

14.**PUBLIC PROSECUTION SERVICE -
REVIEW OF OPERATIONS****BACKGROUND**

14.1 In response to the December 1989 report of the Marshall Inquiry, the Province of Nova Scotia became the first jurisdiction in Canada to create an independent prosecution service. Previously, public prosecutions were the responsibility of the Department of Justice (then Department of Attorney General).

14.2 The Public Prosecution Service (PPS) derives its mandate from the Public Prosecutions Act, which was proclaimed in 1990. The Service is responsible for all prosecutions within the jurisdiction of the Attorney General of the Province, and has developed as its mission, fair and equal treatment in the prosecution of offences. Its head office is located in Halifax. The Service is structured regionally, with Crown Attorneys' offices located in 18 centres throughout four regions of the Province.

14.3 The Service reports that in the six and one-half months ended October 18, 1996 it prosecuted 12,324 criminal code cases, 10,547 summary conviction cases and 50 appeals. Expenditures of \$8.5 million were forecast for the year ended March 31, 1997, with the major category of expenses being salaries and benefits (\$6.8 million). The Service has 67 permanent Crown Attorneys, one manager of administration and 46 support staff.

14.4 The Service is one part of a complex justice system which includes many stakeholders, including the public, Parliament, Provincial Legislature, judges, court administration, lawyers, police, correctional facilities, as well as various other social institutions.

RESULTS IN BRIEF

14.5 The following are the principal observations from this audit.

- The PPS has not reported to the House of Assembly since August 31, 1993. Except for this legislative requirement, the PPS has complied with key requirements of the Public Prosecutions Act.
- The PPS has prepared business plans for 1996-97 and 1997-98, but has not yet developed long-range strategic plans or multi-year performance targets.
- The PPS has a system to monitor and control finances, but has not yet developed a comprehensive electronic system for assisting case management.
- The PPS has implemented measures to provide additional tools and access to information for its staff, as well as to improve its work environment. There are plans to make further improvements as resources become available.

AUDIT SCOPE

14.6 In November 1996 we commenced a broad scope audit of the Public Prosecution Service in accordance with the provisions of the Auditor General Act. Our audit objectives were to review and assess:

- the accountability structure and reporting practices of the Service;
- the Service's compliance with key provisions of the Public Prosecutions Act;
- strategic and operational planning at the PPS; and
- issues relating to efficiency in the operations of the Service.

14.7 The following general criteria were used in our audit.

- The responsibilities and accountability of the Service should be formally defined and accountability reporting should be accurate and timely. Reporting should address performance relative to the PPS's goals and priorities, and should be supported by a system of performance measurement.
- The Service should comply with all requirements of relevant legislation and regulations. Summary information related to compliance should be reported annually to the House of Assembly.
- Strategic and operational planning should be performed on a regular basis and should be consistent with the Service's legislated mandate. The Service's goals should be outcome oriented and measurable, and the goals and other plans should be communicated to all staff.
- Staff should have the information and resources necessary to do their work efficiently, and should receive training on a regular basis. The Service should have adequate management systems for the monitoring and control of its court cases, personnel and finances.

14.8 Our audit involved the review of various documents and systems, as well as interviews with various staff at the Public Prosecution Service. As part of our assignment, we examined the August 31, 1994 report on the independence, accountability and management of the PPS prepared by Bruce P. Archibald and the late Joseph A. Ghiz. The report was the result of a government sponsored study of the PPS, and made 35 recommendations for improving the Service. Where the scope of this review aligned with our audit, we enquired whether the PPS had addressed the recommendations of the Ghiz/Archibald report.

PRINCIPAL FINDINGS

Accountability and Compliance

14.9 The Attorney General is the Minister responsible for all matters related to the administration of justice in Nova Scotia and, accordingly, is responsible for public prosecutions. Thus, the Attorney General is accountable to the House of Assembly for this responsibility.

14.10 The position of Director of Public Prosecutions was created by statute in 1990. The Public Prosecutions Act states that the Director is responsible for all prosecutions within the jurisdiction of the Attorney General, conducted on behalf of the Crown, and the Director is the Attorney General's lawful deputy in respect of prosecutions. Prosecutions may be conducted independent of the Attorney General, except the Service must comply with all written instructions or guidelines issued by the Attorney General if they have been published in the Royal Gazette. The Attorney General has the right to be informed about the conduct of specific prosecutions, but no other member of the government or Legislature has a similar right.

14.11 Further, the Act puts the onus on the Director of Public Prosecutions, instead of the Attorney General, to report annually to the House of Assembly. This is unusual, as normal expectations for accountability to the House of Assembly put the onus on the Member of the House who is responsible for an operation of government. The purpose of this arrangement, as explained to us, is to further enhance the independence of the Public Prosecution Service from other operations of government. The accountability of the Attorney General for prosecutions is upheld through his responsibility to make public any direction provided to the Director of Public Prosecutions, and through the addressing of questions raised in the Legislature.

14.12 *Accountability issues* - We found the Service has fulfilled its accountability responsibilities, with the major exception that the Director has not reported annually to the House of Assembly. No reports have been made since the period ended August 31, 1993. The current Director was appointed in the fall of 1995, and he plans to prepare a report for the period September 1, 1993 to March 31, 1997.

14.13 The PPS's financial plans are reported to the Legislature in the Provincial Estimates. In recognition of its independence from the Department of Justice, its budget is reported under the Public Service classification. The Service's actual financial results are reported in the Public Accounts of the Province, with a similar separation from the Department of Justice's financial results.

14.14 The Act notes that either the Attorney General or the Director of Public Prosecutions may issue instructions respecting prosecutions, but such directives must be published. The Act requires directives from the Attorney General to be published in the Royal Gazette, but is not specific on the publishing of directives from the Director. The Director indicated that he applies his discretion in deciding where to publish his directives, but as a minimum ensures that all staff of the Service receive a written copy. The last directive issued by the Director was dated June 1992 and concerned the exercise of prosecutorial discretion. The last directive of the Attorney General pertained to spousal/partner violence and was issued in April 1996. Both were published in the Royal Gazette. Based on our review, it appears that all directives of the Attorney General and the Director are appropriately published.

14.15 The Ghiz/Archibald report made a number of recommendations concerning the accountability of the Public Prosecution Service. The PPS has implemented several recommendations, and is making progress toward the remainder.

14.16 *Other compliance issues* - The Public Prosecutions Act sets requirements for the PPS beyond the issue of accountability. These requirements address matters such as the appointment and remuneration of the Director of Public Prosecutions, the qualifications of Crown Attorneys, and services to police officers. We reviewed key legislative requirements and found that the Service is in compliance with the Act.

Planning

14.17 Strategic planning serves to provide overall direction and coordination, and should include both high-level and specific planning which incorporate objective setting, establishment of priorities, creation of performance measurement techniques and the design of a process to ensure scarce resources are applied toward the more important objectives.

14.18 *Strategic and operational plans* - The PPS prepared business plans for 1996-97 and 1997-98. All government departments which report annually in the government's accountability document *Government By Design* are required to submit business plans prepared in accordance with guidelines developed by government. The PPS does not participate in this process, and is not included in *Government By Design*. However, it used the guidelines developed by the government to prepare its business plans.

14.19 The business plans describe the mission and goals of the PPS, as well as performance achievements, priorities, financial forecasts and performance measures. Several improvements were made for the 1997-98 edition of the business plan. It better correlated performance measures and annual priorities to PPS goals, and it was expanded to include more information. Also, an annual operating budget is prepared each year which outlines the current financial plans of the PPS. The annual business plans and budgets are reviewed and compared to actual results at monthly meetings of the PPS's Management Committee.

14.20 However, longer-term strategic plans have not yet been prepared by the Service, although the development of a five-year business plan has been identified as a priority. The annual business plans do not contain any multi-year strategies or performance targets. However, four-year financial projections are prepared.

14.21 *Consistency and integration* - Government has identified priorities to guide all of its operations, which are summarized under four categories: economic renewal, redesigned government, social responsibility, and fiscal stability. Although the PPS is not fully included in the government's Integrated Planning and Budgeting Process, we observed that the goals and priorities of the PPS appear consistent with the government's overall priorities and strategies.

14.22 We found the goals and priorities outlined in the Service's annual business plans are consistent with its legislated mandate. We noted consistency in the allocation of budgetary resources towards the more significant priorities and plans, to the extent permitted by the total resources provided for the operation of the Service.

14.23 The Public Prosecution Service is one part of a justice system which includes many groups, and although each group is independent, they are also interdependent. Thus, the effectiveness of the justice system is the result of the quality of performance of each of its members. To operate effectively, the Service must coordinate its planning with that of the other groups. As discussed in a following section of this chapter, we found that the PPS is involved in initiatives with a number of other justice system stakeholders, such as to improve coordination and communication, to establish disclosure guidelines and to improve the flow of cases through the courts.

14.24 *Performance measurement* - Ideally, the goals of an organization should be outcome-oriented and the achievement of goals should be measurable. By outcome, we refer to the intended effects that an operation will have relative to its clients or operational environment.

14.25 In our view, the goals outlined in the Service's business plans could be more outcome-oriented. However, the goals are associated with a number of performance measures. The Service has not yet developed performance targets for future years, but we understand it has only recently

begun to accumulate performance data and has plans to revise and enhance its information gathering and reporting systems. One such initiative is a plan to survey various groups in the justice system on their opinion of the PPS's performance.

14.26 *Communication* - The goals and priorities outlined in the Service's current business plan were communicated throughout the PPS by means of the Management Committee, annual staff conference, newsletters and other communications. As well, management indicated that every office of the PPS has an employee orientation manual which includes a copy of the business plan.

Efficiency

14.27 *Government initiatives* - In August 1994 a report on the independence, accountability and management of the Service was submitted to the Minister of Justice (the Ghiz/Archibald Report). The report included 15 recommendations related to efficiency. We reviewed the recommendations and found that progress is being made by the PPS in their implementation.

14.28 The PPS is a partner in a government-wide *Access to Justice* initiative commenced by the Department of Justice in September 1996. The initiative is intended to improve the management of the justice process and to improve the delivery of justice-oriented programs. As described in planning documents for the project, it was undertaken because each group in the justice system has developed a different way of managing cases, which has led to inefficiency, wasted resources and lack of co-ordination of effort. Part of the initiative will be to improve the technology used to store and share justice-related information.

14.29 The PPS is also participating in several other initiatives to improve the justice system, and has initiated multi-stakeholder working groups to address such concerns as adequacy of disclosure and delays in the Provincial courts.

14.30 *Human resources* - The PPS has implemented several initiatives related to its human resources, including:

- the creation and filling of a new position which will be responsible for handling the administration of the Service (leaving more time for staff professionals to be involved with the PPS's core services);
- a review of its staffing levels and ratio of Crown Attorneys to support staff;
- development of training priorities for positions within the Service and increasing funding for staff training and development;
- implementation of an internal transfer policy; and
- reinstatement of performance appraisals for permanent Crown Attorneys.

14.31 The Service has made progress related to human resource management. However, the PPS does not have a sophisticated system to monitor and manage the work and case loads of Crown Attorneys. Currently, information in this area is primarily paper-based or based on observations, and staffing and case management decisions are made by the Management Committee based on these limitations. An electronic management information system is needed to provide more information on work and case loads, patterns and trends.

14.32 The Service has relied on per diem attorneys (i.e., the short-term hiring of private sector lawyers) to provide additional personnel to handle its volume of cases. The 1996-97 operating budget of \$8.5 million included approximately \$381,000 (5%) for per diem attorneys. The PPS reviewed the use of per diem attorneys in certain offices and found that hiring full-time attorneys may be more efficient in certain circumstances. A committee was established to review issues relating to the use of per diem attorneys, which will report by March 1997. We recommended that policies developed also include a method to review and evaluate the work of per diem attorneys, and a procedure for reviewing and revising the roster from which per diem attorneys are selected.

14.33 *Information resources* - To perform their jobs efficiently, Crown Attorneys need timely access to relevant information, as well as up-to-date equipment. We found that, since March 1996, all staff of the PPS have been assigned their own computer. Crown Attorneys have access to various case law reports and decisions, and we noted that the Service has increased its expenditures in this area during the last couple of years. However, for offices outside of the Halifax metro area, most of this information is in non-electronic (i.e., paper) format and access is slow. Crown Attorneys in the Halifax area currently have on-line computer access to Federal and Provincial statutes and also have the ability to use e-mail, but other regions do not because there is not yet a Province-wide computer network for the government.

14.34 To remedy this, the PPS plans to improve access to such information by participating in a number of initiatives, including an on-line case law service, once all offices have been provided Internet access. Current plans are for Internet service to be provided to all offices by 1998.

14.35 PPS management wishes to establish an internal management information system, in conjunction with the government's *Access to Justice* initiative, which will provide an opportunity for better case management by the Service. The Service may also gain greater access to library resources if the recommendations of a January 1996 joint committee report are implemented. The report recommended greater sharing of information resources among the PPS, Department of Justice, judge's offices and the Barristers' Society.

14.36 *Office resources* - Working environments can effect efficiency and productivity. In 1996 the PPS developed office space standards and determined that some of its offices do not meet basic requirements. Plans have been made to renovate or relocate offices to provide appropriate work environments, as funds become available and as leases expire. In particular, all staff currently located in three separate offices in Halifax will be moved to one centrally located office.

14.37 PPS offices now employ centralized file storage systems using government filing and retention standards. Planned improvements to office resources include increasing office security and further improving file storage.

CONCLUDING REMARKS

14.38 Management of the Public Prosecution Service has made significant improvements to the operation of the Service during the last couple of years. It has commenced a strategic approach to management involving goal development, priority setting and performance measurement. Strategic planning has been short-term to date, but management intends to take a longer-term approach to planning in the near future. There are plans to make reporting to the House of Assembly more regular and timely. We encouraged the PPS to do so, and also to have such reporting focus on goals and related performance.
