

# **PUBLIC PROSECUTION SERVICE**

**Annual Accountability Report for the Fiscal Year 2006-2007**

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## **Accountability Statement**

The accountability report of the Nova Scotia Public Prosecution Service for the year ended March 31, 2007 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 2006-07. 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.

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

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**Date**

## **Message from the Director of Public Prosecutions**

I am pleased to present this accountability report of the Nova Scotia Public Prosecution Service for 2006-2007.

The Service has had a busy year. Our 80 Crown Attorneys across the province dealt with 44,569 criminal charges and prosecuted 4,571 provincial statute violations.

A major focus for the Nova Scotia Public Prosecution Service this year was the Nunn Commission of Inquiry. The Inquiry was called by the Minister of Justice to look into the circumstances surrounding the car crash causing the death of Theresa McEvoy in Halifax, October 14, 2004. A youth who was already facing more than 30 charges under the Youth Criminal Justice Act (YCJA) was responsible for the crash. As a key player in the criminal justice system, the PPS's role in this case was examined by the Inquiry. Hearings got underway in January, 2006 and continued through the spring. Commissioner Nunn released his report in December, 2006. Of the 34 recommendations, five pertained to the Public Prosecution Service. The PPS accepted all of these recommendations and have implemented them.

Again this year, professional development for both Crown Attorneys and support staff was a priority. Dozens of Crown Attorneys and support staff took advantage of the courses, workshops and conferences available.

Communications continued to be a priority for the PPS both externally, through the media and internally, among staff. The PPS recognizes the needs of its various publics to know and understand the prosecutorial process and the role of the Crown Attorney. Further, all efforts are made to keep employees informed on PPS plans and initiatives and to draw constructive feedback. A new priority in communications is the development of a Service-wide intranet site as an operational and communications resource. The site is expected to be online in 2007-08.

The Employee Recognition and Wellness Committee had a banner inaugural year. It has developed plans to begin Long Service Awards at the 2007 Fall Conference and to establish employee milestone recognition standards.

In accordance with the provincial government's French-language Services Act, the PPS continued to enhance its ability to provide French language prosecutions. The Service designated a francophone Crown Attorney based in Yarmouth to act as a liaison and a principal contact for French language prosecution training and related issues. One Crown Attorney attended the week-long training session provided through the Ontario French Language Institute for Professional Development in February, 2007.

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.

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**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 2006-2007, 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 2006-2007**

### **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 80 Crown Attorneys in xx offices across the province dealt with 44,569 criminal charges and 4,571 NS statute matters in both Provincial Court and the Supreme Court of Nova Scotia. (See Appendix A & B)

During 2006-2007, 27 appeals and 101 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 \$130,000 was spent on education and training during the fiscal year. Specifically, the PPS:

- funded the attendance of 13 Crown Attorneys at the Federation of Law Societies National Criminal Law Program in Saint John, New Brunswick;
- 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 24 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 an advocacy seminar in May, 2006 and another in February, 2007;
- 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. The Service designated a francophone Crown Attorney based in Yarmouth to act as a liaison and a principal contact for French language prosecution training and related issues. One Crown Attorney attended the week-long training session provided through the Ontario French Language Institute for Professional Development in February, 2007. Three Crowns were scheduled to attend the Quebec Crown School through the Quebec Ministry of Justice in July 2007.

### ***Regulatory Offence Prosecutions***

The PPS continues to dedicate one Senior Crown Attorney to exclusively conduct regulatory offence prosecutions, particularly Occupational Health & Safety Act cases. The aim is to increase efficiency in the use of PPS resources in these prosecutions.

This dedicated Crown Attorney is also responsible for identifying and promoting training and educational opportunities for Crown Attorneys and investigators involved in regulatory prosecutions, particularly OH&S Act cases.

This Crown Attorney assumes carriage of several major regulatory offence cases each year, partners with other Crown Attorneys across the province to conduct certain other major regulatory prosecutions and a smaller number of additional cases identified as being of medium significance or difficulty. Prosecutions not identified as major cases are generally prosecuted by Crown Attorneys in the regions where the cases arise. The dedicated Crown Attorney is available for consultations with all Crown Attorneys who are involved in the prosecution regulatory offences.

### ***Nunn Commission of Inquiry***

On June 29, 2005, the provincial government appointed Justice Merlin Nunn to conduct a public inquiry into the circumstances surrounding the release of a young offender who was convicted under the Youth Criminal Justice Act as the result of a fatal car crash.

Commissioner Nunn was asked to determine, publicly and independently, what happened and what could be learned from it. Commissioner Nunn submitted his report on December 5, 2006 including 34 recommendations. Of these, five related to the PPS. The PPS agreed with all of these recommendations and acted upon them immediately. (See chart below.)



<b>Recommendation</b>	<b>Response</b>	<b>Comments</b>
<b>#10</b> PPS should consider appointing more dedicated youth court Crown attorneys in Halifax, and specialized youth court Crown attorneys outside of Halifax where numbers warrant.	Agreed	The PPS is in the process of acquiring a third Youth Court Crown Attorney in the Halifax Region and has recruited a Crown Attorney dedicated to Youth Court in Sydney.
<b>#15</b> PPS should take a common general approach to pre-trial detention for young persons . . . by ensuring that Crown Attorneys are familiar with and up-to-date in training in the relevant statutory provisions and recent developments in the law.	Agreed	A Practice Memorandum was developed and forwarded to all Crown Attorneys. In addition, training in youth criminal justice matters will be incorporated in annual conferences as required.
<b>#16</b> Crown Attorneys should ask judges to hear evidence to determine if responsible persons are willing and able to control the youth before the youth is released in their care.	Agreed	The PPS has issued a Practice Memorandum to Crown Attorneys emphasizing the necessity to request that judges hear evidence in this regard.
<b>#17</b> Crown Attorneys should continue to ask judges to immediately record a finding of guilt when a guilty plea is entered rather than at the time of sentencing.	Agreed	The PPS has re-issued a Practice Memorandum emphasizing the best practice which is to seek Section 36 findings of guilt in all cases at the time of a guilty plea. Chief Crown Attorneys will stress this best practice on an ongoing basis.
<b>#18</b> Court administration, PPS and judiciary should work together to identify any scheduling or other issues that could delay recording of the finding of guilt.	Agreed	The PPS participates in meetings with court administration and judiciary to discuss scheduling and any other issues which facilitate an early entry finding of guilt.

### ***Early Case Resolution***

The early case resolution program in the Halifax office – intended to promote where appropriate, the early resolution of cases through the timely entry of a guilty plea – is being reviewed internally. The program is scheduled for evaluation by an external expert next year.

A Senior Crown Attorney reviews files upon their arrival to determine which cases may be appropriately dealt with through early resolution. Certain categories of cases – for example, domestic violence cases designated as having a “high risk of lethality” – are excluded. In eligible cases, the Crown’s sentencing position in the event of an early guilty plea is communicated to the accused and his counsel. The early resolution initiative seeks to reduce court backlogs and to reduce expenses.

### ***Information Technology***

The PPS began development of an intranet site which will be an operational and communications resource to all staff. The content of the *Best Practices Manual for Support Staff* will initially populate the site but the site will expand to allow for much more content including the possibility of 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.

To help provide more accurate management information tracking, the Service is planning for the addition of more staff in its head office central file registry.

The Service's database of staff-generated research – Computerized Legal Education Research Centre (CLERC) continued to expand. A link from the Service's intranet site to CLERC will be developed.

### ***Communications***

The PPS also continued implementation of its communications strategy.

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 newsletter, *On the Docket*, continued publication and distribution.

Once again, the PPS had a successful meeting with representatives of Mothers Against Drunk Driving (MADD) to share perspectives about the issue of impaired driving.

PPS management has established an employee recognition and wellness steering committee to oversee the development of a recognition and wellness program across the Service. Plans have begun for PPS Long Service Awards and for the establishment of employee milestone recognition standards.

### ***Strategic Planning***

The PPS continued the strategic planning process focusing on setting Service-wide long-range goals, succession-planning and on retention and recruitment. The PPS Executive Committee met both on and off-site to discuss and focus specifically on strategic planning.

### ***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;
- ✓ began the development of a comprehensive succession plan;
- ✓ continued to support secondment opportunities;
- ✓ continued to promote internal communications;
- ✓ began the implementation of an employee recognition program;
- ✓ submitted a nomination in a national prosecutorial awards program;

- ✓ completed the annual OH&S review;
- ✓ collaborated with the Department of Justice in enhancing security for staff both in and out of court;
- ✓ 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;
- ✓ 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 opinion. 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.

## Outcome Measures

OUTCOME	INDICATOR	MEASURE	BASE YEAR MEASURE 2005-06	TARGET 2006-07	STRATEGIES	RESULTS
<b>High quality trial work</b>	Majority of Crown Attorneys attain competent or higher designation	Performance evaluation of Crown Attorneys	100%	Maintain majority attainment	<ul style="list-style-type: none"> <li>✓in-court monitoring</li> <li>✓develop tool to assist in court monitoring</li> <li>✓provide continuing education to all Crowns &amp; support staff</li> <li>✓implement a management information system</li> </ul>	Largely achieved
<b>High quality appeal work</b>	Majority of Crown Attorneys attain competent or higher designation	Performance evaluation of Crown Attorneys	100%	Maintain majority attainment	<ul style="list-style-type: none"> <li>✓in-court monitoring</li> <li>✓develop tool to assist in court monitoring</li> <li>✓provide continuing education to all Crowns &amp; support staff</li> <li>✓implement a management information system</li> </ul>	Largely achieved
<b>Provide high quality legal advice and assistance</b>	Consistent high quality	Supervisory assessment of legal advice (to be developed)	(to be determined)	Maintain consistent high quality	<ul style="list-style-type: none"> <li>✓develop method to record advice and assistance</li> </ul>	Strategies in progress
<b>Provide Crown representation in the development of criminal law and criminal prosecution policy</b>	Provide representation on committees as requested	Number of Crowns who participate	50 Crown Attorneys	Maintain representation	<ul style="list-style-type: none"> <li>✓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</li> </ul>	Achieved

**FINANCIAL**

<b>CORE BUSINESS AREAS</b>	<b>2006-07 Budget \$000</b>	<b>2006-07 Actual \$000</b>
Represent the Crown in the conduct of criminal and quasi-criminal matters before all levels of court.	16,142.4	15,610.7
Represent the Crown in the conduct of criminal appeals before all levels of courts.	1,250.6	1,101.3
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
<b>TOTAL EXPENDITURES</b>	<b>17,393.0</b>	<b>16,712.0</b>
<b>Salaries and Benefits</b>	<b>12,951.7</b>	<b>12,865.6</b>
<b>Funded Staff (FTEs)</b>	<b>159</b>	<b>153</b>

## **APPENDICES**

All statistics with the exception of appeals received through the kind co-operation of the Department of Justice.

### **APPENDIX A**

**Criminal Code Charges in Provincial Court  
by Offence Category and Judicial Centre 2006-07**

<b>OFFENCE CATEGORIES</b>	<b>HALIFAX</b>	<b>DARTMOUTH</b>	<b>AMHERST</b>	<b>KENTVILLE</b>	<b>BRIDGEWATER</b>	<b>NEW GLASGOW</b>
Homicide & Related	0	0	0	0	0	0
Attempted Murder	6	8	1	0	0	1
Robbery	216	90	3	14	20	4
Sex Assault	69	47	21	62	29	10
Sexual Abuse	37	32	10	60	2	9
Kidnaping	77	24	5	5	5	1
B&E	698	101	261	168	128	43
Weapons	676	379	88	148	82	26
Fraud	936	471	87	314	142	215
Major Assault	631	319	71	95	69	61
Simple Assault	907	650	146	271	178	176
Theft	1,659	574	273	330	175	138
Stolen Property	2,228	517	103	159	56	60
Arson	13	2	3	10	2	6
PD - Mischief	432	236	127	167	92	115
Morals - Sex	72	17	2	29	12	3
Public Order	29	23	18	25	28	21
CC Traffic	183	126	34	75	31	22
Admin Justice	3,835	2,087	397	849	508	647
Impaired Driving	631	612	192	339	212	229
Other CC	907	536	148	234	144	113
Unknown	1	1	0	0	0	2
<b>TOTAL</b>	<b>14,243</b>	<b>6,852</b>	<b>1,990</b>	<b>3,354</b>	<b>1,915</b>	<b>1,902</b>

*Continued..*

**Criminal Code Charges in Provincial Court  
by Offence Category and Judicial Centre 2006-07**

OFFENSE CATEGORIES	SYDNEY	TRURO	ANTIGONISH	PORT HAWKESBURY	YARMOUTH	DIGBY	TOTAL
Homicide & Related	4	1	0	0	1	0	6
Attempted Murder	5	3	0	0	2	0	26
Robbery	38	22	4	1	18	7	437
Sex Assault	44	22	7	15	25	18	369
Sexual Abuse	11	21	3	3	12	16	216
Kidnaping	13	10	0	1	6	3	150
B&E	177	92	17	70	101	74	1,930
Weapons	140	52	23	11	98	126	1,849
Fraud	128	107	16	25	48	59	2,548
Major Assault	262	94	39	38	88	45	1,812
Simple Assault	639	219	54	102	165	184	3,691
Theft	502	273	57	48	225	84	4,338
Stolen Property	146	192	14	20	96	70	3,661
Arson	7	6	0	7	9	2	67
PD - Mischief	322	105	33	49	173	91	1,942
Morals - Sex	4	14	1	1	4	4	163
Public Order	47	19	13	15	39	15	292
CC Traffic	59	47	27	33	46	41	724
Admin Justice	2,756	752	333	342	699	443	13,648
Impaired Driving	316	321	120	159	199	166	3,496
Other CC	614	118	44	58	148	136	3,200
Unknown	0	0	0	0	0	0	4
<b>TOTAL</b>	<b>6,234</b>	<b>2,490</b>	<b>805</b>	<b>998</b>	<b>2,202</b>	<b>1,584</b>	<b>44,569</b>



**APPENDIX B**

**Provincial Statute Cases by Judicial Centre 2006-07**

	<b>MOTOR VEHICLE ACT</b>	<b>LIQUOR CONTROL ACT</b>	<b>OTHER PROVINCIAL STATUTES</b>	<b>TOTAL</b>
<b>Halifax</b>	1,126	72	107	1,305
<b>Dartmouth</b>	257	4	55	316
<b>Amherst</b>	118	20	65	203
<b>Kentville</b>	384	59	181	624
<b>Bridgewater</b>	250	34	63	347
<b>New Glasgow</b>	156	98	56	310
<b>Sydney</b>	175	22	119	316
<b>Truro</b>	169	28	40	237
<b>Antigonish</b>	77	32	37	146
<b>Port Hawkesbury</b>	79	17	95	191
<b>Yarmouth</b>	153	48	142	343
<b>Digby</b>	127	36	70	233
<b>TOTAL</b>	<b>3,071</b>	<b>470</b>	<b>1,030</b>	<b>4,571</b>

**APPENDIX C**

## Appeals Branch Statistics

The following are statistics related to the operations of the Appeals Branch covering the period April 1, 2006 to March 31, 2007.

The Branch participated in 41 appeals heard by the Court of Appeal.

Of this number:

- 10 were initiated by the Crown
- 31 were initiated by the offender.

Of the 10 appeals initiated by the Crown:

- 4 dealt with acquittal
- 2 dealt with sentence
- 4 dealt with the refusal of DNA or **SOIRA** orders.

Of the 31 appeals initiated by offenders:

- 8 dealt with conviction only
- 5 dealt with sentence only
- 12 dealt with conviction and sentence
- 6 dealt with applications to adduce fresh evidence on appeal, disclosure, DNA or SOIRA orders.

The Appeals Branch also participated in 26 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 these:

- 5 were initiated by the Crown
- 21 were initiated by offenders.

The Appeals Branch participated in 86 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 in appeals, and striking appeals from the Court's docket.

The Appeals Branch received decisions in seven applications for leave to appeal to the Supreme Court of Canada, one of which was initiated by the Crown. The Branch filed one notice of intervention in an appeal to the Supreme Court of Canada in a YCJA case. The Branch filed one Notice of Appeal in the Supreme Court, and was respondent in another appeal commenced in that Court. The Branch received decision in one appeal in which it had participated as an intervener: R. v. Sapier and Polchies, an appeal from the New Brunswick Court of Appeal dealing with native treaty rights.

Counsel in the Appeals Branch received decisions in two major murder cases handed down by the Nova Scotia Court of Appeal: R. v. Assoun and R. v. Smith and James. The offender in Assoun brought an application for leave to appeal to the Supreme Court of Canada and that application was dismissed. Proceedings are pending in the Supreme Court of Canada in both Smith and James.