeals to which the Attorney General is a party in the Nova Scotia Court of Appeal and the Supreme Court of Canada. Appeals also conducts all proceedings required before an appeal is heard by the court. These proceedings include Chambers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

Special Prosecutions focuses on commercial crime, cybercrime, fraud, extraordinary, unusual or historical sexual assaults, charges under the province's *Revenue Act*, *Occupational Health and Safety Act*, *Environment 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.

Freedom of Information and Protection of Privacy Act

For the period April 1, 2020, to March 31, 2021, the PPS received 17 applications for records under this Act.

The organizational structure of the Public Prosecution Service is illustrated by



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 2020–2021

OFFENCE CATEGORIES	HALIFAX	DARTMOUTH	AMHERST	KENTVILLE	BRIDGEWATER	PICTOU
Homicide	16	2	0	0	0	0
Attempted Murder	12	16	1	1	4	5
Robbery	88	59	2	5	2	0
Sexual Assault	97	70	20	53	17	40
Other Sexual Offences	125	127	22	25	37	35
Major Assault	597	508	60	129	74	117
Common Assault	704	574	137	311	149	212
Uttering Threats	494	472	90	157	69	140
Criminal Harassment	79	82	6	12	2	5
Other Crimes Against a Person	123	83	27	25	13	62
Theft of a Motor Vehicle	52	28	11	17	10	4
Theft	720	490	72	87	41	53
Break and Enter	217	170	55	39	26	41
Fraud	501	213	25	35	17	14
Mischief	325	270	104	131	87	140
Possession of Stolen Property	945	533	38	63	23	53
Other Property Crimes	51	26	9	18	2	5
Failure to Attend Court	214	136	10	19	5	18
Breach of Probation	1,254	858	80	100	70	116
Unlawfully at Large	2	11	0	2	1	2
Failure to Comply with Order	2,616	1,814	403	400	232	290
Other Administration of Justice	161	113	58	60	20	38
Weapons Offences	711	751	86	134	98	147
Prostitution	0	0	0	0	0	0
Disturbing the Peace	51	27	6	5	16	5
Residual Criminal Code	66	60	18	26	7	13
Impaired Driving	518	637	109	236	140	158
Other Criminal Code Traffic	160	192	36	71	20	54
TOTAL	10,899	8,322	1,485	2,161	1,182	1,767

APPENDIX A (continued)
CRIMINAL CODE CHARGES IN PROVINCIAL COURT
by Offence Category and Judicial Centre 2020–2021

OFFENCE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide	4	0	0	0	2	0	24
Attempted Murder	4	4	1	3	1	4	56
Robbery	27	10	0	0	5	0	198
Sexual Assault	56	46	24	44	38	23	528
Other Sexual Offences	83	77	36	84	45	31	727
Major Assault	276	154	34	82	94	94	2,219
Common Assault	471	247	94	141	167	131	3,338
Uttering Threats	358	178	52	79	195	95	2,379
Criminal Harassment	13	14	3	4	3	15	238
Other Crimes Against a Person	47	54	18	21	22	21	516
Theft of a Motor Vehicle	25	5	3	6	8	5	174
Theft	143	105	28	33	45	18	1,835
Break and Enter	87	118	16	24	77	27	897
Fraud	48	60	7	7	9	33	969
Mischief	311	139	36	59	125	72	1,799
Possession of Stolen Property	144	106	14	9	23	24	1,975
Other Property Crimes	22	9	1	1	12	6	162
Failure to Attend Court	203	47	12	9	4	6	683
Breach of Probation	604	156	35	44	126	51	3,494
Unlawfully at Large	5	3	0	1	0	1	28
Failure to Comply with Order	2,510	535	138	336	387	218	9,879
Other Administration of Justice	136	60	7	30	51	31	765
Weapons Offences	346	152	31	72	120	95	2,743
Prostitution	0	0	0	0	0	0	0
Disturbing the Peace	15	6	3	11	5	1	151
Residual Criminal Code	45	71	4	7	27	15	359
Impaired Driving	297	331	82	135	141	79	2,863
Other Criminal Code Traffic	138	99	17	29	33	31	880
TOTAL	6,418	2,786	696	1,271	1,765	1,127	39,879

APPENDIX B
PROVINCIAL STATUTE CASES
by Judicial Centre, 2020–2021
 (only cases with prosecutor assigned)

	MOTOR VEHICLE ACT	LIQUOR CONTROL ACT	OTHER PROVINCIAL STATUTES	TOTAL
HALIFAX	502	8	243	753
DARTMOUTH	7	0	114	121
AMHERST	47	1	23	71
KENTVILLE	228	13	106	347
BRIDGEWATER	103	2	27	132
PICTOU	115	6	25	146
SYDNEY	221	7	66	294
TRURO	318	4	64	386
ANTIGONISH	73	1	62	136
PORT HAWKESBURY	80	3	29	112
YARMOUTH	113	13	40	166
DIGBY	159	6	36	201
TOTAL	1,966	64	835	2,865

1. Data includes all charges laid on an *Information* or *Summary Offence Ticket* (SOT) between April 12, 2020 and March 31, 2021 with a prosecutor assigned.
2. The count for provincial statute offences includes those which were handled by the summary offence court.
3. Due to the pandemic, hearings were not being held and courts were not collecting fines. This resulted in a significant reduction in numbers over the previous years.

APPENDIX C

APPEALS STATISTICS

2020–2021

The following are statistics related to appeals covering the period April 1, 2020 to March 31, 2021.

The section participated in 23 appeals heard by the Court of Appeal. Of this number:

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

Of the appeals initiated by the Crown:

- 1 dealt with acquittal
- 1 dealt with an appeal of an extraordinary remedy
- 2 dealt with sentence

Of the 19 appeals initiated by offenders:

- 18 dealt with conviction
- 1 dealt with sentence

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

The PPS was involved in one appeal that was abandoned, quashed or dismissed without a full hearing in the Court of Appeal. It had been initiated by the Crown.

The PPS participated in 150 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).

Seven recommendations for appeal were received from trial Crown attorneys. Four were approved for appeal.

With regard to the Supreme Court of Canada, the PPS received no notices of appeal from an offender. The PPS sought leave to appeal to the SCC on two matters, both of which were refused. The PPS participated in one hearing before the SCC.

APPENDIX D FINANCIAL TABLE AND VARIANCE EXPLANATION

PUBLIC PROSECUTION SERVICE	2020–2021 ESTIMATE (\$ thousands)	2020–2021 ACTUAL (\$ thousands)	2020–2021 VARIANCE (\$ thousands)
DEPARTMENTAL EXPENSES			
Head Office	3,731	3,810	79
Cape Breton Region	3,607	3,501	(106)
Central Region	3,159	3,134	(25)
Halifax Region	8,169	9,371	1,202
Western Region	2,997	3,171	174
Appeals	1,286	1,324	38
Special Prosecutions	2,070	2,078	8
TOTAL DEPARTMENTAL EXPENSES	25,019	26,389	1,370
ADDITIONAL INFORMATION			
Ordinary Revenue	0	0	0
Fees and Other Charges	0	0	0
Ordinary Recoveries	403	241	(162)
TOTAL: REVENUE, FEES AND RECOVERIES	403	241	(162)
TCA Purchase Requirements	0	0	0
Provincial Funded Staff (Full Time Employees)	177.8	180.4	2.6

Departmental Expenses Variance Explanation:

Pressure due to higher than anticipated salary costs. It is also related to increased operating costs for office rentals, transcription, appeals, library books, per diem Crown attorney fees and membership dues as well as an increase for Covid-19 related costs.

Revenue, Fees and Recoveries Variance Explanation:

Variance is due to lower than anticipated recoveries from NS Municipalities for summary offence tickets.

Provincial Funded Staff (FTEs) Variance Explanation:

Addition of FTEs for the Dechamp prosecutions and the *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;
-

- (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
