

PUBLIC PROSECUTION SERVICE

Annual Accountability Report for the Fiscal Year 2008-2009

*The statistics contained within this report have been revised as of October 6, 2009

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Accountability Statement

The accountability report of the Nova Scotia Public Prosecution Service for the year ended March 31, 2009 is prepared pursuant to the Provincial Financial Act and government policy and guidelines. These authorities require the reporting of outcomes against the Public Prosecution Service's business plan information for the fiscal year 2008-09. The reporting of the Public Prosecution Service outcomes necessarily includes estimates, judgments and opinions by the Public Prosecution Service.

We acknowledge that this accountability report is the responsibility of the Nova Scotia Public Prosecution Service. This report is, to the extent possible, a complete and accurate representation of outcomes relative to the goals and priorities set out in the Public Prosecution Service business plan for the year.

In terms of accountability, it should be noted that the Nova Scotia Public Prosecution Service was established in 1990 as the first statutorily-based independent prosecution service in Canada.

All prosecutions within the jurisdiction of the Attorney General of Nova Scotia are the responsibility of the Director of Public Prosecutions. Crown Attorneys responsible to the Director conduct prosecutions independently of the Minister. The only limitation on the operational independence of the Director permitted by the Public Prosecutions Act 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.

Martin E. Herschorn, Q.C.
Director of Public Prosecutions

Date

Message from the Director of Public Prosecutions

I am pleased to present this accountability report of the Nova Scotia Public Prosecution Service for 2008-2009.

The Service has had another busy year. Our 90 Crown Attorneys across the province dealt with 44,088 criminal charges and prosecuted 5,771 provincial statute violations.

Of chief concern in 2008-2009 was the issue of recruitment and retention of our Crown Attorneys. The PPS lost several Crown attorneys to the private sector and the federal government because of higher salaries and more attractive benefits. Recruiting lawyers with the same level of experience continues to be a challenge.

Employee recognition and wellness continued to be a focus. The second annual Long Service Awards ceremony was held. As a basis for planning a corporate wellness strategy, the PPS conducted a service-wide health risk assessment. The results will enable the PPS to plan effective wellness programs.

As part of the strategic planning process, the PPS continued with its succession planning initiative. Linked to succession planning and as part of the recognition and wellness initiative, the PPS continued to develop the framework for a Crown attorney mentoring program. The program will be fully rolled out in 2009-2010.

The PPS continued to provide communications designed to enhance community understanding of the role of the Crown Attorney and of the prosecutorial process. Issues management required significant resources with regard to several high profile complex cases.

The PPS continued to fine tune its business continuity plan. A business continuity plan will allow the PPS to continue critical business functions in the event of an emergency or disaster.

The PPS continued to enhance its ability to provide French language prosecutions again providing training for Crown attorneys in 2008-2009.

An important focus for the PPS, as always, is continuing education for all staff. Opportunities to attend various training and development seminars and conferences were made available to staff. Additionally, the PPS hosted successful spring and fall educational conferences.

The PPS continues to do an important job for Nova Scotians as it fulfills its role in the criminal justice system and continues to refine and improve its practices.

Martin E. Herschorn, Q.C.

Director of Public Prosecutions

Introduction

The Public Prosecution Service prosecutes offences with fairness and equal treatment of all persons making decisions based solely on fact, legal analysis and the defined policies of the Service. The Service performs a function absolutely critical to public safety in Nova Scotia.

This accountability report is based on the goals, priorities and outcomes set out in the Public Prosecution Service's business plan for 2008-2009, which should be read in conjunction with this report.

This report explains the work undertaken by the Public Prosecution Service last year on behalf of all Nova Scotians. It should help to inform and educate its readers as to the role and function of the Service and its Crown Attorneys.

Mission

The mission of the Public Prosecution Service of Nova Scotia 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 of providing for public safety. In order to accomplish its mission, the Public Prosecution Service has set the following goals:

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

Core Business Areas

- Represent the Crown in the conduct of criminal matters and quasi-criminal matters before all levels of court.
- Represent the Crown in the conduct of criminal and quasi-criminal appeals before all levels of courts.
- Provide legal advice and assistance to the police and provincial law enforcement officers at their request.
- Participate in the development of criminal law policy and criminal prosecutions policy.

Priorities & Accomplishments for 2008-2009 In Relation to the Service's Business Functions:

The priorities for the first three core business areas of the Service overlap significantly and thus are presented as a group.

- **Represent the Crown in the conduct of criminal and quasi-criminal matters before all levels of courts.**
- **Represent the Crown in the conduct of criminal appeals and quasi-criminal appeals before all levels of courts.**
- **Provide legal advice and assistance to the police and provincial law enforcement officers at their request.**

Court Activity

This year 90 Crown Attorneys in 19 offices across the province dealt with 44,088 criminal charges and 5,771 NS statute matters in both Provincial Court and the Supreme Court of Nova Scotia. (See Appendix A & B)

During 2008-2009, 37 appeals and 94 chambers motions were handled by the PPS in the Nova Scotia Court of Appeal. (See Appendix C)

Education and Training

Continuing education for Crown Attorneys as well as support staff remained a priority in order to enhance the level of expertise within the PPS and the resulting quality of prosecution services. More than \$250,000 was spent on education and training during the fiscal year. Specifically, the PPS:

- funded the attendance of 30 Crown Attorneys at the Federation of Law Societies National Criminal Law Program in Charlottetown, PEI.
- funded the Crown Attorney Annual Conference and the Public Prosecution Service Support Staff Annual Seminar held this year in Baddeck, Nova Scotia;
- funded the participation of 19 Crown Attorneys at the Ontario Crown Attorneys' summer school program, a valuable professional development opportunity made available to the PPS through the kind cooperation of the Ontario Ministry of the Attorney General;
- conducted a one day Spring educational conference for all Crowns Attorneys and support staff.
- continued additional training as required on new PPS policies;
- supported the requirements of the Education Development Committee to insure that PPS staff received required training.

PPS Crown Attorneys also play a role in providing training and professional development to police and other investigative agencies.

French Language Prosecutions

In accordance with the provincial government's French-language Services Act, the PPS continues to enhance the ability to provide French language prosecutions. A francophone Crown Attorney based in Yarmouth acted as a liaison and a principal contact for French language prosecution training and related issues. Four Crown Attorneys attended French language training in Vancouver.

Information Technology

The PPS continued to upgrade its intranet site which is a valuable operational and communications resource to all staff. The content of the *Best Practices Manual for Support Staff* initially populated the site but the site is now gradually expanding and will eventually allow for much more content including internal discussion forums, podcasting, and videostreaming.

The PPS continued enhancements to the Prosecution Information Composite System (PICS) – a comprehensive computerized offender history information system. Management information tracking is performed in addition to its primary file manager and case management functionality. Ongoing enhancements to the Service's ability to capture management information maximizes the effectiveness in planning, acquiring and deploying resources.

The Service's database of staff-generated research – Computerized Legal Education Research Centre (CLERC) continued to expand.

Communications

The PPS continued to provide communications designed to enhance community understanding of the role of the Crown Attorney and of the prosecutorial process. Issues management required significant resources with regard to several high profile complex cases.

The PPS continued its comprehensive program of media training Crown Attorneys. Crown Attorneys have daily contact with the media and follow PPS policy to use the media as a conduit to the public to ensure that prosecutorial procedure and decisions are explained.

The Employee Recognition and Wellness Committee established employee milestone recognition standards and held the PPS's second annual Long Service Awards program.

As part of a larger plan to educate special interest groups in understanding the role of the Crown, a brochure for sexual assault victims continued development. The brochure explains the specifics and complexities of a sexual assault prosecution to this target audience.

Strategic Planning

The PPS continued the strategic planning process to ensure the Service will be better able to deliver professional prosecutorial services. Specific initiatives include the establishment of a Succession Planning Task Force; the establishment of a Mentoring program; the development of a rationale for the development of a case management tool. Other initiatives that fall under the strategic planning umbrella include the programs being developed and launched by the Employee Recognition and Wellness Committee.

As a basis for planning wellness programs the PPS offered health risk assessments to its employees. 108 employees participated. The average wellness score for this group was 48

out of 100 which is in the “needs improving” category. The top health needs included fitness, weight management, better nutrition, managing cholesterol levels and coronary risk. 70 participants showed a need for improving fitness levels, 65 participants were overweight and showed need for making nutritional changes. 38 had cholesterol over recommended levels, 36 exhibited moderate to high coronary risk.

As part of the health risk assessment, an organizational health perception survey was conducted. The results indicate that the top organizational health issues fall under work life balance with 30 per cent unable to complete all important tasks within scheduled work hours; work content and characteristics with 20 per cent of the participants unhappy with their work environment; and development and involvement with 15 per cent reporting they did not feel good about the opportunities to learn and grow within the PPS. On a positive note, 75 per cent of participants reported they felt empowered to make decisions affecting their work performance, 91 per cent reported having clear job expectations and 87 per cent had a very positive perception of communication with their colleagues.

Based on these results, a corporate wellness strategy is being developed.

Business Continuity Plan

The Business Continuity Planning Committee continued development of a business continuity plan to ensure the continuation of critical business functions in time of emergency and disaster. With a continuity policy drafted and training of key personnel completed, a business impact analysis is underway.

Human Resources Strategy

The PPS made progress on each of the five HR Strategy Goals:

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

Specifically, the PPS:

- ✓ provided educational opportunities for its staff;
- ✓ continued the development of a comprehensive succession plan;
- ✓ continued to support secondment opportunities;
- ✓ continued to promote internal communications;
- ✓ continued a Long Service Awards program;
- ✓ sponsored staff at respectful workplace training;
- ✓ contributed to the Department of Justice review of court house security;
- ✓ continued to participate in the Indigenous, Black & Mi’Kmaq student employment initiative;
- ✓ provided opportunities for French language training;
- ✓ continued the development of an equity and diversity policy;
- ✓ continued to support staff in leadership development training;
- ✓ continued to support the PPS Education Committee;
- ✓ held spring and fall educational conferences for all staff;

- ✓ continued to develop best practices policy.

Pre-Charge Advice

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

- **Participate in the development of the criminal law and criminal prosecutions policy.**

The PPS continued contribution to the development of criminal law policies and procedures through participation in meetings with: Federal/Provincial/Territorial Ministers and Deputy Ministers responsible for Justice; CCSO (Coordinating Committee of Senior Justice Officials) and Federal/Provincial/Territorial Heads of Prosecutions; and Provincial Deputy Ministers. A PPS Crown Attorney attended the Uniform Law Conference of Canada as Nova Scotia's representative to provide input on criminal law revisions/amendments. The PPS also participated in provincial government policy initiatives; the standardization of documents used in courts; restorative justice; and training with regard to the domestic violence.

MEASURING OUR PERFORMANCE

OUTCOME	INDICATOR	MEASURE	BASE YEAR MEASURE 2005-06	TARGET 2008-09	STRATEGIES	RESULTS
High quality trial work	Majority of Crown Attorneys attain competent or higher designation	Performance evaluation of Crown Attorneys	100%	100% attainment	<ul style="list-style-type: none"> ✓in-court monitoring ✓develop tool to assist in court monitoring ✓provide continuing education to all Crowns & support staff ✓implement a case management information system 	Largely achieved; in-court monitoring still in the planning stages
High quality appeal work	Majority of Crown Attorneys attain competent or higher designation	Performance evaluation of Crown Attorneys	100%	Maintain majority attainment	<ul style="list-style-type: none"> ✓in-court monitoring ✓develop tool to assist in court monitoring ✓provide continuing education to all Crowns & support staff ✓implement a case management information system 	Largely achieved; in-court monitoring still in the planning stages
Provide high quality legal advice and assistance	Consistent high quality	Supervisory assessment of legal advice (to be developed)	(to be determined)	Maintain consistent high quality	<ul style="list-style-type: none"> ✓develop method to record advice and assistance 	Strategies in progress
Provide Crown representation in the development of criminal law and criminal prosecution policy	Provide representation on committees as requested	Number of Crowns who participate	50 Crown Attorneys	Maintain representation	<ul style="list-style-type: none"> ✓contribute to the development of the criminal law policies and procedures in conjunction with federal and provincial Departments of Justice and liaise with law enforcement agencies, government, the judiciary and professional associations on policy and procedural matters 	Achieved

FINANCIAL

CORE BUSINESS AREAS	2008-09 Budget \$000	2008-09 Actual \$000
Represent the Crown in the conduct of criminal and quasi-criminal matters before all levels of court.	17,139.1	17,240.4
Represent the Crown in the conduct of criminal appeals before all levels of courts.	1,082.0	1,078.3
Provide legal advice and assistance to the police and provincial law enforcement officers at their request.	Included	Included
Participate in the development of criminal law and criminal prosecutions policy.	Included	Included
TOTAL EXPENDITURES	18,221.0	18,318.7
Salaries and Benefits	14,308.3	15,782.1
Funded Staff (FTEs)	165	157

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 2008-09

OFFENCE CATEGORIES	HALIFAX	DARTMOUTH	AMHERST	KENTVILLE	BRIDGEWATER	NEW GLASGOW
Homicide & Related	6	3	0	1	1	2
Attempted Murder	21	13	1	0	0	0
Robbery	182	82	6	7	10	13
Sex Assault	80	42	3	39	22	15
Sexual Abuse	38	46	4	22	10	7
Kidnapping	53	38	3	16	4	14
Abduction	0	0	0	0	0	1
B&E	425	152	40	75	41	40
Weapons	932	800	29	63	81	64
Fraud	751	530	241	133	53	63
Major Assault	585	361	47	89	85	56
Simple Assault	784	543	82	277	186	148
Theft	1312	580	119	240	161	129
Stolen Property	1477	536	49	88	40	57
Arson	11	4	5	4	19	0
PD - Mischief	395	170	82	183	110	99
Morals - Sex	53	39	6	8	3	4
Public Order	44	17	18	17	21	6
CC Traffic	108	110	26	59	37	29
Admin Justice	4792	3250	450	739	533	591
Impaired Driving	682	576	125	482	270	261
Other CC	778	473	87	173	133	100
Unknown	1	0	0	0	0	0
TOTAL	13,510	8,365	1,423	2,715	1,820	1,699

Continued..

by Offence Category and Judicial Centre 2008-09

OFFENSE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide & Related	4	1	0	17	0	0	35
Attempted Murder	2	0	0	0	0	0	37
Robbery	29	20	3	2	2	0	356
Sex Assault	40	21	6	8	25	23	324
Sexual Abuse	41	21	1	3	11	29	233
Kidnapping	20	5	2	5	7	6	173
Abduction	1	0	0	0	0	0	2
B&E	160	43	25	65	105	91	1262
Weapons	157	171	21	35	103	39	2495
Fraud	90	56	61	44	39	49	2110
Major Assault	256	88	57	49	87	52	1812
Simple Assault	634	232	67	106	166	134	3359
Theft	413	159	60	49	169	93	3484
Stolen Property	111	200	13	20	42	51	2684
Arson	8	4	0	2	3	0	60
PD - Mischief	340	83	43	52	114	82	1753
Morals - Sex	10	5	3	1	4	3	139
Public Order	23	24	5	6	33	22	236
CC Traffic	51	56	40	13	30	27	586
Admin Justice	3512	770	275	323	639	394	16268
Impaired Driving	387	385	164	129	155	154	3770
Other CC	663	129	60	64	132	117	2909
Unknown	0	0	0	0	0	0	1
TOTAL	6,952	2,473	906	993	1,866	1,366	44,088

APPENDIX B

Provincial Statute Cases by Judicial Centre 2008-09

	MOTOR VEHICLE ACT	LIQUOR CONTROL ACT	OTHER PROVINCIAL STATUTES	TOTAL
Halifax	1394	89	99	1582
Dartmouth	1210	20	104	1334
Amherst	60	23	126	209
Kentville	448	66	76	590
Bridgewater	230	25	198	453
New Glasgow	156	37	42	235
Sydney	189	29	59	277
Truro	188	18	46	252
Antigonish	82	19	33	134
Port Hawkesbury	75	27	30	132
Yarmouth	117	40	86	243
Digby	176	44	110	330
TOTAL	4,325	437	1,009	5,771

Appeals Branch Statistics

The following are statistics related to the operations of the Appeals Branch covering the period April 1, 2008 to March 31, 2009.

The Branch participated in 37 appeals heard by the Court of Appeal.

Of this number:

- 2 were initiated by the Crown
- 35 were initiated by offenders, including 4 under the **Youth Criminal Justice Act** and 5 brought by prisoners.

Of the appeals initiated by the Crown, both dealt with sentence.

Of the 35 initiated by offenders:

- 10 dealt with conviction only
- 7 dealt with sentence only
- 14 dealt with both conviction and sentence
- 2 concerned fresh evidence applications
- 1 dealt with a Prohibition Order
- 1 dealt with the review of a Youth Court judge's decision.

The Appeals Branch also participated in 10 appeals which were abandoned, quashed or dismissed without a full hearing in the Court of Appeal, or were ordered transferred to the summary conviction appeal court (Supreme Court of Nova Scotia). Of this number, one appeal had been initiated by the Crown and nine appeals had been initiated by offenders.

The Appeals Branch participated in 94 Chambers motions - applications heard by a single judge of the Court of Appeal. Chambers motions include applications for hearing dates, adjournments, bail pending appeal, extensions of time for appeal, directions and updates in appeals, and striking appeals from the Court's docket.

The Appeals Branch received decisions in two applications for leave to appeal to the Supreme Court of Canada, both initiated by offenders. The Branch participated in one appeal before the Supreme Court of Canada as an intervener. The Branch participated in three appeals heard by the Supreme Court of Canada, all initiated by offenders.

Counsel in the Appeals Branch were involved in a number of cases presenting important legal issues. In the Supreme Court of Canada, for example, one appeal - *Miazga v. Kvello Estate et al.* - was concerned with the liability of Crown Attorneys in civil actions based on malicious prosecution. In the Court of Appeal, there were at least two appeals of note. In *G.D.S. v. R.*, the Court had before it the sentencing of a young person as an adult for the brutal murder of a cab driver. Further, in *Bryan v. R.*, the Court dismissed an appeal by an offender from his sentence for his horrific and savage attack on his pregnant girlfriend using a sword as a weapon.