
Appendices

1 List of Participants Peer Review Workshop* on "Prosecuting Officers and the Administration of Justice in Nova Scotia"

June 23, 1988

* Each of the Commission's research studies was scrutinized in early draft form by experts in the field, and discussed in a workshop format with the Commissioners and Commission staff, the peer reviewers, and invited professional and community participants.

List of Participants

Chair:

Lois Dyer Mann, Vice-President (Administration), Mount St. Vincent University and former Executive Secretary of the Royal Commission

Researcher:

Professor Bruce Archibald, Associate Professor, Dalhousie Law School, Principal Researcher

Reviewers:

1. Ken Chasse, Director of Research, Ontario Legal Aid Plan, Toronto
2. Gordon Gregory, Q.C., former Deputy Attorney General, New Brunswick
3. Marc Rosenberg, Barrister, Greenspan, Rosenberg, Toronto

Royal Commission:

1. Chief Justice Hickman, Chairman
2. Associate Chief Justice Poitras, Commissioner
3. Honourable Gregory T. Evans, Q.C. Commissioner
4. George MacDonald, Q.C., Counsel
5. David Orsborn, Counsel
6. W. Wylie Spicer, Counsel
7. Susan Ashley, Commission Executive Secretary
8. John Briggs, Director of Research
9. Prof. John Edwards, Special Advisor to Commission
10. Dr. Philip Stenning, Research Consultant to Commission

Invited Participants:

1. James D. Bissell, Director, Atlantic Region, Department of Justice, Canada
2. Lorene Clark, Defence Counsel, Digby, Nova Scotia.
3. Stanley Cohen, Coordinator, Criminal Procedure Project, Law Reform Commission of Canada
4. Professor Brent Cotter, Associate Dean, Faculty of Law, Dalhousie University
5. Anne Derrick, Counsel to Donald Marshall, Jr.
6. William Digby, Q.C., Lawyer, Nova Scotia Legal Aid
7. Pat Duncan, Lawyer, Halifax
8. Martin Herschorn, Director (Prosecutions), Department of Attorney General, Nova Scotia
9. Professor Archie Kaiser, Faculty of Law, Dalhousie University
10. William MacDonald, Q.C., Deputy Attorney General, Nova Scotia

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11. Robert Parker, Crown Prosecutor, Nova Scotia
 12. Darrel Pink, Counsel to Department of Attorney General
 13. Adrian Reid, Crown Prosecutor, Nova Scotia
 14. Anthony Ross, Counsel to Oscar Seale and the Black United Front
 15. Jamie Saunders, Counsel to Department of Attorney General
 16. Bruce H. Wildsmith, Counsel to Union of Nova Scotia Indians
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2 Prosecuting Officers Act

R.S.N.S. 1954, c.226

1.

(1) At the criminal sittings of the Supreme Court at Halifax, or at the sittings of the Supreme Court in any county, or at any sittings of the county court judge's criminal court, the prosecution of criminals and other criminal business shall be taken charge of and conducted, on behalf of the Crown, by the following persons, that is to say:

(a) if the Attorney General is present at the sittings, by the Attorney General, or by a Queen's counsel or other competent barrister appointed by him at such sittings;

(b) if the Attorney General is not present, by a Queen's counsel or other competent barrister appointed by him in writing under his hand; and such appointment in writing shall be accepted by the presiding judge as a sufficient authority in that behalf;

(c) if the Attorney General is not present, and no Queen's counsel or barrister at the opening of the sittings presents a written appointment from the Attorney General, then by a Queen's counsel, or, in the absence of Queen's counsel, a competent barrister appointed by the presiding judge.

(2) The counsel appointed by the Attorney General to conduct criminal proceedings in any county in Nova Scotia shall be known and designated as the "prosecuting officer", and have all the powers and duties provided for such an officer by the criminal law of Canada. R.S., c. 220, s.1.

2.

(1) The presiding judge shall tax and allow to any such Queen's counsel, or other barrister so appointed, such reasonable fees for the services performed by him as are prescribed for civil actions by the *Costs and Fees Act*; but such fees, in any one case, shall not exceed:

(a) in the Supreme Court, the sum of thirty dollars; and

(b) in the county court judge's criminal court, the sum of twenty dollars.

(2) The amount of the bill so taxed shall be paid out of the Consolidated Revenue Fund, upon the production of a certificate, under the seal of the court, that such amount has been taxed and allowed. R.S., c. 220, s. 2.

3.

(1) Whenever it appears to the Attorney General that any criminal matter is of an exceptional character, requiring special attention in the public interest, he may, at any stage, appoint a barrister to appear and act for the Crown at any inquest held by a coroner, or by a stipendiary magistrate, or at any preliminary examination, or other investigation in respect to such matter.

(2) The fee for such barrister shall be ten dollars for each day, unless a larger fee is for good cause allowed by the Attorney General.

(3) Such fees shall be paid out of the Consolidated Revenue Fund, upon the certificate of the Attorney General. R.S., c. 220, s.3.

4.

(1) Notwithstanding anything in this Act, the Attorney General may appoint in any city, town or county, a competent barrister, who shall take charge of and conduct, on behalf of the Crown, the prosecution of criminals and other criminal business.

(2) The prosecuting officer so appointed shall receive such remuneration annually as may be fixed by the Governor in Council.

(3) Such remuneration shall be paid out of the Consolidated Revenue Fund, on the certificate of the Attorney General.

(4) The duties of such prosecuting officer shall from time to time be prescribed by the Attorney General.

(5) Such prosecuting officer may be removed at any time by the Governor in Council on a report from the Attorney General. R.S., c. 220, s.4.

3
Prosecuting Officers Act,

S.N.S. 1960, c.12

An Act to Revise Chapter 226 of the Revised Statues, 1954, the *Prosecuting Officers Act* (Assented to the 13th day of April, A.D., 1960)

Be it enacted by the Governor and Assembly as follows:

1.

This Act may be cited as the *Prosecuting Officers Act*.

2.

The Attorney General may take charge of and conduct on behalf of the Crown the prosecution of criminals and other criminal business at any sittings of the Supreme Court or of a county court judge's criminal court or before any magistrate or justice.

3.

If the Attorney General or a prosecuting officer appointed by him pursuant to this Act does not take charge of the prosecution of criminals and other criminal business at any sittings of the Supreme Court or of a county court judge's criminal court the presiding judge may appoint a competent barrister to take charge of and conduct on behalf of the Crown the prosecution of criminals and other criminal business at that sittings.

4.

The Attorney General shall appoint for each county a barrister to take charge of and conduct on behalf of the Crown the prosecution of criminals and other criminal business at the sittings of the Supreme Court or at any sittings of the county court judge's criminal court or before any magistrate, justice or coroner in the county.

5.

The barrister so appointed shall be known and designated as the prosecuting officer and, within the county for which he is appointed, has all the powers, authorities and duties provided by the criminal law of Canada for prosecutors, or for prosecuting officers, or for counsel for the Attorney General.

6.

(1) The Attorney General may appoint in each county one or more barristers to be assistant prosecuting officers for the county.

(2) An assistant prosecuting officer, acting in any matter or proceeding, has the same powers, authorities and duties as the prosecuting officer.

7.

(1) If there is a vacancy in the office of prosecuting officer, or if the prosecuting officer is for any reason unable or unwilling to act, or if for any reason the Attorney General considers it in the interest of the administration of justice to do so, the Attorney General may appoint a barrister to take charge of and conduct any particular prosecution or the prosecution at any sittings of any court or otherwise 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 special prosecuting officer and, when acting within the terms of his appointment, has all the powers, authorities and duties of a prosecuting officer.

(3) The Attorney General may from time to time vary the terms of the appointment of a special prosecuting officer or may at any time revoke such appointment.

8.

(1) A prosecuting officer or an assistant prosecuting officer may be removed from office at any time by the Governor in Council on a report from the Attorney General.

(2) The appointment of a special prosecuting officer shall not terminate, revoke or rescind the appointment of a prosecuting officer or an assistant prosecuting officer.

9.

The Governor in Council may from time to time fix an annual remuneration for any prosecuting officer or assistant prosecuting officer.

10.

A prosecuting officer or an assistant prosecuting officer for whom an annual remuneration has not been fixed or a special prosecuting officer shall be paid such reasonable fees as may be taxed and approved by a solicitor on the staff of the Department of the Attorney General for his services in any matter or proceeding in which he acts.

11.

(1) The Attorney General may prescribe the duties of prosecuting officers or of a prosecuting officer and may from time to time issue instructions to prosecuting officers, which instructions it shall be the duty of the prosecuting officer to observe and follow.

(2) In this section the expression "prosecuting officer" includes assistant prosecuting officer.

12.

Chapter 226 of the Revised Statutes, 1954, the *Prosecuting Officers Act*, is repealed.

13.

This Act shall come into force on and not before the first day of July, 1960.

4
Memo from Deputy
Attorney General to Staff

December 1, 1966

From:

Deputy Attorney General

To:

All Members of the Main Office Staff

This is an updating of professional staff assignments. It is again emphasized that no rigid division is intended and that all professional members of the staff will be expected to maintain familiarity with the general work of the Department, and will be expected to consult each other on all major questions. It is also to be understood that any member of staff who is under temporary pressure will seek, and should receive, the assistance of others. It is again pointed out that primary responsibility will be as set out hereunder, and incoming correspondence will be distributed in the first instance accordingly. The Attorney General will be advising the senior officers of the several Departments.

Mr. Jones

All matters relating to legislation, particularly proposed legislation, and including final approval of all regulations originating within the Government; all appeals in indictable offences.

Mr. Kavanagh

Matters relating to the Departments of Mines, Labour, Trade and Industry, Agriculture and Marketing, matters relating to the Water Authority, and proceedings under the *Quieting Titles Act*.

Mr. Anderson

All *Criminal Code* matters, including police reports and correspondence in relation to *Criminal Code* matters with Prosecuting Officers and others, but not including appeals in indictable offences or Provincial statute prosecutions; matters relating to the Departments of Municipal Affairs and Education, exclusive of summary conviction prosecutions under the *Education Act*.

Mr. Conrad

Matters relating to the Department of Health, including the Hospital Insurance Commission, the Hospital Tax Commission and the Medical Care Commission; the Department of Welfare, not including the Housing Commission; the Department of the Provincial Secretary, including Credit.

Mr. Gale

Matters relating to the Department of Highways, including the Motor Vehicle Branch; matters relating to the Liquor Commission and the Liquor Licensing Board, the supervision of legal matters relating to Maintenance Orders; the licensing of gun clubs; divorce; and all actions and prosecutions under Provincial statutes, including prosecutions under statutes administered by other Departments of Government.

Mr. Ronald MacDonald

All non-legal administrative matters, including requisitions for all branches, payrolls, personnel matters, accounts of solicitors conducting prosecutions; routine Maintenance Order cases; matters relating to the inspection of Public Offices; and matters relating to budget control.

Mr. Walker

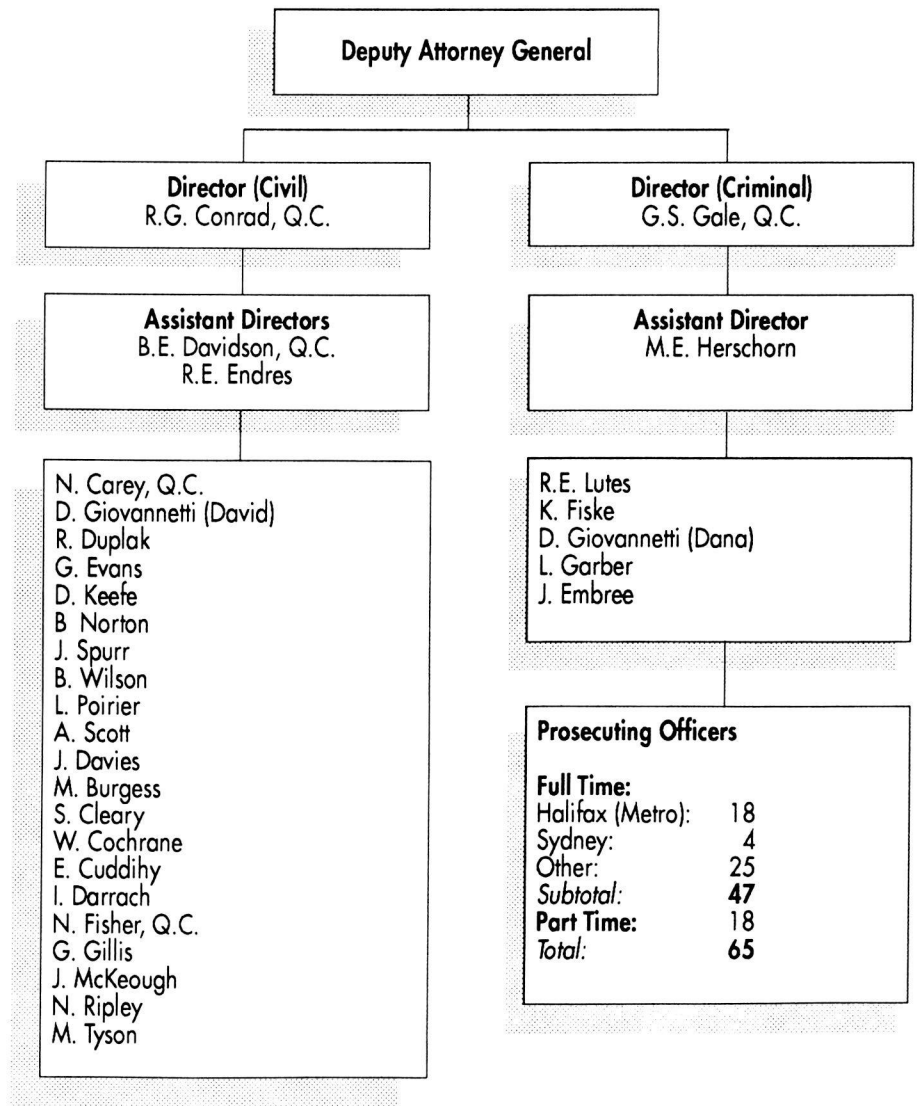
Matters relating to the Department of Fisheries, Public Works, Land and Forests; matters relating to the Housing Commission, Estates and loans to Universities; matters relating to Nova Scotia's participation in the Centennial Pavilion at EXPO.

The Deputy

Matters relating to the Premier's Office, Department of Finance and Economics, all Federal Departments, Public Utilities, Civil Service Commission, Probation, Public Offices and, in the first instance, all miscellaneous matters or matters not coming within the classifications set out above.

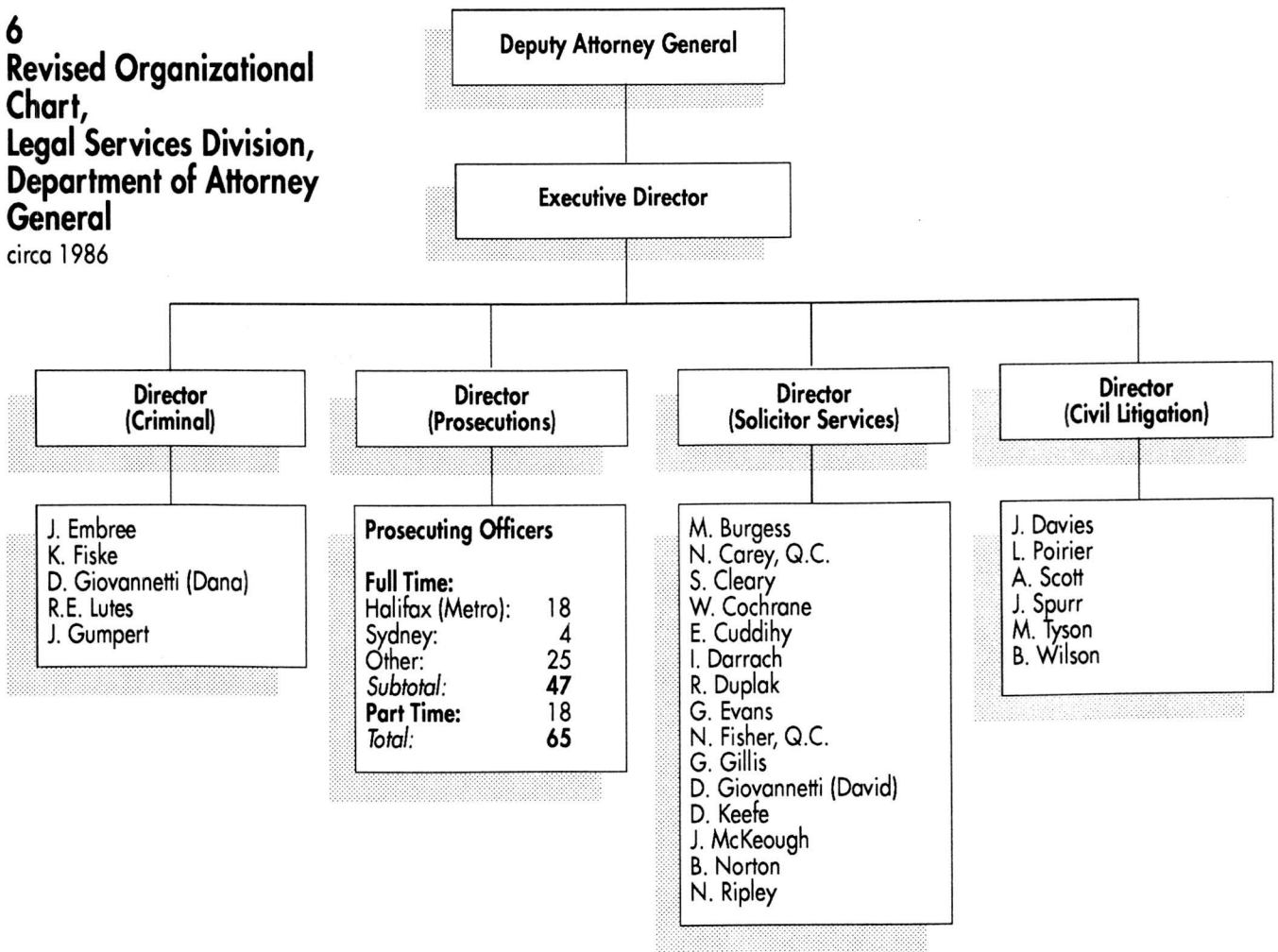
5
Organizational Chart,
Legal Services Division,
Department of Attorney
General

circa 1971

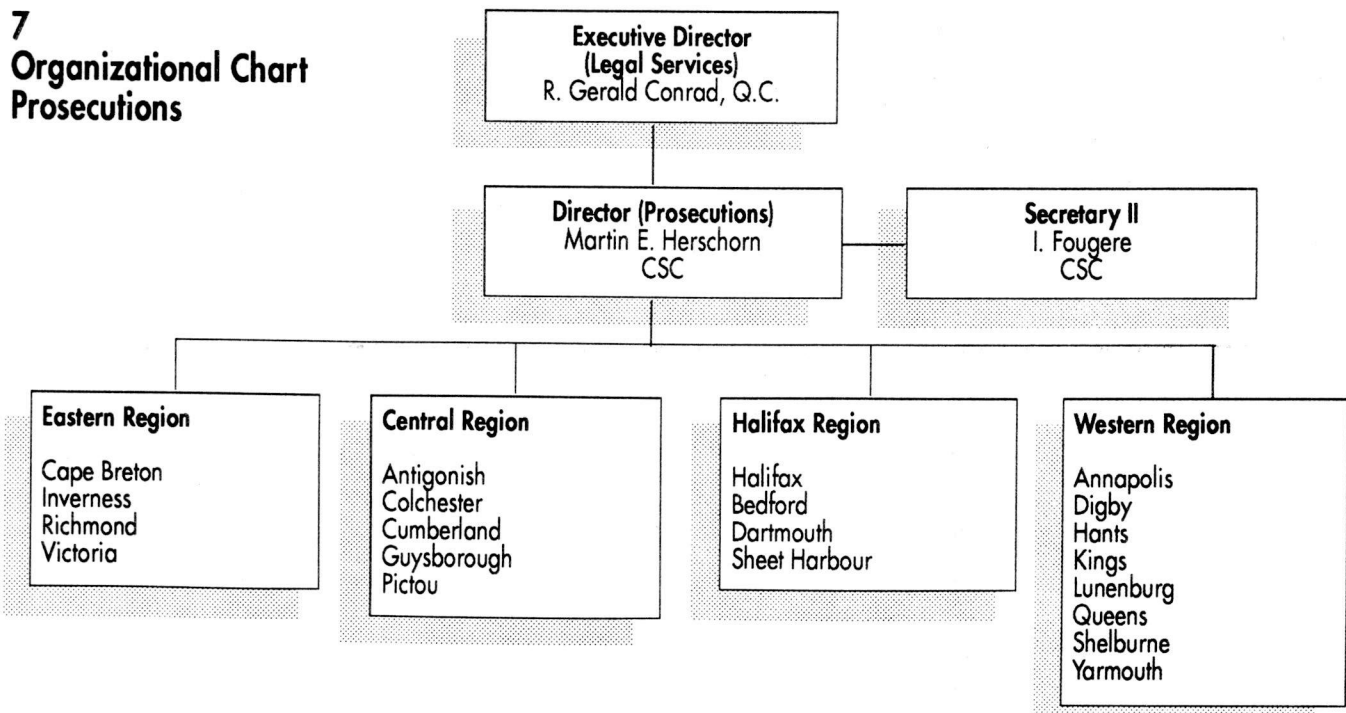


6
Revised Organizational
Chart,
Legal Services Division,
Department of Attorney
General

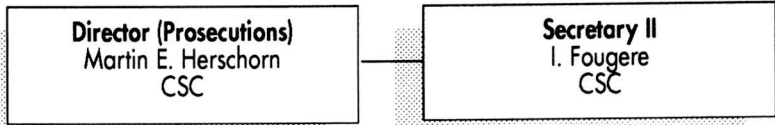
circa 1986



7
Organizational Chart
Prosecutions



7
Organizational Chart
Prosecutions
 Central Region



Antigonish

Prosecuting Officer:
R. Chisholm, Q.C., CSC

Assistant Prosecuting Officers:
C. Grant, Q.C., OIC Pt
W. Murphy, Q.C. OIC Pt

Secretary II:
M. MacDonald, CSC

Colchester

Prosecuting Officer:
R. Kaulback, Q.C., CSC

Assistant Prosecuting Officers:
R. Hagell, CSC
D. Fairbanks, OIC

Per Diem Prosecuting Officers:
W. Kennedy, Q.C.
C. Ellis
R. Carruthers
P. Lederman
F. Joseph

Secretary II:
R. Bakker, CSC

Part-Time Casual:
G. Bohaker

Cumberland

Prosecuting Officer:
D. Fairbanks, Q.C., OIC

Per Diem Prosecuting Officers:
C. Ellis
M. Pare

Secretary:
D. Chambers, OIC

Part-Time Casual:
D. Allen

Guysborough

Prosecuting Officer:
W. Murphy, Q.C., OIC, Pt

Assistant Prosecuting Officers:
R. Chisholm, Q.C., CSC
C. Grant, Q.C., OIC, Pt

Pictou

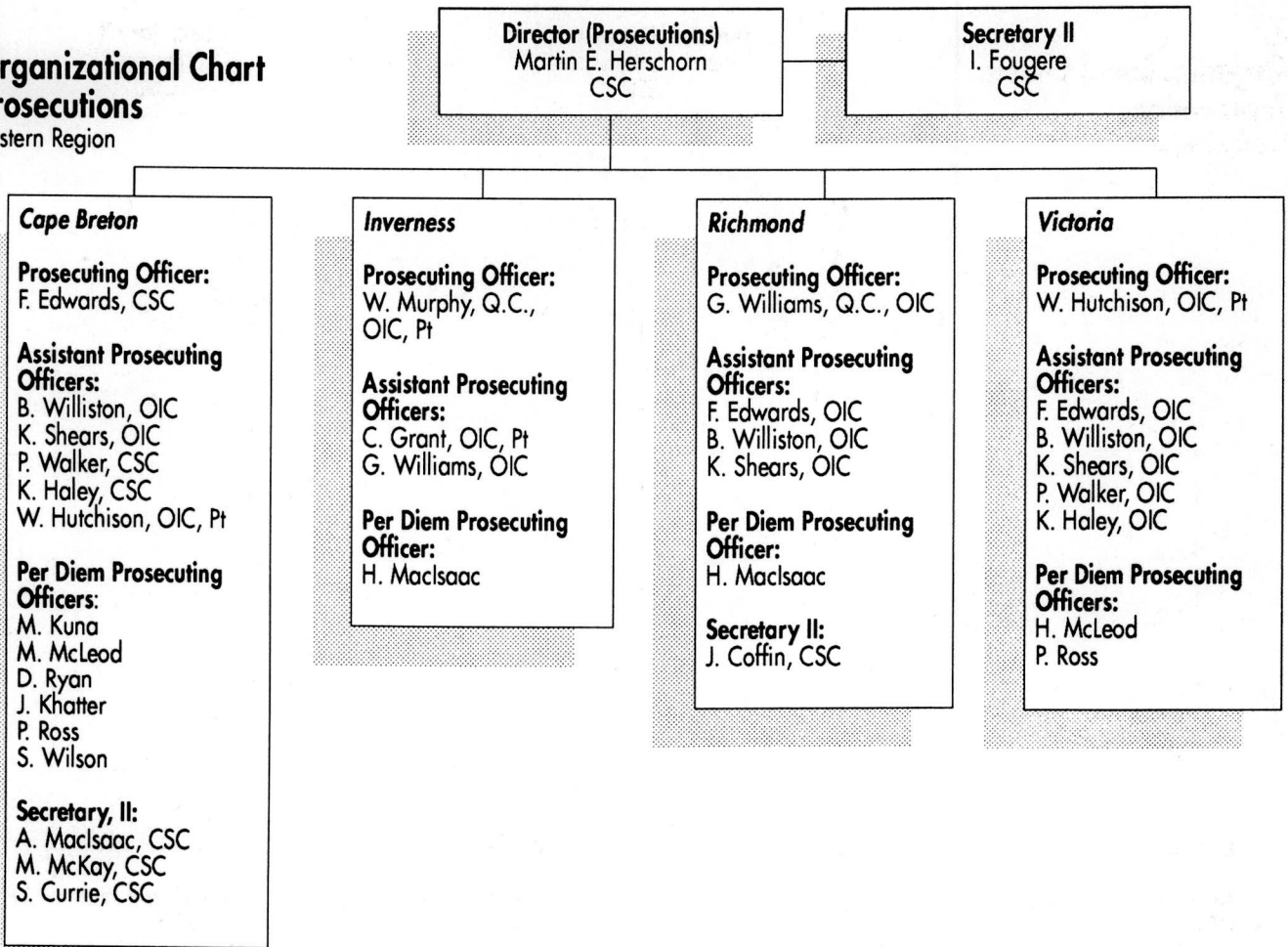
Prosecuting Officer:
T. Parker, Q.C., CSC

Assistant Prosecuting Officers:
H. Felderhof, CSC
N. Scaravelli, OIC, Pt
D. Fairbanks, OIC

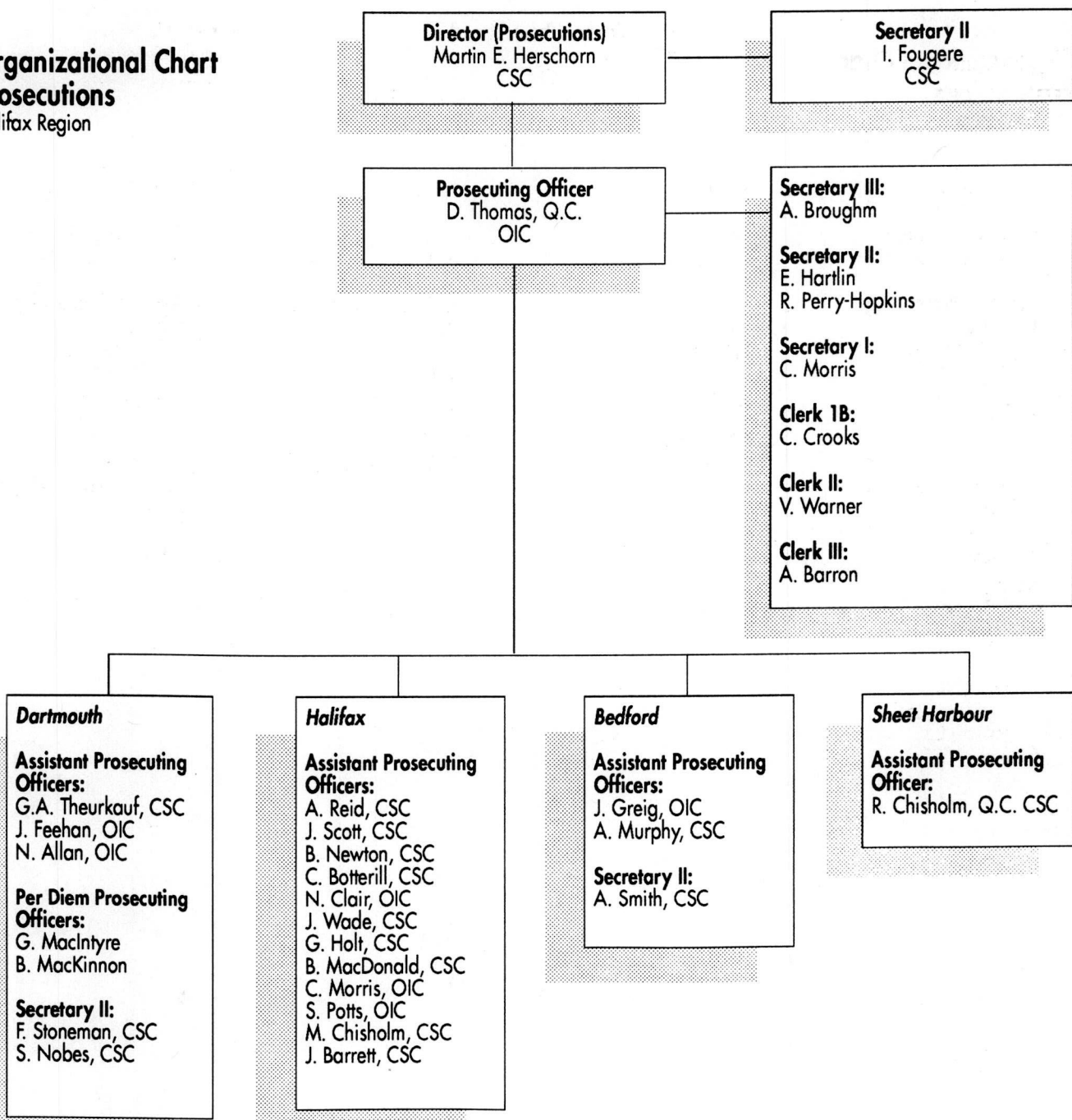
Per Diem Prosecuting Officers:
H. Patterson
W. Kennedy, Q.C.
J. Baker, Q.C

Secretary II:
J. Westerman, CSC
S. Adamson, CSC.

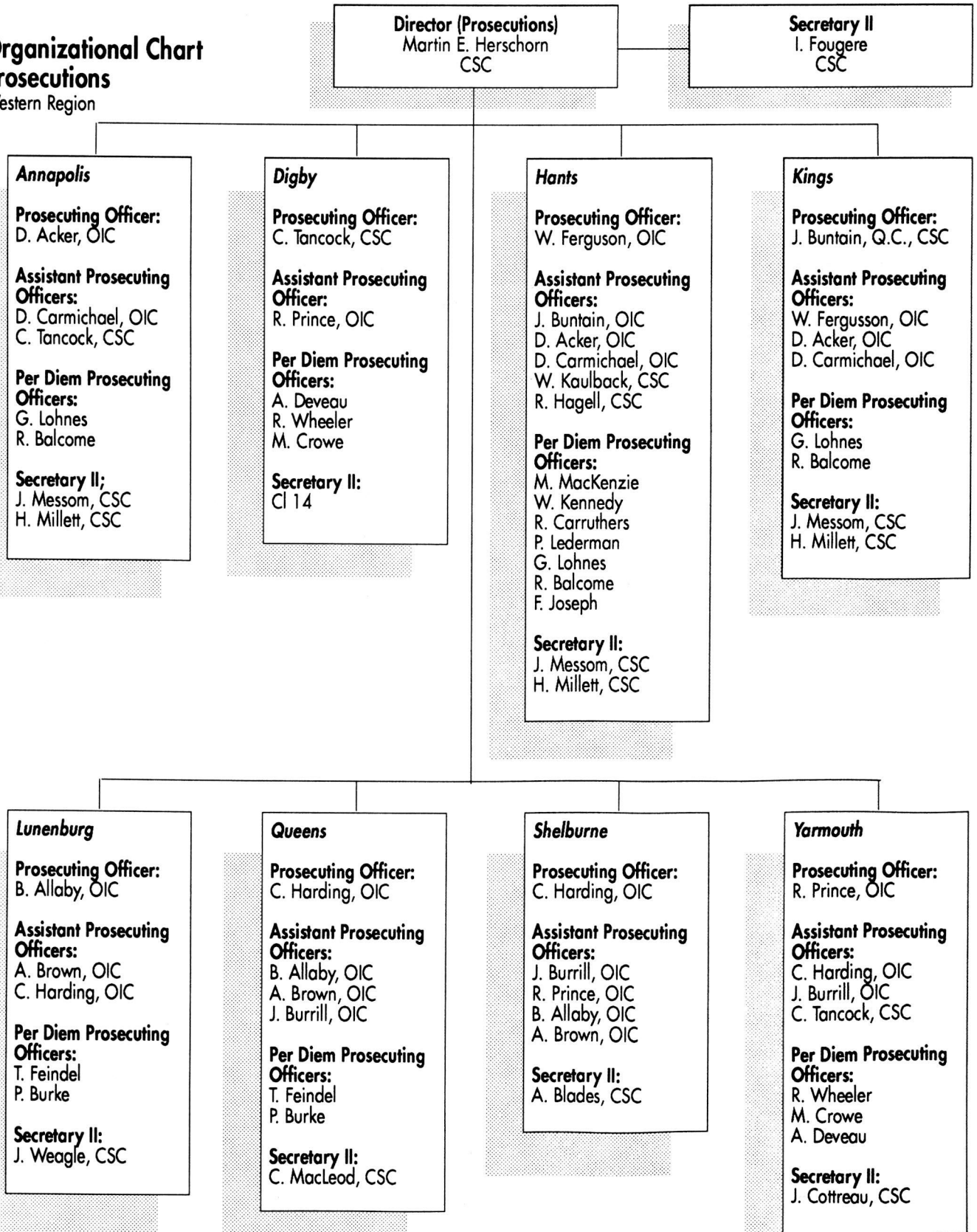
7
Organizational Chart
Prosecutions
 Eastern Region



7
Organizational Chart
Prosecutions
 Halifax Region



7
Organizational Chart
Prosecutions
 Western Region



8
Order in Council
Appointment of
Assistant Prosecuting
Officer

To:
Of:
In the County of:
And All Others Whom it May Concern

KNOW YE that under and by virtue of Chapter 240 of the Revised Statutes of Nova Scotia, 1967, the *Prosecuting Officers Act*, and of every other power and authority in me vested in that behalf, effective on and from the day of , 19 , I have appointed and do by these presents appoint the said , as Assistant Prosecuting Officer for the County of , to take charge of and conduct on behalf of the Crown the prosecution of criminals and other criminal business at all sittings of the Supreme Court in the County of , and at all sittings of the County Court Judge's Criminal Court in the County of , and before any provincial court judge or justice in the County of , the said to have for that purpose all powers, authorities and duties provided by the criminal law of Canada for prosecutors, or for prosecuting officers, or for counsel for the Attorney General.

GIVEN under my hand at the City of Halifax, Province of Nova Scotia, this day of , 19 .

Attorney General

9
Position Description,
Assistant Prosecuting
Officer

July 1980

Position: Assistant Crown Prosecutor (Prosecuting Officer IV)

Incumbent:

Department: Attorney General

Division: Halifax County Prosecuting Office

Location: Halifax

Date: July 2, 1980

General Accountability:

This position is accountable for representing the Crown in the prosecution of criminal matters and all provincial statutes for the Province of Nova Scotia in the Supreme Court, County Court and Provincial Magistrate's Court.

Structure:

This position is one of twelve reporting to the Crown Prosecutor for the County of Halifax. In the absence of the Prosecuting Officer, the eleven (11) Assistant Crown Prosecutors report to the one Prosecuting Officer V.

The other ten (10) Assistant Crown Prosecutors consist of Prosecuting Officers I, II, III.

There are no subordinates reporting to this position.

Nature and Scope:

The Attorney General of Nova Scotia is responsible for the administration of justice within the Province. Included in this responsibility is the taking charge of and conducting on behalf of the Crown the prosecution of criminals and other criminal matters. The Attorney General under the *Prosecuting Officers Act* appoints a barrister to represent the Crown in this respect for each County in the Province. This barrister is known as a Prosecuting Officer. The Attorney General may also appoint in each County any number of barristers to be Assistant Prosecuting Officers. They have the same power, authority and duties as the Prosecuting Officer, but are subject to his direction. All of the above must be practicing members of the Nova Scotia Barristers' Society.

A Prosecuting Officer IV is consulted on a daily basis by the police, members of various government departments and the public concerning the laying of charges, and in particular those of a more complex nature; for example, a complicated commercial fraud. Therefore, he must call upon his knowledge and experience in the criminal law - substantive, procedural and evidentiary. He must also keep abreast of the latest developments in the criminal law by the perusal of current legal publications and the maintenance of up-to-date reference files. On occasion he is required to attend continuing legal education courses.

After a charge is laid, the Crown must be represented by an Assistant Prosecuting Officer at the following stages of the criminal proceedings: arraignments, show cause hearings, preliminary inquiries, and trials. All of the above require advance preparation, and in particular preparation for a trial includes the following elements: he must select, summons, and interview the witnesses that he needs to prove the charge. He will then address himself to the law applicable to the charge and prepare for both the cross-examination of anticipated defence witnesses and his final argument to the Judge

or Jury. He then presents his case in the courtroom and if a finding of guilty is made, he must prepare for and represent the Crown at the sentencing of the accused person.

A Prosecuting Officer IV must handle all the summary conviction appeals to the County Court. This requires that he do extensive research into the legal issues that are the basis of the appeal. Frequently, he is required to prepare and submit written briefs to the Appellate Judge.

The criminal charges routinely prosecuted by a Prosecuting Officer IV are of a more serious and complex nature than those routinely prosecuted by a Prosecuting Officer I, II, III.

In addition, a Prosecuting Officer IV has daily contact with members of the public, concerning questions they have about the criminal law. He is also called upon to address various organizations that are interested in the criminal law, such as police organizations, High School classes, etc.

Finally, the Prosecuting Officer IV is in almost continuous contact with other members of the practicing Bar and the judiciary. He must be able to get along with these people and must maintain a reputation of the highest integrity, honour and impartiality in order to effectively represent the Crown.

The Incumbent provides advice to less experienced Assistant Crown Prosecutors concerning the laying of criminal charges and other related problems that arise on a frequent basis.

The major challenge of the position is decision making. As has already been mentioned, the *Prosecuting Officers Act* confers the power and authority to make decisions that will have a great impact on the lives of many people. He must make many decisions daily, such as whether criminal charges are to be laid and against whom, how the trial is to be conducted, whether magisterial inquiries are required following fatalities, etc.

The decision making responsibilities of the Prosecuting Officer IV are more onerous because he is consulted in an advisory capacity by less experienced staff.

In the day to day performance of his decision making duties, the Incumbent has a great deal of discretion which is subject to only very broad directives from the Prosecuting Officer or the Attorney

General's Department. Thus, he functions virtually independently in the decisions he makes. Only in the most unusual cases is he specifically directed to take certain action.

Some examples will serve to illustrate the importance of the decisions the Prosecutor is called upon to make. One is in the area of appeals. Unless the Prosecutor determines to recommend an appeal after the trial is completed, the matter is unlikely to come to the attention of anyone in the Department until the appeal period has expired. Thus, there is a heavy responsibility on the Prosecutor regarding the launching of appeals. Making decisions on which cases should be considered for appeal becomes one of the primary challenges of the job.

Another example involves submissions on sentencing. The Prosecutor is often inundated with psychiatric reports, Pre-sentence Reports and offers to plead guilty, if the Prosecutor will make certain concessions on sentencing submissions. The Prosecutor must decide how the best interests of justice can be served in light of these factors and then formulate his submissions accordingly without forgetting the victim of the crime.

Dimensions:

A Prosecuting Officer IV has no direct impact on budget or monetary considerations for the Prosecutor's Office for the County of Halifax.

This position has a great impact in human terms and in public relations as the decisions made by the Prosecutor directly affect these classes of people:

(1) *The Police* - who rely on free access to the Prosecutor in preparing their cases and handling legal problems related to the performance of their duties.

(2) *The Public* - who perceive the Prosecutor as their advocate in court - who assess the Prosecutor's performance as representative of the Attorney General's Department as a whole.

(3) *The Accused* - whose ultimate fate is often largely determined by the manner in which the Prosecutor exercises his discretion in handling the case.

The importance of this position has been summed up by Mr. Justice Rand of the Supreme Court of Canada in *Boucher v. The Queen*, (1955) 20 C.R. at page 8.

The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty that which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.

Specific Accountabilities:

1. Determine the proper charge (or charges), if any, which should be laid in particular cases by consultation with the investigating police officer.
2. Prepare cases for trial by legal research, consultation with police, interviews with witnesses.
3. Present the more complicated cases in Court thoroughly and impartially, but as efficiently as possible, keeping in mind time constraints on the courts, through adequate planning of the case in its initial stages.
4. Prepare memorandi [*sic*] recommending appeals where the law has not been correctly interpreted in particular cases by viewing the evidence present at the trial, the Judge's decision and the relevant law.
5. Represent the Crown on all summary conviction appeals by preparing written briefs and/or oral arguments before a County Court Judge.
6. Assist junior Prosecuting Officers in an advisory capacity through consultation.

Approved by:

Incumbent: _____ *Date:* July 1980
(signed)

Supervisor: _____ *Date:* July 1980
(signed)

*Deputy
Minister:* _____ *Date:* July 1980
(signed)

10
Performance
Appraisal Form

(Blank)

Name: _____ *Position Title:* _____

Division: _____ *Classification:* _____

Department: _____

Appointed to Present

Position: _____ *Total Service:* _____

Review Period

From: _____ *To:* _____

This form contains four sections:

- I *Expected Results*
- II *Results Achieved*
- III *Analysis of Overall Performance*
- IV *Follow-up Action Plans*

Part I:

completed at the beginning of the review period, indicates the major accountabilities of the employee, and the performance goals which have been established in relation to each for the appraisal period.

Part II:

completed at the end of the appraisal period, indicates the actual results achieved in relation to each goal.

Part III:

provides an analysis of the individual's overall performance in terms of significant achievements, requirements for performance improvement, etc.

Part IV:

indicates the follow-up action plans which have been developed in relation to each of the performance areas identified in Part III.

Part I: Expected Results

For each major accountability identified, specify the performance goal(s) to be achieved and the standards by which success will be measured.

1. To consult with and be accessible to police forces operating in the county.
2. To keep abreast of developments in the criminal law which affect pending cases through perusal of available case reports and other legal materials.
3. To prepare and present cases in court in a thorough and professional manner.
4. To manage caseloads efficiently and facilitate the prompt hearing and disposition of cases.
5. To attend upon matters relating to witnesses including subpoenas, notice of adjournments, fees and exhibits.
6. To ensure that matters to be discussed with the Department i.e. plea bargaining situations, the entering of a stay of proceeding and recommendations for appeal are promptly raised with the Assistant Director or Director (Criminal).
7. To implement instructions issued from time to time by the Attorney General.

Part II: Results Achieved

Specify the results achieved in relation to each performance goal previously established.

.....

.....

Part III: Analysis of Overall Performance

Summarize outstanding achievements; performance strengths; weaknesses; etc.

Part IV: Follow-up Action Plans

Specify action plans which have been developed in relation to each of the performance areas identified in Part III.

Summary Comments

Signatures: _____

Manager: _____

Employee: _____

Senior Manager: _____

The public interest criteria:

7.

Having satisfied himself that the evidence itself can justify proceedings, the Crown Prosecutor must then consider whether the public interest requires a prosecution. The Crown Prosecution Service will be guided by the view expressed in a House of Commons debate by Lord Shawcross when he was Attorney General, and subsequently endorsed by his successors:

"It has never been the rule in this Country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution. Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should ... prosecute wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest.' That is still the dominant consideration." (H.C. Deb., Vol. 483, col. 681, January 29th 1951)

He continued by saying that regard must be had to 'the effect which the prosecution, successful or unsuccessful as the case may be, would have upon public morale and order, and with any other considerations affecting public policy.'

8.

The factors which can properly lead to a decision not to prosecute will vary from case to case, but broadly speaking, the graver the offence, the less likelihood there will be that the public interest will allow of a disposal less than prosecution, for example, a caution. Where, however, an offence is not so serious as plainly to require prosecution, the Crown Prosecutor should always apply his mind to the public interest and should strive to ensure that the spirit of the Home Office Cautioning Guidelines is observed. If the case falls within any of the following categories this will be an indication that proceedings may not be required, subject of course to the particular circumstances of the case.

(i) *Likely Penalty*

When the circumstances of an offence are not particularly serious, and a Court would be likely to impose a purely nominal penalty, Crown Prosecutors should carefully consider whether the public interest would be better served by a prosecution or some other form of disposal such as, where appropriate, a caution. This applies

particularly where the offence is triable on indictment when Crown Prosecutors should also weigh the likely penalty with the likely length and cost of the proceedings.

(ii) *Staleness*

Regard must be had not only to the date when the last known offence was committed, but also the length of time which is likely to elapse before the matter can be brought to trial. The Crown Prosecutor should be slow to prosecute if the last offence was committed three or more years before the probable date of trial, unless, despite its staleness, an immediate custodial sentence of some length is likely to be imposed. Less regard will be paid to staleness, however, if it has been contributed to by the accused himself, the complexity of the case has necessitated lengthy police investigation or the particular characteristics of the offence have themselves contributed to the delay in its coming to light. Generally, the graver the allegation the less significance will be attached to the element of staleness.

(iii) *Youth*

The stigma of a conviction can cause irreparable harm to the future prospects of a young adult, and careful consideration should be given to the possibility of dealing with him or her by means of a caution.

(iv) *Old age and infirmity*

(a) The older or more infirm the offender, the more reluctant the Crown Prosecutor should be to prosecute unless there is a real possibility of repetition or the offence is of such gravity that it is impossible to overlook. In general, proceedings should not be instituted where a Court is likely to pay such regard to the age or infirmity of the offender as to induce it to impose only a nominal penalty, although there may be exceptional circumstances, such as where the accused still holds a position of some importance, when proceedings are required in the public interest regardless of what penalty may be imposed.

(b) It will also be necessary to consider whether the accused is likely to be fit enough to stand his trial. The Crown Prosecutor should have regard to any medical reports which have been made available by the defence solicitor and may arrange through him for an independent medical examination where this is necessary.

(v) *Mental illness or stress*

(a) Whenever the Crown Prosecutor is provided with a medical report to the effect that an accused or a person under investigation is suffering from some form of mental illness or psychiatric illness and that the strain of criminal proceedings may lead to a considerable worsening of his condition, such a report should receive anxious consideration. This is a difficult field because in some instances the accused may have become mentally disturbed or depressed by the mere fact that his misconduct has been discovered and the Crown Prosecutor may be dubious about a prognosis that criminal proceedings will adversely affect his condition to a significant extent. Where, however, the Crown Prosecutor is satisfied that the probable effect upon the defendant's mental health outweighs the interests of justice in that particular case, he should not hesitate to discontinue proceedings. An independent medical examination may be sought, but should generally be reserved for cases of such gravity as plainly to require prosecution but for clear evidence that such a course would be likely to result in a permanent worsening of the accused's condition.

(b) The Crown Prosecutor should not pay as much regard to evidence of mental instability not coupled with a prognosis as to the adverse effect of proceedings, as such instability may increase the likelihood that the offence will be repeated. The accused's mental state will, of course, be relevant in considering any issue of mens rea or fitness to plead.

(vi) *Sexual offences*

(a) Whenever two or more persons have participated in the offence in circumstances rendering both or all liable to prosecution the Crown Prosecutor should take into account each person's age, the relative ages of the participants and whether or not there was any element of seduction or corruption when deciding whether, and if so in respect of whom, proceedings should be instituted.

(b) Sexual assaults upon children should always be regarded seriously, as should offences against adults, such as rape, which amount to gross personal violation. In such cases, where the Crown Prosecutor is satisfied as to the sufficiency of the evidence there will seldom be any doubt that prosecution will be in the public interests.

(vii) *Complainant's attitude*

In some cases it will be appropriate for the Crown Prosecutor to have regard to the attitude of a complainant who notified the police but later expresses a wish that no action be taken. It may be that in such circumstances proceedings need not be pursued unless either there is suspicion that the change of heart was actuated by fear or the offence was of some gravity.

(viii) *Peripheral defendants*

Where an allegation involves several accused, as a general rule the Crown Prosecutor should have regard to the need to ensure that proceedings are continued only against those whose involvement goes to the heart of the issue to be placed before the Court. The inclusion of defendants on the fringe of the action and whose guilt in comparison with the principal offenders is minimal can lead to additional delay and cost, as well as unnecessarily clouding the essential features of the case.

9.

Finally, if, having weighed such of the above factors as may appertain to the case, the Crown Prosecutor is still in doubt as to whether proceedings are called for, he will throw into the scales the attitude of the local community and any information about the prevalence of the particular offence in the area or nationally. Should doubt still remain, the scales will normally be tipped in favour of prosecution as if the balance is so even, it could properly be said that the final arbiter must be the Court.

12
U.S. Department of Justice
Materials Relating to
Prosecutorial Discretion

1977

The following materials are reprinted in their entirety from two Justice Department documents issued under cover of a January 18, 1977, memorandum by then Attorney General Edward H. Levi to U.S. Attorneys and the head of all Justice Department offices, divisions, and bureaus.

The enclosed materials relate to the exercise of prosecutorial discretion by attorneys for the government in such areas as decisions to prosecute, selection of charges, plea agreements involving the reduction or dropping of charges, and agreements to forego prosecution in return for cooperation. These materials have been developed within the Department after a lengthy process of study and consultation. They represent what are believed to be appropriate considerations with respect to the exercise of prosecutorial discretion

in the areas covered and are being provided to you, not as departmental requirements, but for whatever use you may find appropriate in the course of discharging your duties and responsibilities as federal prosecutors.

I wish to emphasize that these materials are not to be construed as Department of Justice "guidelines" and that they impose no obligations on United States Attorneys, their Assistants, or other attorneys for the government. Of course, they confer no rights or benefits, substantive or procedural, enforceable at law by any party to litigation with the United States. They are intended solely for use by attorneys for the government to the extent that they are found to be useful in assisting these attorneys in performing their important functions.

Any comments or suggestions you may have with respect to the enclosed materials should be forwarded to the Office of Policy and Planning of the Department of Justice. - Edward H. Levi, Attorney General.

Decisions To Prosecute, Selection Of Charges, Agreements To Terminate Prosecutions In Return For Guilty Pleas To Fewer Than All Charges, And Opposition To Nolo Contendere Pleas

A. Application

These materials relate to the exercise of prosecutorial discretion by attorneys for the government with respect to decisions to prosecute or decline prosecution, selection of charges, agreements to terminate prosecutions in return for guilty pleas to fewer than all charges, and opposition to *nolo contendere* pleas.

B. Decisions to Prosecute

If the attorney for the government has probable cause to believe that a person has committed a federal offense, it is his duty to determine whether to initiate or recommend prosecution or to decline prosecution.

2.

In determining whether to initiate or recommend prosecution or to decline prosecution, the attorney for the government should weigh all relevant considerations, including:

-
- (a) the seriousness of the offense;
 - (b) the need to provide a deterrent to similar offences;
 - (c) the strength of the government's case;
 - (d) the person's relative culpability in connection with the offense, his history with respect to criminal activity, and his circumstances;
 - (e) the probable sentence if the person is convicted;
 - (f) the possibility of civil, administrative, or other proceedings in lieu of prosecution;
 - (g) the possibility of prosecution in another jurisdiction; and
 - (h) the availability of prosecutorial and judicial resources.

3.

In determining whether to initiate or recommend prosecution or to decline prosecution, the attorney for the government should not be influenced by:

- (a) the offender's race, religion, sex, national origin or political association, activities, or beliefs;
- (b) his own personal feelings concerning the offender or the victim; or
- (c) the possible effect of his decision on his own personal or professional circumstances.

4.

Whenever a potential prosecution is declined, the attorney for the government should assure that the case file reflects the action taken with respect to the matter and the reason therefor.

13

**Excerpt From
Prosecution Policy of the
Commonwealth of
Australia**

Guidelines for the Making of
Decisions in the Prosecution
Process

The decision to prosecute

2.10

Sir Hartley Shawcross Q.C., then Attorney General, stated to the House of Commons on 29 January 1951:

"The truth is that the exercise of a discretion in a quasi-judicial way as to whether or when I must take steps to enforce the criminal law is exactly one of the duties of the office of the Attorney-General, as it is of the office of the Director of Public Prosecutions.... It has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution.... (T)he public interest ... is still the dominant consideration." (See H.C. Debates, Vol. 483, col. 681.)

This statement is equally applicable to the position in Australia. The resources available for prosecution action are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue with some vigour those cases worthy of prosecution.

2.11

The decision whether or not to prosecute is the most important step in the prosecution process. In every case great care must be taken in the interests of the victim, the suspected offender and the community at large to ensure that the right decision is made. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, both tend to undermine the confidence of the community in the criminal justice system.

2.12

It follows that the objectives previously stated - especially fairness and consistency - are of particular importance. However, fairness need not mean weakness and consistency need not mean rigidity. The criteria for the exercise of this discretion cannot be reduced to something akin to a mathematical formula; indeed it would be undesirable to attempt to do so. The breadth of the factors to be considered in exercising this discretion indicates a candid recognition of the need to tailor general principles to individual cases.

2.13

In deciding whether or not a matter should be prosecuted any views put forward by the A.F.P., or the Department responsible for the administration of the law in question, are carefully taken into account. Ultimately the decision is to be made having regard to the considerations referred to below.

2.14

The initial consideration in the exercise of this discretion is whether the available evidence establishes a prima facie case; that is to say, on the basis that the available evidence is accepted without reservation by a jury it could, acting responsibly, be satisfied of the defendant's guilt beyond reasonable doubt. In this regard, if a prosecution has already commenced but on an objective assessment there is not, nor will there be, a prima facie case, the prosecution should not proceed.

2.15

The second major consideration is whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires the prosecution to be pursued. In deciding whether the public interest requires a prosecution a wide variety of factors can properly be taken into account, many of which are referred to below. Dominant in this context is that ordinarily the public interest will not require a prosecution unless it is more likely than not that it will result in a conviction. Such an assessment requires a dispassionate evaluation of how strong the case is likely to be when presented in court. It must take account of such matters as the availability and credibility of witnesses and their likely impression on a jury, the admissibility of any alleged confession and the impact of any likely defence on a jury or other arbiter of fact. It may also be relevant that the particular offence or offender has characteristics which motivate juries towards acquittal. This assessment may be a difficult one to make and in some cases it may not be possible to say with any confidence that either a conviction or an acquittal is the more likely result. In such cases of doubt it may still be appropriate to proceed with the prosecution when regard is had to any other relevant public interest factors, provided a conviction is reasonably open on the available evidence. On the other hand, the public interest may require that a prosecution not be brought although a conviction is more likely than not.

2.16

Other factors which may arise for consideration in determining whether the public interest requires a prosecution include:

- (a) the seriousness or, conversely, the triviality of the alleged offence or that it is of a "technical" nature only;
- (b) any mitigating or aggravating circumstances;
- (c) the youth, age, physical health, mental health or special infirmity of the alleged offender or a witness;
- (d) the alleged offender's antecedents;
- (e) the staleness of the alleged offence;
- (f) the degree of culpability of the alleged offender in connection with the offence;
- (g) the effect on public order and morale;
- (h) the obsolescence or obscurity of the law;
- (i) whether the prosecution would be perceived as counter-productive, for example, by enabling the defendant to be seen as a martyr;
- (j) the availability and efficacy of any alternatives to prosecution;
- (k) the prevalence of the alleged offence and the need for deterrence,

-
- both personal and general;
- (l) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
 - (m) whether the alleged offence is of considerable public concern;
 - (n) any entitlement of the Commonwealth or other person to criminal compensation, reparation or forfeiture if prosecution action is taken;
 - (o) the attitude of the victim of the alleged offence to a prosecution;
 - (p) the likely length and expense of a trial;
 - (q) whether the alleged offender is willing to cooperate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;
- (r) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (s) whether the alleged offence is triable only on indictment; and
 - (t) the necessity to maintain public confidence in such basic institutions as the Parliament and the courts.

The applicability of and weight to be given to these and other factors will depend on the particular circumstances of each case.

2.17

Special considerations apply to the prosecution of persons under the age of 16 years. Prosecution action against children should be used sparingly and in making a decision whether to prosecute particular consideration should be given to available alternatives to prosecution, such as a caution or reprimand, as well as the sentencing alternatives available to the relevant Children's Court if the matter were to be prosecuted. The practice of the D.P.P. is that any decision to prosecute a child under 16 years of age should be taken by a senior lawyer, usually the Deputy Director of the Branch Office concerned.

2.18

A decision whether or not to prosecute must clearly not be influenced by:

- (a) the race, religion, sex, national origin or political associations, activities or beliefs of the alleged offender or any other person involved;
- (b) personal feelings concerning the offender or the victim;
- (c) possible political advantage or disadvantage to the Government or any political group or party; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

14
Nova Scotia Policy Directive
on Disclosure

September 15, 1986

From: The Honourable Ronald C. Giffin, Attorney General
To: Prosecuting Officers and Assistant Prosecuting Officers
Subject: Policy Directive on Disclosure
Date: September 15, 1986

The Crown shall make full disclosure of its case to the accused, or counsel for the accused. The accused is entitled to any statements that he or she has made. In addition, the Crown shall make available to the accused, or counsel, statements of all witnesses indicating which witnesses the Crown intends to use. Whenever possible, copies shall be provided upon request. In most cases, the Crown Sheet prepared by the police which details the facts in support of the charge laid may be made available to the defence. It is incumbent upon the Crown to fully disclose all statements and other evidence which it intends to present when the same is known at the earliest opportunity.

Notwithstanding the above, disclosure may be limited or withheld by the Crown in any of the following situations:

1. Where there are reasonable grounds to believe that there may be destruction of evidence or, intimidation or threats to the well being of a witness.
2. The statement, and address of a young sexual assault victim may be withheld if there is concern that provision of that young person's statement and whereabouts to the defence may result in excessive stress for that witness.
3. Any other situation where upon perusal of the file, it is felt that disclosure would be contrary to the interests of justice.

In any case in which it is felt that full disclosure should not be made, this must be referred to the Director (Prosecutions) for decision and instructions.

Prosecuting Officers are reminded that in no case should a file be turned over to the defence for perusal, without the file having first been checked to ensure that it does not contain any confidential or extraneous material or police reports containing expressions of personal views or opinions of the police investigator which ought not to be disclosed to the defence.

(signed)

Honourable Ronald C. Giffin

15
Nova Scotia Disclosure
Guidelines

July 18, 1988

From: Hon. Terence R.B. Donahoe, Q.C., Attorney General
To: Prosecuting Officers and Assistant Prosecuting Officers
Subject: Disclosure Guidelines
Date: July 18, 1988

It is recognized that there is a general duty upon the Crown to disclose the case in chief for the prosecution to counsel for the accused, and to make defence counsel aware of the existence of all relevant evidence. The Crown, in giving disclosure, must be cognizant of the importance of reviewing information received, prior to disclosure. Matters of opinion expressed or information which on public policy grounds could jeopardize a state or individual interest, should be subject to careful scrutiny.

The purpose of disclosure by the Crown of the case against the accused is threefold:

- (a) to ensure the defence is aware of the case which must be met, and is not taken by surprise and is able to adequately prepare their defence on behalf of their client;
- (b) to resolve non-contentious and time-consuming issues in advance of the trial in an effort to ensure more efficient use of court time;
- (c) to allow for the entering of guilty pleas at a date early in the proceedings.

The guiding principle should always be full and fair disclosure restricted only by a demonstrable need to protect the integrity of the prosecution.

Pursuant to this duty, and bearing in mind the above principles, upon request, the accused is entitled to full disclosure of the case in chief for the Crown and in this context full disclosure shall mean the provision to counsel for the accused, as soon as reasonably practical, but in any event prior to the preliminary inquiry or trial, as the case may be, of the following information:

- (a) The circumstances of the offence. This will usually be disclosed by means of the provision of a summary prepared by the investigating police agency of the case as a whole.
- (b) Copies of all written statements made by witnesses.
- (c) A copy of any statement made by the accused to persons in authority and in the case of verbal statements, a verbatim account of the statement.
- (d) A copy of the accused's criminal record.
- (e) Copies of medical and laboratory reports.

(f) Access to any exhibits intended to be introduced and where applicable, copies of such exhibits.

(g) A copy of the wording of the charge.

Additional disclosure beyond what is outlined above is to be at the discretion of the prosecutor balancing the principle of full and fair disclosure with the need to prevent endangering the life or safety of witnesses or interference with the administration of justice. Such additional disclosure may include names and addresses of any potential witnesses keeping in mind possible need for protection from intimidation or harassment.

Where an accused is not represented by counsel it is recognized that in order to maintain a proper arms-length relationship with an accused, the method of disclosure of evidence must remain in the discretion of the prosecutor responsible for the prosecution.

It is understood that there is a continuing obligation on the prosecution to disclose any new relevant evidence that becomes known to the prosecution without need for a further request for disclosure.

(signed)

Terence R.B. Donahoe

16
Uniform Law Conference of
Canada, Proposed
Disclosure Guidelines

1985

It is recognized that there is a general duty upon Crown Counsel to disclose the case in chief for the prosecution to counsel for the accused, and to make defence counsel aware of the existence of all relevant evidence. The Crown, in giving disclosure, must be cognizant of the importance of reviewing information received, prior to disclosure. Matters of opinion expressed or information which on public policy grounds could jeopardize a state or individual interest, should be the subject of careful scrutiny.

The purpose of disclosure by the Crown of the case against the accused is threefold:

- (a) to ensure the defence is aware of the case which must be met, and is not taken by surprise and is able to adequately prepare their defence on behalf of their client;
- (b) to resolve non-contentious and time-consuming issues in advance of the trial in an effort to ensure more efficient use of court time;

(c) to encourage the entering of guilty pleas at a date early in the proceedings.

The guiding principle should always be full and fair disclosure restricted only by a demonstrable need to protect the integrity of the prosecution.

Pursuant to this duty, upon request, the accused is entitled to full disclosure of the case in chief for the Crown and in this context full disclosure shall mean the provision to counsel for the accused, as soon as reasonably practical, but in any event prior to the preliminary or trial, as the case may be, of the following information:

- (a) The circumstances of the offence. The method of providing the circumstances may include the provision of contents of the police report, the provision of a summary prepared by the investigating policy agency of the case as a whole, the provision of a summary of witnesses' statements or the contents of witnesses' statements.
- (b) A copy of any statement made by the accused to persons in authority and in the case of verbal statements, a verbatim account of the statement.
- (c) A copy of the accused's criminal record.
- (d) Copies of medical and laboratory reports.
- (e) Access to any exhibits intended to be introduced and where applicable, copies of such exhibits.
- (f) A copy of the information.

Additional disclosure beyond what is outlined above is to be at the discretion of the Crown Attorney responsible for the prosecution balancing the principle of full and fair disclosure with the need to prevent endangering the life or safety of witnesses or interference with the administration of justice. Such additional disclosure may include the following:

- (a) Copies of the Criminal records of witnesses.
- (b) Names and addresses of any potential witnesses keeping in mind possible need for protection from intimidation or harassment.

The method of disclosure of evidence to an unrepresented accused remains in the discretion of the Crown Attorney responsible for the prosecution.

It is understood that there is a continuing obligation on the prosecution to disclose any new relevant evidence that becomes

known to the prosecution without need for a further request for disclosure.

It is recognized that the precise mechanics or procedure for providing disclosure will vary from jurisdiction to jurisdiction throughout the country keeping in mind that full and fair disclosure should be given unless there is a demonstrable need that such full and fair disclosure should not be given.

17
Law Reform Commission of
Canada, Disclosure
Proposals

1984

Part XIV.2 Disclosure

462.5

A judicial officer shall not proceed with a criminal prosecution at the time that the accused first appears unless he has satisfied himself

- (a) that the accused has been given a copy of the information or indictment reciting the charge or charges against him in that prosecution; and
- (b) that the accused has been advised of his right to request disclosure under Section 462.6.

462.6

(1) Upon request to the prosecutor, the accused is entitled before being called upon to elect mode of trial or to plead to the charge of an indictable offence, whichever comes first and thereafter:

- (a) to receive a copy of his criminal record;
- (b) to receive a copy of any relevant statement made by him to a person in authority and recorded in writing (or to inspect such a statement if it has been recorded by electronic means);
- (c) to inspect anything that the prosecutor proposes to introduce as an exhibit and, where practicable, to receive copies thereof;
- (d) to receive a copy of any relevant statement made by a person whom the prosecutor proposes to call as a witness and recorded in writing or, in the absence of a statement, a written summary of the anticipated testimony of the proposed witness;
- (e) to inspect the electronic recording of any relevant statement made by a person whom the prosecutor proposes to call as a witness;
- (f) to receive, where his request demonstrates the relevance of such information, a copy of the criminal record of any victim or proposed witness; and
- (g) to receive, where known to the police officer or prosecutor in charge of the investigation, and not protected from disclosure by law, the name and address of any other person who could be called as a

witness, or other details enabling that person to be identified, unless, upon an *ex parte* application by the prosecutor supported by an affidavit demonstrating that disclosure will probably endanger life or safety or interfere with the administration of justice, a judicial officer having jurisdiction in the matter orders in writing and with reasons, that disclosure be delayed until a time fixed in the order.

(2) A request under Subsection (1) imposes a continuing obligation on the prosecutor to disclose the items within the class requested, without need for a further request.

(3) A statement referred to in paragraph (b), (d) or (e) of Subsection (1) does not include a communication that is governed by Part IV.1 of this Act.

462.7

Where a judicial officer having jurisdiction in the matter is satisfied that there has not been compliance with the provisions of Section 462.6, he shall, at the accused's request, adjourn the proceedings until in his opinion there has been compliance and he may make such other order as he considers appropriate in the circumstances.

18 Nova Scotia Policy on Plea Bargaining

1985

(i) Negotiations with Defence Counsel Concerning Plea and Sentence

Periodically, a Prosecuting Officer may be approached by Defence Counsel who offers to plead his or her client guilty either:

- (a) in return for the Crown reducing the charge to a less serious, included offence, or
- (b) in return for a specific recommendation by the Crown to the sentencing Judge as the quantum of sentence, or
- (c) in return for the Crown withdrawing another charge.

With respect to situation (a) above, the decision as to whether to enter into the arrangement proposed must be one for the Prosecuting Officer in the first instance, except where the offence charged is first or second degree murder. He or she must be satisfied that a plea to a reduced charge will not bring the administration of justice into disrepute. In reaching such a conclusion, the Prosecuting Officer may wish to consult with the Assistant Director* or Director (Criminal). Where the charge is murder, it will be necessary to seek the approval of the Department where Defence Counsel offers to enter a plea of guilty to the included offence of manslaughter.

* Now the Director (Prosecutions)

Any arrangement proposed which goes beyond the Crown agreeing to reduce the charge to a less serious, included offence, must be approved by the Assistant Director or Director (Criminal). This would encompass situations where in return for a guilty plea, the Crown is asked to make a specific recommendation as to the quantum of sentence or where the Crown is asked to withdraw one or more of multiple charges in return for an accused entering a plea of guilty to another of the charges laid.

Assistant Prosecuting Officers are advised that they must seek the approval of the Prosecuting Officer for the County prior to concluding any negotiations with the Defence concerning plea and sentence.

The Appeal Division of the Supreme Court of Nova Scotia has stated that "plea bargaining" is not to be regarded with favour. However, the Court has recognized that the Crown and Defence Counsel will enter into such arrangements from time to time. It must always be kept in mind that any agreement by the Crown on a specific recommendation to be put forward as to the quantum of sentence must accord with the principles of sentencing and the range of sentences enunciated by the appellate courts for the particular type of crime involved.

(ii) Addendum, 1985

To: All Prosecutors
From: David W. Thomas, Q.C., Crown Prosecutor's Office
Date: November 22, 1985
Re: Plea Bargaining

Your attention is directed to Section 7.21 of Volume 1, Advice to Prosecuting Officers, wherein you will note that *Assistant Prosecuting Officers*

"are advised that they must seek the approval of the Prosecuting Officer for the County prior to concluding any negotiations with the defence concerning plea and sentence."

Section 7.20 sets out the procedure to be followed by the *Prosecuting Officer*.

As a general statement of policy to be followed by *Assistant Prosecuting Officers* in Halifax County, it is my view that the

position you should take is that you will recommend either local or federal time and that you should not be specific as to the length of time.

You may go a step further and indicate that you feel lengthy local or federal time would be appropriate, or alternatively, a short local term or a term in a federal institution. Sentence is a matter for the court. If either party feels aggrieved by the sentence the appropriate remedy is to appeal same.

19
Manitoba Guidelines on
Plea Bargaining and
Sentence Recommendations

April 29, 1987

Date Effective: April 29, 1987

Subject: Plea Bargaining and Sentence Recommendations

Purpose: To establish guidelines for Crown counsel in plea and sentence bargaining situations.

Central Issues

Plea bargaining will include all situations where an accused offers to plead guilty to charges other than those originally laid (*i.e.* lesser and included offences or otherwise less serious offences) or to only some of such charges with the balance being stayed or withdrawn.

Sentence bargaining will include situations where Crown Counsel agrees to recommend a sentence (including sentence ranges) to the Court in consideration of a plea of guilty being entered. Such agreements may be entered into subject to the following guidelines.

1. The laying of criminal charges should be based on only one consideration - a careful examination of police investigation reports to determine the appropriate charge or charges founded upon available reliable and admissible evidence in support thereof.
2. The acceptance of a plea of guilty to a lesser charge should be based on the nature and quality of the evidence available as a result of the exchange of particulars and discussions with defence counsel and further discussions with police investigation officers. The decision on the appropriate charge should never be made on the basis of convenience or expediency.
3. Offers of guilty pleas to lesser charges or withdrawal of some charges in exchange for guilty pleas to the balance of charges are not to be accepted for the purpose of avoiding trial on all charges where the available evidence is such that it would likely support a finding of guilty on all charges in a trial situation.

4. Notwithstanding the general purport of guideline number three, there may be exceptions in situations where a multiplicity of charges are laid which arise out of a single delict. In some of these situations the law as stated in *R. v. Kienapple* will operate in determining which charge(s) should be stayed, withdrawn or proceeded with. The same criteria, *inter alia*, should be considered in assessing an offered plea of guilty.

Other policy guidelines which have been developed to deal with particular offences (such as alcohol related driving offences) and including the principal of totality of sentence, must also be borne in mind when assessing a disposition suggested by defence counsel.

5. The principal consideration in withdrawing charges or substituting less serious charges than those originally laid is the character and quality of the evidence available to support the Crown's case. The administration of criminal justice is not to be laboured with trials of charges which cannot realistically lead to a finding of guilt having regard to the overall strength of the Crown's case and most particularly the character and quality of the evidence on which the Crown relies. It is, however, to be considered improper to withdraw charges or substitute less serious charges only on condition that a plea of guilty is entered by the accused. The Crown is obligated to ensure that only the proper charges are before the Court whether it be for trial or plea.

6. It is improper Crown practice to withhold any material, factual information or evidence from the Court in exchange for a plea of guilty from the accused. The Court accepting the plea must be apprised of all the facts if it is to effectively discharge its responsibility to the community in passing sentence.

7. Though very rare, there are situations where the Crown may properly decide to stay proceedings or withdraw charges on compassionate or humanitarian grounds or in cases where the system of criminal justice would be brought into disrepute by the furtherance of a particular prosecution.

8. Each and every Crown Counsel is an Agent of the Attorney General and has a duty not to enter into any improvident agreement in respect of sentence or other disposition. The duty of Crown Counsel is to represent the public interest in the administration of justice in the Province. Any doubt about the propriety or reasonableness of a proposed disposition in the circumstances of a

particular case should be reviewed with the Director of Criminal Prosecutions.

Specific Issues

1. The Judiciary should not generally be brought into the bargaining process. A directive from the Chief Provincial Court Judge, contains the following, with which this Department is in accord:

"The only situation in which it would be appropriate for counsel for either the Crown or the accused to make representations jointly outside of court, would be where the information is critical to the sentencing process and yet should not be subjected to the scrutiny of a courtroom. It is difficult to draw specific guidelines but I would suggest that included in this category would be instances where the accused might be an informant; where a psychiatric report might contain information which could adversely affect innocent persons or the accused; where there is medical information which should remain confidential, such as the terminal illness of an accused, etc."

2. Plea or sentence bargains should not be entered into in advance of the preparation of a pre-sentence report. Difficulties have arisen where probation officers have been of a different view than the Crown with the result that the pre-sentence report has made the plea bargain seem unreasonable. There is no way of predicting what a pre-sentence report will contain and it may often undermine the terms of the agreement. It is a dangerous practice and should be avoided.

3. Crown Attorneys prosecuting in Provincial Court should not attempt to bind the Queen's Bench prosecution staff with respect to plea or sentence discussions. This will apply to all cases, including consent committals. With consent committals there should be an undertaking by defence counsel *and* the accused to enter a guilty plea to the agreed charges in the Court of Queen's Bench but any discussions with respect to sentence must be had with the Queen's Bench Crown Attorney.

4. All Crown Counsel are reminded of the decision of the Manitoba Court of Appeal in *R. v. Simoneau* (1978) 2 C.R. (34) S-17. This decision forms the basis of this Department's policy on the subject of sentence bargaining. Crown Attorneys are permitted to entertain recommendations as to both ranges of sentence and specific sentences. Such recommendations will be based upon a fair

disposition in accordance with precedent and established sentencing practice in similar cases.

5. All Crown Attorneys are advised to seek a second opinion whenever in doubt and senior counsel should be consulted in all serious cases. In particular, all homicide cases in which a reduction in charge is sought must be first discussed with the Director of Criminal Prosecutions.

These guidelines supercede and replace all previous directives on matters contained herein.

Date Effective: January 5, 1983

Subject: Procedure - Docket Operations Provincial Court

1. The docket Crown Attorney will have overall responsibility for the correct laying of charges on the dockets. This will include reviewing those charges laid by the police on their own initiative.

2. Briefing on new arrests should start as close to 9:00 a.m. as possible and the docket Crowns should attend their respective courtrooms as close to 9:30 a.m. as possible to deal with counsel.

3. All homicide charges should have the approval of the Senior Crown Attorney. In addition the Senior Crown Attorney must be kept advised of all "serious" cases, either by inviting him in to the morning briefing or by dropping by his office after court. All such cases are to have their hearings expedited and if necessary custody dates may be used even when the accused has made bail.

4. Every effort should be made to start court at 10:00 a.m. sharp and by 10:15 on the day after a holiday. Defence counsel should be discouraged from arriving at the last minute and expecting to be dealt with prior to court commencement.

5. Docket Crown Attorneys are not normally assigned to other duties. They are expected to use the available afternoons to review and familiarize themselves with all files, to ensure that the proper charges have been laid and the evidence is available, to entertain plea bargains, and to assist with the giving out of particulars on "serious cases" where time permits.

6. All efforts should be made to plea bargain and obtain guilty pleas at the docket level. Any discussions in this regard should be placed on the file to prevent "Crown shopping".

7. In light of s.11(d) of the *Charter* (trial within a reasonable time) reasons for each and every delay should be apparent from the file. Requests for adjournments should indicate at whose request the adjournment is being asked.

8. Telephone remands will not normally be accepted barring exceptional circumstances, *e.g.*, sickness or weather. I see no problem, however, in accepting written requests for remands made prior to Court.

9. As a general rule the Crown would be expected to consent to one remand past the date on which particulars are given out. This should be ample time for counsel to discuss the particulars with the accused and make any approaches to the Crown.

10. Please ensure that the accused indicates his election on the record in indictable offences. Similarly, the Crown should, on first appearance, be prepared to indicate its election in dual procedure offences.

11. The Police Identification Division will advise of those accuseds who fail to appear as required by the *Identification of Criminals Act*. Please ensure that counsel bring their clients in for this purpose, failing which a warrant should be requested.

12. Departmental policy is to require that persons in custody have their hearings expedited. Keeping in mind s.11(d) of the *Charter* and s.457 C.C. delay can only work to the prejudice of the Crown, even when defence counsel appears in no hurry to proceed. The onus is on the Crown and s.457 makes the custodial officer responsible. Any defence occasioned delay should be clearly on the record and there is no reason why the 90 day rule is not always complied with.

13. Please ensure that enough time is set for the hearing of cases. This by itself, is a good reason for the Crown to read all files as the number of witnesses listed on the P-6 is not always accurate. It is better to err on the side of setting too much time as continuations are more difficult to schedule than are the original trial dates. Similarly, the docket Crown is responsible for the identification of all Calendar Court cases which will normally require a reasonably accurate assessment of time requirements.

14. When a person is in custody and no charge is to be laid, that person should not be brought into court. Rather the Crown Attorney should instruct the appropriate Inspector to complete an "Order for Discharge of a Person in Custody" to ensure that the person is released directly from the Remand Centre.

15. There are to be no additions to a docket without the express consent of a Crown Attorney who will exercise discretion with due regard for time constraints. Generally speaking, an accused cannot be denied access to the Court but by the same token the Crown cannot be forced to proceed without reports and unprepared.

16. Please ensure that at least one clear calendar week is given to remands to either Calendar Court or Screening Court, unless that Crown Attorney agrees to an earlier remand.

17. All requests for appeals should be cleared first with the Senior Crown Attorney.

18. Whenever in doubt - discuss. That's what we're here for.

Wayne Myshkowsky
Director, Criminal Prosecutions

20
New Brunswick
Plea Bargaining Policy

Policy

1. Crown Prosecutors, in carrying out their responsibilities, shall not "plea bargain". For this purpose, a "plea bargain" includes:

- a) the withdrawal of a charge which is substantiated by the evidence in return for a guilty plea on a lesser charge, simply to avoid a trial;
- b) the withdrawal of a charge which is substantiated by the evidence in return for a guilty plea on another charge simply to avoid a trial;
- c) an agreement not to appeal whatever sentence the Judge imposes, in exchange for a guilty plea;
- d) an agreement to "play down" certain facts in exchange for a guilty plea. Under no circumstances can the Crown be permitted to "go easy" on the facts in exchange for a guilty plea. All of the facts relating to the incident must be disclosed to the Judge;
- e) an agreement not to introduce a relevant criminal record in exchange for a guilty plea;
- f) an agreement to deal with the matter at a time other than the normal court time for dealing with such matters in order to avoid the "press".

2. The only exceptions to this policy will be where public interest factors such as expense, time or difficulty dictate any variation from the above and only where the consent of the Deputy Attorney General, Assistant Deputy Attorney General or Director of Public Prosecutions is obtained.

Guidelines

1. It is recognized that considerable latitude must be given to the Crown Prosecutor to discuss with defence counsel the circumstances of the case. If the issue of sentence arises during such conversations, the Crown should indicate, if requested, what it is looking for in the way of sentence and in so doing may acknowledge that a guilty plea is a mitigating factor in Canadian jurisprudence.

2. None of the foregoing restricts the proper exercise of Prosecutorial discretion in accepting a guilty plea to a lesser offence because of evidentiary or witness-related problems. If, for example, the Crown discovered in preparing for trial on a theft charge that the continuity of the stolen property could not be established thereby preventing its acceptance as an exhibit or the owner of the stolen goods who was required to prove ownership had moved to British Columbia, it would be appropriate for the Crown Prosecutor to accept a guilty plea to the lesser offence of possession of stolen property provided, of course, the evidence supported that charge.

21 Canadian Sentencing Commission Recommendations on Plea Bargaining

13.1

The Commission recommends that the interests of the victim in plea negotiations continue to be represented by Crown counsel. To encourage uniformity of practice across Canada, the responsible federal and provincial prosecutorial authorities should develop guidelines which direct Crown counsel to keep victims fully informed of plea negotiations and sentencing proceedings and to represent their views.

13.2

The Commission recommends that, where possible, prior to the acceptance of a plea negotiation, Crown counsel be required to receive and consider a statement of the facts of the offence and its impact upon the victim.

13.3

The Commission recommends that the sentencing judge inquire of the defendant whether he or she understands the plea agreement and its implications and, if he or she does not, the judge should have the discretion to strike the plea or sentence.

13.4

The Commission recommends that federal and provincial prosecutorial authorities collaborate in the formulation of standards or guidelines for police respecting over-charging and/or inappropriate multiple charging.

13.5

The Commission recommends that the relevant federal and provincial authorities give serious consideration to the institution of formalized screening mechanisms to permit, to the greatest extent practicable, the review of charges by Crown counsel prior to their being laid by police.

13.6

The Commission recommends that police forces develop and/or augment internal review mechanisms to enhance the quality of charging decisions and, specifically, to discourage the practice of laying inappropriate charges for the purpose of maximizing a plea bargaining position.

13.7

The Commission recommends that the relevant federal and provincial prosecutorial authorities establish a policy (guidelines) restricting and governing the power of the Crown to reduce charges in cases where it has the means to prove a more serious offence.

13.8

The Commission recommends that the appropriate federal and provincial authorities formulate and attempt to enforce guidelines respecting the ethics of plea bargaining.

13.9

The Commission recommends a mechanism whereby the Crown prosecutor would be required to justify in open court a plea bargain agreement reached by the parties either in private or in chambers unless, in the public interest, such justification should be done in chambers.

13.10

The Commission recommends that the trial or sentencing judge never be a participant in the plea negotiation process. This recommendation is not intended to preclude the judge from having the discretion to indicate in chambers the general nature of the disposition or sentence which is likely to be imposed upon the offender in the event of a plea of guilty.

13.11

The Commission also recommends that the *Criminal Code* be amended to expressly provide that the court is not bound to accept a joint submission or other position presented by the parties respecting a particular charge or sentence.

13.12

The Commission recommends the development of a mechanism to require full disclosure in open court of the facts and considerations which formed the basis of an agreement, disposition or order arising out of a pre-hearing conference.

13.13

The Commission recommends that an in-depth analysis of the nature and extent of plea bargaining in Canada should be conducted by the federal and provincial governments or by a permanent sentencing commission.

**22
Nova Scotia Policy
on Summaries
to Trial Judges****(i) Guidelines of April 15, 1983**

From: Martin E. Herschorn, Assistant Director (Criminal)

To: Prosecuting Officers and Assistant Prosecuting Officers

Subject: Guidelines for Preparation of Summaries for Trial Judges

Date: April 15, 1983

The following guidelines are to apply to the preparation of summaries for trial Judges with respect to criminal jury trials in the Trial Division of the Supreme Court of Nova Scotia. The Judges of the Trial Division have expressed a desire for greater uniformity in the information provided to them by Prosecuting Officers. It is hoped that these guidelines will assist in providing the Court with all necessary and relevant information.

1. As soon as possible and, in any event, not later than 14 days before the opening day of the criminal sittings, the Prosecuting

Officer should prepare and forward to the trial Judge, a summary which should include:

- (a) a summary of facts,
- (b) a brief of the law, indicating relevant sections, authorities and wherever possible, appropriate comments relating the facts to the law as well as a brief statement of the position of the Crown with regard to the points of law. The Crown should alert the trial Judge as to any *voir dire* which will be required at trial together with any other matters that the Crown Prosecutor anticipates will arise during the course of the trial;
- (c) if it is the practice in your County for Judges of the Trial Division to sentence an accused immediately following the rendering of a verdict by the Jury, rather than reserving and having the accused brought back to Court on a subsequent day, your summary should also include references to relevant case authorities on sentence for the offence concerned. This will assist the Judge in reviewing the relevant case law in advance of the sentencing hearing and thereby facilitate the imposition of sentences which will conform with proper principles of sentencing.

2. In addition to the summary, the trial Judge should also be provided with:

- (a) a copy of the Indictment with the names of the witnesses endorsed thereon,
- (b) a copy of the preliminary inquiry transcript, if any.

(ii) Summary to Trial Judge, *The Queen v. Donald Marshall, Jr.*, October 12, 1971

The Queen on the Information of Sgt. Det. John F. MacIntyre v. Donald Marshall, Junior

Charge

Donald Marshall, Jr. did at Sydney, in the County of Cape Breton, Province of Nova Scotia, on or about the 28th day of May, 1971, murder Sanford William (Sandy) Seale, contrary to Section 206(2) of the *Criminal Code of Canada*.

Witnesses:

Dr. Mohamad Ali Naqvi
Dr. David Gaum
Carl MacDonald
Roy Gould
Donald Marshall, Senior
Sgt. Michael R. MacDonald
Patricia Ann Harriss
Terrance Gushue
Maynard Vincent Chant
John Pratico
Robert MacKay
Brian Doucette
Leo Curry
Pearl MacMillan
Dr. Mohan S. Virick
Mrs. Merle Faye Davis
Aldophus James Evers
Sandra Catherine Mrazek
Cst. John Mallowney
Det.-Sgt. John F. McIntyre

Statement of Facts

On the 27th [*sic*] May, 1971 (a Saturday night) a dance was being held at a local hall (St. Joseph's Parish Hall) with a number of witnesses in attendance. Near midnight the participants at the dance began to leave.

A Mr. John Pratico met the accused and the deceased, Sandy Seale, at the corner of Argyle and George Streets in Sydney, and was invited by the accused to go into Wentworth Park with them by the accused. Mr. Pratico did not like the way the invitation was extended so he declined and proceeded along up Argyle St. to Crescent Street which skirts the edge of Wentworth Park. He proceeded along Crescent Street until he neared the intersection of Crescent Street and Bentinck Street. There he stepped behind a shrub in Wentworth Park in order to consume a pint bottle of beer. While behind this shrub he saw the accused and the late Mr. Seale walk along Crescent Street and engage in an argument, or at least a loud discussion. As he watched he saw the accused remove a knife from his right hand pocket and plunge it into the stomach of the deceased. He then panicked and ran from the scene to his home.

Meanwhile one Maynard Vincent Chant will testify that he missed his bus to his home at Louisbourg and that he proceeded down Bentinck Street, and coming to the railroad tracks that run through Wentworth Park he proceeded along these railroad tracks as a short cut to George Street where he intended to hitch-hike a drive home. As he walked along the tracks he noticed, and can identify, Mr. John Pratico sitting behind a shrub watching two men in an argument on Crescent Street. He proceeded about thirty feet beyond Mr. Pratico and stopped to observe what was going on. He knew both the accused and Mr. Seale and he saw Mr. Marshall, the accused, draw a knife from his pocket and plunge it into the abdomen of Mr. Seale, the deceased. He panicked and ran down the tracks and cut over a path to Byng Avenue, another street skirting Wentworth Park on the opposite side from Crescent Street.

While on Byng Avenue he saw the accused running down Bentinck Street and turn into Byng Avenue towards him. Mr. Chant turned to walk in the opposite direction when the accused caught up to him and told him that he and his friend, Mr. Seale, had been attacked by two men, one stabbed his friend, Mr. Seale, in the abdomen and he received a cut in the arm defending himself. This conversation took place in front of a house occupied by a Mr. Mattson, a former RCMP officer, who is expected to testify.

The accused showed Mr. Chant his forearm that was injured but no blood was in appearance. These two men stopped a passing automobile, the operator unknown, and were taken back to the scene where Mr. Seale was still alive, but beyond reasonable senses. Help was then summoned. Mr. Chant at first related to the police the story the accused gave him but later advised that he related the false story because of fear of the accused. He knew and can identify both men involved in the offence.

Dr. M.A. Naqvi and Dr. D. Guam will testify as to the identification of the deceased and the efforts put forth to save his life and the cause of death.

Carl MacDonald will introduce the plans of Wentworth Park and the surrounding streets and area.

Roy Gould will testify that he loaned the jacket in question to the accused on the night in question, that it was in good condition on the evening in question and its condition on recovery from the father of the accused. It was bloodstained and torn.

Donald Marshall, Senior, who is the father of the accused, will testify that he returned the jacket to its owner, Mr. Roy Gould.

Det. Michael R. MacDonald, a member of the City of Sydney Police Force, took the exhibit jacket from Mr. Gould and took it to the RCMP Crime Laboratory in Sackville, N.B.

Patricia Ann Harriss, who is 14 years of age, will testify that she left the dance with Terry Gushue at approximately 11 P.M. They went into Wentworth Park to the bandshell where they spent some time. Then they proceeded along Crescent Street at approximately 11:45 P.M. where they met the accused, and another man who she cannot identify. A conversation took place and they continued along to her home.

Miss Harriss had known the accused before.

Terence Patrick Gushue will give the same evidence as Miss Harriss.

Maynard Vincent Chant, who is 14 years of age and lives in Louisbourg, will testify that he missed the bus that was going to Louisbourg and that he walked down Bentinck Street to the railway tracks that run through Wentworth Park. As he walked along the tracks he noticed John Pratico hunched behind a bush watching something on Crescent Street. Mr. Chant stopped to see what Mr. Pratico was observing and saw two men talking to each other. Mr. Chant saw the accused haul a knife out of his pocket and drive it into the stomach of the other man. This other man keeled over and Mr. Chant ran away towards George Street. He cut off into a path to Byng Avenue. As he proceeded along Byng Avenue he saw the accused running down Bentinck Street and turn into Byng Avenue. Mr. Chant turned around but the accused caught up to him in front of a house occupied by Mr. M. Mattson. Here the accused showed his arm and said "Look what they did to me". The accused told him that two men attacked he and his buddy and that the buddy was over at the park with a knife in his stomach. The accused stopped a passing car and he and Mr. Chant were driven over to Crescent Street where Mr. Chant placed his shirt on the stomach of Mr. Seale. Mr. Chant remained there until Mr. Seale was taken away in the ambulance.

John Pratico will testify that he knew the accused and met him near the corner of George Street and Argyle Street. He declined an invitation by the accused to go into Wentworth Park. He then went down Argyle Street to Crescent, which he walked along until he came to a bush which he went behind in order to have a pint of beer. As he was there he saw the accused and the deceased talking or

arguing, he saw the accused haul something from his pocket and stab Seale. Seale dropped and Mr. Pratico ran away from the scene. Mr. Pratico knew both Mr. Marshall and Mr. Seale before the night in question.

Robert MacKay, who was attending the dance, left with Miss Debbie MacPherson around 11:40 P.M. They sat at the bandshell in Wentworth Park for a few minutes, then proceeded along Crescent Street. As they walked along they saw Sandy Seale lying on the street. He asked for help because he was stabbed. Mr. MacKay sent Miss MacPherson on her way and ran for help. He returned just as the automobile with the accused returned to the scene. Mr. MacKay and the accused went to a house to ask for an ambulance to be called.

Brian Doucette will testify that he was asked by the accused and another man to call an ambulance. When the ambulance arrived Mr. Doucette accompanied the ambulance to the hospital. The accused showed Mr. Doucette his injured arm and there was no blood.

Leo Curry will testify that he was the ambulance driver that took Mr. Seale to the hospital and stayed with the deceased until the doctor arrived.

Pearl MacMillan, a lab technician at the Sydney City Hospital, will testify that she typed the blood of Sandy Seale and found it to be "O" positive.

Dr. Mohan S. Virick will testify that he examined Donald Marshall and found that he had a laceration on the left arm which he sutured. There was no bleeding from this cut. It was a superficial laceration.

Mrs. Merle Faye Davis will testify that she is a nurse at the Sydney City Hospital and that she examined Donald Marshall on his arrival at the Hospital. She will describe the condition of Mr. Marshall's arm and that there was no blood on the arm when he entered the hospital.

Mr. Aldophus James Evers will testify that he is with the RCMP Crime Laboratory in Sackville. He will testify that he received the Exhibits from Sgt. Michael MacDonald on June 16th, 1971. These exhibits were a light brown jacket and a bright yellow jacket. He passed these exhibits on to Miss Mrazek. He will then describe the conditions of the exhibits.

Miss Sandra Mrazek, from the RCMP Crime Laboratory, will explain her examination of the two exhibits and also of a piece of Kleenex given to her as an exhibit.

Constable John Mullooney, a member of the Sydney Police Force, will testify that he searched the Crescent Street area after the alleged offence and found the blood soaked piece of Kleenex in the area.

Sgt. John MacIntyre, a member of the Sydney Police Force, may be called regarding statements made by the accused.

Law Involved:
Section 206(2)
Section 203.

Dated at:
Sydney, Nova Scotia, this 12th day of October, A.D., 1971.

(signed)

Donald C. MacNeil
Prosecuting Officer,
Cape Breton County

(iii) Directive of July 18, 1988

From: Hon. Terence R. B. Donahoe, Q.C. Attorney General
To: Prosecuting Officers and Assistant Prosecuting Officers
Subject: Summaries for Supreme Court Trial Judges
Date: April 15, 1983

Henceforth, you are requested to provide the defence with a copy of any summary which you prepare and submit to a Supreme Court Trial Judge in advance of the trial.

23
Manitoba Guideline
Concerning Special
Prosecutions Branch

February 5, 1981

Date Effective: February 5, 1981

Subject: Special Prosecutions Branch

The writer would now like to outline those class of cases that the Special Prosecutions Branch will handle:

Class 1

Significant cases involving commercial or corporate criminal conduct of a complex nature, i.e. fraud, conspiracy to commit fraud, theft, etc.

Class 2

Cases which because of their protracted nature would have a significance outside the general stream of criminal prosecutions. Example, arson - fraud, gambling and related wiretap evidence.

Class 3

Cases which because of a subject matter under investigation are particularly sensitive in nature and require more protracted attention. Such sensitivity would involve the investigation and prosecution of members of the government, peace officers, members of the judiciary, public officials, where alleged acts occurred during the course of employment.

Class 4

Cases involving organized criminal activity with inter-provincial or international implications.

Class 5

Cases which are more appropriately handled by a Crown Prosecutor out of the particular judicial district.

Procedures

I feel I should now outline to you the manner in which your investigative officers should bring to the attention of the Special Prosecutions Branch, cases that could possibly fall within the enumerated classes.

The history of our Department has been that a police officer will attend upon the Crown Attorney in the Judicial area involved and request instructions from him as to whether or not charges should be preferred and what these charges would entail.

I would suggest that in the future all communications dealing with the above-noted topics should be made directly to the Special Prosecutions Branch. I would further suggest that if the communication is in fact, a first communication dealing with the file, that same be made directly to my office, with one exception. With respect to the City of Winnipeg Police Department, all first communications dealing with a case involved in the above-noted topics, with the exception of Class 1, should be made directly to the Senior Crown Attorney for Provincial Judges' Court at the City of Winnipeg. The Senior Crown and I have set up a system of liaison in which cases that he feels may come within the classes set out herein are discussed and decisions made as to whether or not those cases would be forwarded directly to the Special Prosecutions Branch. Once a file has been turned over to the Special Prosecutions Branch, it is no longer necessary for those officers of the City of Winnipeg Police Department to deal with that Senior Crown but can then deal directly with members of the Branch.

Requests for prosecutorial assistance from prosecutors outside the Special Prosecutions Branch in whatever Judicial District, should be made directly to the writer.

I do want to emphasize that the Special Prosecutions Branch is not to be considered the exclusive prosecutor with respect to offences such as Conspiracy, Arson, Betting, etc., but only those cases that come within the classes set out in this correspondence. Should there be any question as to whether or not the matter should be referred to our Branch, then I would suggest that you contact the writer directly or if I'm not available, Mr. Schachter or Mr. Mellon. This, of course, would not apply to the City of Winnipeg Police Department, who should make such contact directly with the Senior Crown Attorney.

When you have prepared instructions to those divisions of your Police Department which are likely to be dealing with cases within the purview of the Special Prosecutions Branch, I would appreciate receiving a copy of those instructions as they are available.

24 Survey Results

(i) Questionnaire to Prosecuting Officers

1.

(a) How long have you been working for the Attorney General? (%)

- Less than 1 year: 2.4
- Between 1 and 5 years: 26.2
- Between 5 and 10 years: 52.4
- Between 10 and 15 years: 16.7
- Between 15 and 20 years: 0
- More than 20 years: 2.4

(b) Did you have experience in the practice of law prior to working for the Attorney General's Department? (%)

- Yes: 87.8
- No: 12.2

Please specify in general terms (*i.e.* private practice, government service, etc.) (%)

- Private Practice: 79.5
- Government: 2.6
- Legal Aid: 2.
- Priv./Judiciary: 2.6
- Priv./Government Combined: 12.8

2.

What is your present position? (%)

- Prosecuting Officer: 8.6
- Assistant Prosecuting: Officer 44.2
- Per diem Prosecuting: Officer 37.3

3.

(a) How long have you held this position? (%)

- Less than 1 year: 2.45
- Between 1 and 5 years: 26.8
- Between 5 and 10 years: 48.8
- Between 10 and 15 years: 22.0
- Between 15 and 20 years: 0
- More than 20 years: 0

(b) Do you consider this position a: (%)

- Career position? 68.3
- Interim position? 24.4
- Both: 7.3

(c) What other career goals, if any, do you have in mind? (%)

- Private Goals: 38.1
- Judiciary: 19.0
- (Promotion) Advance in A.G.'s Office: 19.0
- Other law related: 14.3
- Not law related: 9.5
- Undecided: 0

4.

(a) How long have you been prosecuting offences for the Attorney General of Nova Scotia? (%)

- 1 to 4 years: 31.0
- 5 to 10 years: 38.1
- Over 10 years: 31.0

(b) Approximately how many hours per month do you spend in court prosecuting offences for the Attorney General? (%)

- 1 to 10 hours: 22
- 11 to 20 hours: 12.2
- 21 to 30 hours: 2.4
- 31 to 40 hours: 34.1
- 41 to 50 hours: 4.9
- 51 to 75 hours: 14.6
- 76 + hours: 9.8

5.

(a) From what institution did you receive your initial law degree (LL.B.)? (%)

- Dalhousie: 88.4
- Other (please specify): 11.6

(b) Do you have an LL.M.? (%)

- Yes: 9.5
- No: 90.5

(c) Have you taken advantage of any of the following continuing legal education programs during your career as a Crown prosecutor?

(i) The Federation of Law Societies Criminal Law Refresher: (%)

- Always: 0
- Frequently: 4.9
- Sometimes: 17.1
- Rarely: 14.6
- Never: 63.4

(ii) C.L.E. Conferences: (%)

- Always: 0
- Frequently: 23.3
- Sometimes: 32.6
- Rarely: 23.3
- Never: 20.9

(iii) The Attorney General's Department Fall Meeting for Prosecuting Officers: (%)

- Always: 62.8
- Frequently: 2.3
- Sometimes: 7.0
- Rarely: 14.0
- Never: 14.0

(vi) Others: (*Please specify*)

6.

(a) What was the nature of your initial appointment? (%)

- Civil Service Appointment: 12.2
- Appointment by Order in Council: 87.8

(b) If your initial appointment was made by the Civil Service Commission:

(i) Was the position advertised? (%)

- Yes: 28.6
- No: 71.4

(ii) Was a competition held? (%)

- Yes: 62.5
- No: 37.5

(iii) Were you interviewed? (%)

- Yes: 77.8
- No: 22.2

(c) If your initial appointment was by Order in Council:

(i) Has it been converted to a Civil Service position? (%)

- Yes: 14.7
- No: 85.3

(ii) If so, how many years after your original appointment did this conversion take place?

(iii) Explain why you were appointed by Order in Council rather than by the Civil Service Commission.

.....

.....

7.

How often have you appeared for the Crown before the following courts:

(a) Provincial Court: (%)

- Always: 23.3
- Frequently: 69.8
- Sometimes: 4.7
- Rarely: 2.3
- Never: 0

(b) County Court: (%)

- Always: 9.5
- Frequently: 35.7
- Sometimes: 28.6
- Rarely: 16.7
- Never: 9.5

(c) Supreme Court Trial Division: (%)

- Always: 4.7
- Frequently: 32.6
- Sometimes: 27.9
- Rarely: 18.6
- Never: 16.3

(d) Supreme Court Appeal Division: (%)

- Always: 0
- Frequently: 0
- Sometimes: 0
- Rarely: 25.6
- Never: 74.4

(e) Supreme Court of Canada: (%)

- Always: 0
- Frequently: 0
- Sometimes: 0
- Rarely: 4.8
- Never: 95.2

8.

(a) Who usually assigns you to a particular court or level of court?

- Answer: *Chief Prosecuting Officer of County*

(b) What considerations do you feel are used in making these decisions?

.....

.....

(c) Are you consulted? (%)

- Always: 29.0
- Frequently: 19.4
- Sometimes: 35.5
- Rarely: 12.9
- Never: 3.2

(d) Comment on the positive and/or negative aspects of appearing before the same judge for a prolonged period of time.

- Answer:
- Positive: *Know what to expect/what is required. Procedure of disposition and sentencing is more predictable.*
- Negative: *Crown may hesitate to object or appeal; too complacent; Judge may use personal relationship to consult privately.*

9.

What is the population of the jurisdiction in which you most frequently prosecute?

	Prosecution:(%)	Defence:(%)
• Under 10,000	2.5	2.0
• Between 10,000 and 19,999	25.0	18.4
• Between 20,000 and 29,999	7.5	4.1
• Between 30,000 and 39,999	17.5	14.3
• Between 40,000 and 99,999	25.0	14.3
• Between 100,000 and 199,999	10.0	22.4
• Over 200,000	12.5	24.5

10.

With which police force(s) would you normally have contact concerning the prosecution of offences?

(a) RCMP (%)

- Always: 27.9
- Frequently: 46.5
- Sometimes: 23.3
- Rarely: 2.3
- Never: 0

(b) Municipal: (%)

- Always: 20.0
- Frequently: 55.0
- Sometimes: 15.0
- Rarely: 5.0
- Never: 5.0

(c) Other: (%) (Please specify)

-
- Always: 0
 - Frequently: 13.0
 - Sometimes: 39.1
 - Rarely: 34.8
 - Never: 13.0

11.

How large is the local police force/detachment with which you most often have contact?

- Answers: Range from 1 to 400

12.

(a) How often do the police initiate contact with you regarding the investigation of a particular offence prior to the laying of an information? (%)

- Always: 0
- Frequently: 32.6
- Sometimes: 34.9
- Rarely: 25.6
- Never: 7.0

(b) Explain the nature and purposes of such contacts:

- Answer: *To determine if evidence supports a particular charge; to determine which charge to lay.*

(c) Who are the officers who make this contact: *i.e.*, constables, detectives, Superintendent, Chief, etc.?

- Answer: *Constables*

(d) Have you ever disagreed with a police officer's decision to lay a charge or not to lay a charge? (%)

- Always: 0
- Frequently: 0
- Sometimes: 48.8
- Rarely: 34.1
- Never: 17.1

(e) If your answer is other than "Never", please describe circumstances and the manner of resolution of the disagreement.

- Answer: *Most said that they had final decision (see Comment Summaries)*

(f) In your opinion, should a police officer be given the exclusive right to decide whether or not to lay an information?(%)

- Yes: 7.3
- No: 92.7

(g) *(Please explain:)*

- Answer:
- Yes: *Check on power of the Crown; Police should lay and Crown can withdraw in open court.*
- No: *Police don't know legal or evidentiary problems or requirement.*

13.

(a) How often do you initiate contact with local police concerning general policies of law enforcement and the prosecution of offences? (%)

- Always: 0
- Frequently: 11.9
- Sometimes: 35.7
- Rarely: 21.4
- Never: 31.0

(b) Can you cite some examples of this kind of contact?

14.

(a) How often do you request the police to make investigations which might lead to the laying of criminal charges? (%)

- Always: 0
- Frequently: 0
- Sometimes: 32.6
- Rarely: 41.9
- Never: 25.6

(b) If you have made this type of request:

(i) What was the source of the information which led you to believe that the investigation was necessary?

• Answer: *Phone calls; perjury in court.*

(ii) Have you ever personally investigated the possible commission of an offence?(%)

- Yes: 15.8
- No: 78.9

15.

(a) How often do you ask the police to make further investigations in preparation for trial after the laying of an information? (%)

- Always: 0
- Frequently: 20.9
- Sometimes: 51.2
- Rarely: 20.9
- Never: 7.0

(b) If you have asked the police to make further investigations in preparation for trial, (*please give specific examples.*)

• Answer: *Ask to find additional witnesses; particulars about scene of crime; information to rebut possible defences.*

16.

When making requests to the police for further investigations, who in the police force would you normally contact, i.e. constables, detectives, Superintendent, Chief, etc.?

• Answer: *Constables/investigators*

17.

(a) How often do you advise the police in the drafting of informations? (%)

- Always: 2.4
- Frequently: 26.2
- Sometimes: 42.9
- Rarely: 23.8
- Never: 4.8

(b) How often are you required to actually draft an information for the police? (%)

- Always: 2.4
- Frequently: 4.8
- Sometimes: 40.5
- Rarely: 40.5
- Never: 11.9

(c) Under what circumstances would this occur?

- Answer: *Complicated charge (fraud)*

(d) Do you feel Prosecuting Officers should be regularly involved in drafting informations?(%)

- Yes: 61.5
- No: 35.9
- Depends: 2.6

Please explain:

18.

What factors do you take into account in determining whether a charge should or should not be laid?

- Answer: *Sufficient evidence; seriousness of offence; attitude of defendant; quality of witnesses.*

19.

(a) In preparation for trial, how often are you given complete access to the entire police file? (%)

- Always: 55.0
- Frequently: 25.0
- Sometimes: 12.5
- Rarely: 5.0
- Never: 2.5

(b) In your opinion, under what circumstances would the police withhold information? (*Explain*):

- Answer: *Don't withhold; may fear that defence counsel will obtain from prosecutor.*

(c) Are there any procedures in effect which would allow a Prosecuting Officer to be sure he or she had access to all information collected by the police in the course of investigating a particular offence?(%)

- Yes: 23.1
- No: 74.4
- Depends: 2.6

(d) If there are, please explain:

.....

(e) How often are you left with the impression that the police investigation is not satisfactory? (%)

- Always: 0
- Frequently: 7.0
- Sometimes: 51.2
- Rarely: 41.9
- Never: 0

20.

(a) How often do you go to trial relying only on witness statements provided by the police without personally interviewing witnesses? (%)

- Always: 9.3
- Frequently: 27.9
- Sometimes: 37.2
- Rarely: 41.9
- Never: 4.7

(b) Under what circumstances and/or in relation to what offences would you do this?

- Answer: *Minor matters (summary convictions); motor vehicle offences.*

21.

(a) How often do you interview witnesses prior to the day of trial? (%)

- Always: 0
- Frequently: 26.2
- Sometimes: 45.2
- Rarely: 23.8
- Never: 4.8

(b) Under what circumstances and/or in relation to what offences?

- Answer: *Serious or more complicated cases.*

22.

Do you make disclosure to defence counsel?(%)

- Automatically: 35.7
- Only upon request: 54.8

	Prosecutor: (%)	Defence: (%)
• Always:	7.8	41.7
• Frequently:	9.8	45.8
• Sometimes:	23.5	10.4
• Rarely:	29.4	2.1
• Never:	29.4	0

23.

(a) How often do you give unrestricted access to defence counsel of your complete file in a case?

	Prosecutor: (%)	Defence: (%)
• Always:	27.9	15.7
• Frequently:	44.2	39.2
• Sometimes:	9.3	21.6
• Rarely:	7.0	11.8
• Never:	11.6	11.8

(b) How often do you make the following available to defence counsel?

(i) Crown sheets:

	Prosecutor: (%)	Defence: (%)
• Always:	74.4	78.4
• Frequently:	23.3	11.8
• Sometimes:	2.3	7.8
• Rarely:	0	2.0
• Never:	1	0

(ii) All statements made by the accused:

	Prosecutor: (%)	Defence: (%)
• Always:	90.7	64.7
• Frequently:	7.0	29.4
• Sometimes:	2.3	5.9
• Rarely:	0	0
• Never:	0	0

(iii) All statements made by witnesses:

	Prosecutor: (%)	Defence: (%)
• Always:	58.1	23.5
• Frequently:	30.2	29.4
• Sometimes:	9.3	39.2
• Rarely:	0	7.8
• Never:	2.3	0

(iv) Names of persons who may have evidence whom the Crown intends not to call:

	Prosecutor: (%)	Defence: (%)
• Always:	47.6	8.0
• Frequently:	26.2	10.0
• Sometimes:	9.5	16.0
• Rarely:	14.3	46.0
• Never:	2.4	20.0

(v) Police reports:

	Prosecutor: (%)	Defence: (%)
• Always:	28.6	11.8
• Frequently:	38.1	23.5
• Sometimes:	16.7	27.5
• Rarely:	14.3	23.5
• Never:	2.4	13.7

(vi) Other: *(Please specify)*

24.

(a) How often do you impose conditions on the way information disclosed to defence counsel may be used?

	Prosecutor: (%)	Defence: (%)
• Always:	2.4	27.5
• Frequently:	7.1	13.7
• Sometimes:	21.4	19.6
• Rarely:	38.1	29.4
• Never:	31.0	9.8

(b) Why would these conditions be imposed?

(i) to protect witnesses:

	Prosecutor: (%)	Defence: (%)
• Always:	20.0	10.9
• Frequently:	34.3	26.1
• Sometimes:	17.1	34.8
• Rarely:	22.9	19.6
• Never:	5.7	8.7

(ii) to protect victims: (%)

- Always: 20.0
- Frequently: 34.3
- Sometimes: 22.9
- Rarely: 17.1
- Never: 5.7

(iii) to prevent the loss of physical evidence:

	Prosecutor: (%)	Defence: (%)
• Always:	11.4	2.3
• Frequently:	8.6	2.3
• Sometimes:	31.4	23.3
• Rarely:	40.0	37.2
• Never:	8.6	34.9

(iv) because of a bad prior experience with a particular defence counsel:

	Prosecutor: (%)	Defence: (%)
• Always:	2.9	4.7
• Frequently:	8.8	18.6
• Sometimes:	23.5	23.3
• Rarely:	35.3	27.9
• Never:	29.4	25.6

(v) because the investigating officer has expressed personal opinions in some of the documents in the file:

	Prosecutor: (%)	Defence: (%)
• Always:	0	2.3
• Frequently:	0	9.3
• Sometimes:	48.6	44.2
• Rarely:	28.6	27.9
• Never:	22.9	16.3

(vi) Other:

	Prosecutor: (%)	Defence: (%)
• Always:	0	5.9
• Frequently:	50.0	41.2
• Sometimes:	50.0	29.4
• Rarely:	0	5.9
• Never:	0	17.6

25.

(a) How much evidence do you usually call when conducting a preliminary inquiry?

(i) only enough evidence to get a committal for trial:

	Prosecutor: (%)	Defence: (%)
• Always:	14.3	10.2
• Frequently:	40.5	53.1
• Sometimes:	33.3	28.6
• Rarely:	9.5	8.2
• Never:	2.4	0

(ii) all witnesses known to the Crown likely to be called at trial:

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	17.5	30.6
• Sometimes:	30.0	20.4
• Rarely:	42.5	34.7
• Never:	10.0	14.3

(b) What considerations govern your decisions on these issues?
(*Explain*)

• Answer: *Nature of offence; strength of witnesses.*

26.

(a) How often have you had occasion to withdraw all charges or enter a stay on all charges against an accused? (%)

- Always: 0
- Frequently: 0
- Sometimes: 27.9
- Rarely: 67.4
- Never: 4.7

(b) Under what circumstances have you done this?

• Answer: *Insufficient evidence; unavailable witness; new evidence tends to show accused didn't commit.*

27.

(a) How often are guilty pleas the product of plea negotiation?

	Prosecutor: (%)	Defence: (%)
• Always:	2.3	0
• Frequently:	37.2	56.9
• Sometimes:	44.2	39.2
• Rarely:	11.6	3.9
• Never:	4.7	0

(b) Can you estimate in percentage terms?

28.

(a) How often do you initiate plea negotiations?

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	2.3	5.9
• Sometimes:	30.2	25.5
• Rarely:	44.2	64.7
• Never:	23.3	3.9

(b) How often have the following factors led you to agree to a negotiated plea?

(i) uncertainty about the availability of sufficient proof to sustain a conviction:

	Prosecutor: (%)	Defence: (%)
• Always:	0	6.0
• Frequently:	14.3	30.0
• Sometimes:	40.5	50.0
• Rarely:	23.8	12.0
• Never:	21.4	2.0

(ii) to prevent a backlog in case load on the court docket:

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	0	10.0
• Sometimes:	21.4	28.0
• Rarely:	31.0	42.0
• Never:	47.6	20.0

(iii) gain the accused's cooperation in the prosecution of others:

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	0	6.0
• Sometimes:	11.6	46.0
• Rarely:	34.9	38.0
• Never:	53.5	10.0

(iv) a consideration of the interests of the victim:

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	14.0	4.0
• Sometimes:	58.1	66.0
• Rarely:	23.3	24.0
• Never:	4.7	6.0

(v) a recommendation of a departmental superior:

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	2.3	0
• Sometimes:	2.3	17.0
• Rarely:	37.2	55.3
• Never:	58.1	27.7

(vi) Other: (*Explain*)

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	0	42.9
• Sometimes:	16.7	21.4
• Rarely:	50.0	0
• Never:	33.3	35.7

(*Many charges; no greater penalty can be expected.*)

29.

(a) How often are plea negotiations initiated by defence counsel?

	Prosecutor: (%)	Defence: (%)
• Always:	11.9	8.0
• Frequently:	64.3	60.0
• Sometimes:	23.8	26.0
• Rarely:	0	6.0
• Never:	0	0

(b) What factors, in your perception, motivate defence counsel in such negotiations?

(i) to minimize the length and severity of the accused's sentence:

	Prosecutor: (%)	Defence: (%)
• Always:	11.9	11.8
• Frequently:	50.0	68.6
• Sometimes:	33.3	17.6
• Rarely:	4.8	2.0
• Never:	0	0

(ii) to permit the accused to avoid the public disgrace of a trial:

	Prosecutor: (%)	Defence: (%)
• Always:	2.4	0
• Frequently:	12.2	9.8
• Sometimes:	51.2	25.5
• Rarely:	26.8	52.9
• Never:	7.3	11.8

(iii) to obtain for the accused a faster and less expensive procedure:

	Prosecutor: (%)	Defence: (%)
• Always:	0	4.0
• Frequently:	22.5	14.0
• Sometimes:	40.0	24.0
• Rarely:	27.5	40.0
• Never:	10.0	18.0

(iv) to quickly dispose of an unwanted, unprofitable or difficult case:

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	7.5	0
• Sometimes:	32.5	7.8
• Rarely:	47.5	21.6
• Never:	12.5	70.6

(v) Other:(%)

- Always: 0
- Frequently: 25.0
- Sometimes: 50.0
- Rarely: 25.0
- Never: 0

Explain:

.....

30.

(a) Which of the following are offered (or are sought by defence counsel) in return for a plea of guilty?

(i) a reduction in the charge to a lesser or included offence:

	Prosecutor: (%)	Defence: (%)
• Depends:	2.3	0
• Always:	0	0
• Frequently:	30.2	47.1
• Sometimes:	58.1	43.1
• Rarely:	9.3	7.8
• Never:	0	2.0

(ii) a withdrawal of other charges:

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	44.2	62.7
• Sometimes:	53.5	37.3
• Rarely:	0	0
• Never:	2.3	0

(iii) a favourable recommendation as to the severity of the sentence:

	Prosecutor: (%)	Defence: (%)
• Depends:	2.3	0
• Always:	0	3.9
• Frequently:	37.2	54.9
• Sometimes:	51.2	29.4
• Rarely:	7.0	7.8
• Never:	2.3	3.9

(iv) use of summary conviction procedure rather than proceeding by way of indictment:

	Prosecutor: (%)	Defence: (%)
• Always:	0	2.0
• Frequently:	9.3	17.6
• Sometimes:	53.5	51.0
• Rarely:	30.2	27.5
• Never:	7.0	2.0

(v) a promise not to oppose release on bail or release after conviction but before sentence:

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	0	3.9
• Sometimes:	16.3	13.7
• Rarely:	62.8	47.1
• Never:	20.9	35.3

(vi) a promise not to apply for a harsher penalty in accordance with s. 592 of the *Criminal Code* where the accused has a previous conviction for the same offence:

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	0	3.9
• Sometimes:	30.2	39.2
• Rarely:	39.5	47.1
• Never:	30.2	37.3

(vii) a promise not to force a jury trial under s. 498 of the *Criminal Code*:

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	0	0
• Sometimes:	7.0	0
• Rarely:	27.9	15.7
• Never:	65.1	84.3

(viii) a promise not to charge friends or family of the accused:

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	0	2.0
• Sometimes:	7.1	17.6
• Rarely:	38.1	33.3
• Never:	54.8	47.1

(ix) a promise or a recommendation as to the type of treatment, the place of imprisonment, or the time of parole:

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	0	9.8
• Sometimes:	28.6	29.4
• Rarely:	45.2	35.3
• Never:	26.2	25.5

(x) Others? (*Explain*)

31.

How often might you discuss a plea negotiation with any of the following people:

(a) an Assistant Prosecuting Officer:(%)

- Always: 0
- Frequently: 7.9
- Sometimes: 42.1
- Rarely: 23.7
- Never: 26.3

(b) a Prosecuting Officer:(%)

- Always: 7.5
- Frequently: 12.5
- Sometimes: 40.0
- Rarely: 25.0
- Never: 15.0

(c) the Director Prosecutions:(%)

- Always: 0
- Frequently: 2.3
- Sometimes: 18.6
- Rarely: 44.2
- Never: 34.9

(d) the Director Criminal:(%)

- Always: 0
- Frequently: 0
- Sometimes: 11.9
- Rarely: 38.1
- Never: 50.0

(e) the Deputy Attorney General:(%)

- Always: 0
- Frequently: 0
- Sometimes: 0
- Rarely: 11.9
- Never: 88.1

(f) the Attorney General:(%)

- Always: 0
- Frequently: 0
- Sometimes: 0
- Rarely: 4.7
- Never: 95.3

(g) Other: (%)

- Always: 40.0
- Frequently: 20.0
- Sometimes: 20.0
- Rarely: 0
- Never: 20.0

32.

How often would you seek advice concerning any of the following issues:

(a) Pretrial detention or conditions of interim release: (%)

- Always: 4.8
- Frequently: 16.7
- Sometimes: 26.3
- Rarely: 28.6
- Never: 23.8

(i) If 2, 3 or 4 under what circumstances would you seek advice?

- Answer: *Depends on the nature of the crime.*

(ii) Who would you most likely contact?

(b) Withdrawing charges: (%)

- Always: 21.4
- Frequently: 21.4
- Sometimes: 38.1
- Rarely: 16.7
- Never: 2.4

(i) If 2, 3 or 4 under what circumstances would you seek advice?

(ii) Who would you most likely contact?

- Answer: *Director of Criminal; Prosecutor*

(c) Stays of proceedings: (%)

- Always: 35.0
- Frequently: 7.5
- Sometimes: 15.0
- Rarely: 27.5
- Never: 15.0

(i) If 2, 3 or 4 under what circumstances would you seek advice?

• Answer: One questionnaire stated: When high public profile cases. Another said that couldn't stay without Director of Criminal's O.K.

(ii) Who would you most likely contact?

(d) Choice among multiple charges: (%)

- Always: 7.1
- Frequently: 9.5
- Sometimes: 33.3
- Rarely: 16.7
- Never: 33.3

(i) If 2, 3 or 4 under what circumstances would you seek advice?

(ii) Who would you most likely contact?

(e) Sentencing recommendations: (%)

- Always: 10.0
- Frequently: 2.5
- Sometimes: 42.5
- Rarely: 25.0
- Never: 20.0

(i) If 2, 3 or 4 under what circumstances would you seek advice?

(ii) Who would you most likely contact?

(f) Give examples of other issues on which you have sought advice and whom you asked for this advice:

33.

(a) How often are pre-sentence reports made available for use in sentencing offenders?

	Prosecutor: (%)	Defence: (%)
• Depends:	0	2.0
• Always:	7.0	25.5
• Frequently:	79.1	58.8
• Sometimes:	14.0	11.8
• Rarely:	0	0
• Never:	0	2.0

(b) In making submissions on sentencing, how often are you guided by the information found in pre-sentence reports?

	Prosecutor: (%)	Defence: (%)
• Always:	7.0	7.8
• Frequently:	51.2	62.7
• Sometimes:	37.2	25.5
• Rarely:	4.7	2.0
• Never:	0	2.0

34.

(a) How often has your conduct of a prosecution been altered by a particular direction or instruction from a departmental "superior"? (%)

- Always: 0
- Frequently: 0
- Sometimes: 2.3
- Rarely: 39.5
- Never: 58.1

(b) Who has given these directions, and under what circumstances?

• Answer: *Department Superiors suggested a charge be withdrawn but left final decision to prosecutor. (See Summary - Gordon Gale made a direction to stay proceeding.)*

(c) Have you ever been required to turn the prosecution of a case over to another prosecutor? (%)

- Always: 0
- Frequently: 0
- Sometimes: 9.3
- Rarely: 18.6
- Never: 72.1

Under what circumstances? (Please specify)

35.

(a) What influence do you have over whether and how a case which you have prosecuted will be taken on appeal by the Crown?

• Answer: *Very little. Make recommendations.*

(b) Do you view this state of affairs as satisfactory? (*Please explain.*)

• Answer: *Yes: Senior solicitors can have a more objective view. Most often my recommendation is accepted therefore feel is satisfactory. No: Should have greater input. Prosecutor has better knowledge of the case.*

36.

Do you consider the directions in the loose-leaf volume *Advice to Prosecuting Officers* to be mandatory instructions?(%)

• Yes: 63.9
• No: 36.1

(*Please explain:*)

• Yes: *Do not deviate without consulting superiors. Department policy which I follow for consistency.*
• No: *Guidelines only. Words used are imprecise.*

37.

(a) Do you receive other general instructions which are not included in the volume entitled *Advice to Prosecuting Officers*?(%)

• Yes: 51.3
• No: 48.7

(b) Who would issue these instructions?

• Answer: *Director of Criminal; Chief Prosecutor.*

(c) What form would these instructions take?

• Answer: *Policy statements; letters; memos; phone calls.*

38.

Are there any other factors which affect the way in which you exercise your prosecutorial discretion or carry out your duties?

• Answer: *Yes, police interference, the problem is chronic and out of control. Common sense.*

39.

(a) Is your performance as a Prosecuting Officer evaluated by the Attorney General's Department?(%)

- Yes: 42.4
- No: 57.6

(b) If yes, what evaluation process is used?

- Answer: *Many are unsure of the existence of any formal evaluation system. Some say one was in place but hasn't been used for several years.*

(c) Is this state of affairs appropriate in your view?(%)

- Yes: 60.0
- No: 36.0
- Depends: 4.0

(Explain)

- Positive: *Seem to be satisfied; best possible way to allow superiors to give opinion.*
- Negative: *No feedback; salaries and promotion not tied to performance; don't weed out poor performers.*

40.

(a) Are you given an opportunity to provide in-pup in relation to departmental policy covering the way you exercise prosecutorial discretion or carry out your duties?(%)

- Yes: 35.0
- No: 65.0

(b) Please comment:

41.

(a) How would you describe your morale in relation to your work?(%)

- Positive: 74.4
- Indifferent/Neutral: 18.6
- Negative: 7.0

(b) How would you describe the morale of prosecutors in general?(%)

- Positive: 53.8
- Indifferent/Neutral: 20.5
- Negative: 20.5

(c) Please explain the reasons for your response.

- Positive: *interesting work; autonomy.*
- Negative: *poor pay; bad work conditions; overworked; lack of research facilities; little chance of advancement.*

(d) What is your yearly income from prosecuting offences? (\$)

(e) (i) Do you consider this adequate?(%)

- Yes: 29.3
- No: 70.7

(ii) Please comment:

- Answer: *Underpaid when consider income opportunities in private practice or amount of work put in.*

(f) (i) Are the research facilities available to you adequate?(%)

- Yes: 64.3
- No: 35.7

(ii) Please comment:

(g) (i) Do you consider working conditions in your jurisdiction adequate?(%)

- Yes: 68.3
- No: 29.3
- Depends: 2.4

(ii) Please comment:

42.

(a) Have you had occasion to prepare *Summaries for Trial Judges*?

	Prosecutor: (%)
• Always:	4.8
• Frequently:	19.0
• Sometimes:	40.5
• Rarely:	16.7
• Never:	19.0

(b) Please comment on the value of these summaries:

- Answer: *Most felt summaries were useful and had no objection to their use.*

(c) If you have prepared such summaries, how often have you made them available to defence counsel?

	Prosecutor: (%)	Defence: (%)
• Depends:	0	2.4
• Always:	52.9	19.0
• Frequently:	11.8	7.1
• Sometimes:	11.8	11.9
• Rarely:	8.8	11.9
• Never:	14.7	47.6

43.

(a) How often have you participated in pre-trial conferences in criminal matters?

	Prosecutor: (%)	Defence: (%)
• Depends:	0	8.2
• Always:	11.9	6.1
• Frequently:	14.3	10.2
• Sometimes:	31.0	24.5
• Rarely:	31.0	30.6
• Never:	11.9	20.4

(b) What issues are most often discussed in pre-trial conferences?

(c) Please comment on the value of pre-trial conferences.

• Answer: *Valuable especially in complex cases.*

44.

(a) In your experience, how often do pre-trial conferences have an impact on plea negotiation?

	Prosecutor: (%)	Defence: (%)
• Always:	0	0
• Frequently:	5.4	9.3
• Sometimes:	16.2	20.9
• Rarely:	37.8	46.5
• Never:	40.5	23.3

(b) Please give examples:

• Answer: *Sometimes judge will imply whether a party has a strong case. Most say no effect.*

45.

(a) Does your conduct of a prosecution differ according to whether an accused is represented or unrepresented by counsel? (%)

- Always: 9.5
- Frequently: 7.1
- Sometimes: 21.4
- Rarely: 16.7
- Never: 45.2

(b) Please explain:

- Answer: *Some say they try to make sure the accused understands the process.*

46.

(a) Does your conduct of a prosecution differ in relation to what you perceive to be the degree of competence or incompetence of defence counsel? (%)

- Always: 2.3
- Frequently: 2.3
- Sometimes: 27.9
- Rarely: 23.3
- Never: 44.2

(b) Please explain:

47.

(a) Are there written or unwritten understandings with the Attorney General's Department concerning the prosecution of "public figures" or controversial cases?(%)

- Yes: 5.0
- No: 92.5
- Depends: 2.5

If yes, please explain:

- Most common answer: *"Not to my knowledge". Notify department; send to superior.*

(b) Do you think there ought to be a "special prosecutions" unit in the Attorney General's Department which would prosecute particularly complex or sensitive cases?

	Prosecutor: (%)	Defence: (%)
• Yes:	57.5	60.4
• No:	42.5	33.3
• Depends:	0	6.3

(c) If your answer to (b) was yes, state briefly your reasons why such a unit would be valuable and what kinds of offences it might handle.

• Answer: *Remove political influence. Complex or sensitive cases could be handled better.*

(d) If your answer to (b) was no, state why you think a special prosecutions unit is not advisable.

• Answer: *Appearance of bias. All accused should be treated equally.*

48.

Have you ever encountered instances of judicial efforts to control or influence the manner in which you exercise your prosecutorial discretion? (%)

- Always: 0
- Frequently: 2.4
- Sometimes: 16.7
- Rarely: 26.2
- Never: 54.8

Please provide examples, if any:

• Answer: *Some judges try to intimidate you into doing what they want.*

49.

(a) Do you have social contact outside the courtroom with any of the members of the judiciary before whom you may be required to appear? (%)

- Always: 0
- Frequently: 2.4
- Sometimes: 26.2
- Rarely: 57.1
- Never: 14.3

(b) If you have such contact, please describe typical circumstances:

• Answer: *Bench/Bar functions; community events.*

50.

(a) Do you ever have occasion to discuss outside the courtroom a particular case with the judge before whom the matter is being heard? (%)

- Always: 0
- Frequently: 0
- Sometimes: 12.2
- Rarely: 12.2
- Never: 75.6

(b) If yes, please describe the circumstances:

- Answer: *Sometimes after a matter is dealt with.*

(c) How often, in your opinion, do other prosecutors discuss particular cases with judges outside of the courtroom? (%)

- Always: 0
- Frequently: 0
- Sometimes: 12.1
- Rarely: 48.5
- Never: 39.4

51.

(a) In matters heard in the following courts, how often do you feel that judges have read the transcript of the preliminary inquiry?

(i) Judges of the County Court?

	Prosecutor: (%)	Defence: (%)
• Depends:	0	2.3
• Always:	19.4	2.3
• Frequently:	41.7	36.4
• Sometimes:	22.2	25.0
• Rarely:	13.9	22.7
• Never:	2.8	11.4

(ii) Judges of the Nova Scotia Supreme Court - Trial Division:

	Prosecutor: (%)	Defence: (%)
• Depends:	0	2.3
• Always:	19.4	2.3
• Frequently:	41.7	36.4
• Sometimes:	22.2	25.0
• Rarely:	13.9	22.7
• Never:	2.8	11.4

(iii) Judges of the Supreme Court - Appeal Division:

	Prosecutor: (%)	Defence: (%)
• Depends:	0	5.7
• Always:	40.9	11.4
• Frequently:	27.3	20.0
• Sometimes:	13.6	22.9
• Rarely:	13.6	25.9
• Never:	4.5	14.3

(b) In your opinion, is this satisfactory? (*Please explain*)

- Answer: *Should not be done where judge is the trier of fact.*

52.

(a) The *Code of Professional Conduct* in Rule VIII states: "When engaged as a prosecutor the lawyer's prime duty is not to seek a conviction, but to see that justice is done through a fair trial on the merits." Would you describe this in any of the following terms: (%)

- A description of the system in practice: 64.3
- A worthwhile, though perhaps unattainable, ideal: 33.3
- Damaging to crime control if put in practice: 0.0
- Other Depends: 2.4

(b) Please explain:

53.

(a) How often do you discuss general policy matters concerning the prosecution of offences or the administration of criminal justice with officials of the municipality in which you work? (%)

- Always: 0
- Frequently: 0
- Sometimes: 7.1
- Rarely: 26.2
- Never: 66.7

(b) Please state with whom and describe typical circumstances:

- Answer: *Municipal councils when there is a rash of a certain offence.*

54.

(a) How often do you discuss the prosecution of particular offences with officials of the municipality within which you work? (%)

- Always: 0
- Frequently: 2.3
- Sometimes: 2.3
- Rarely: 16.3
- Never: 79.1

(b) Please explain:

.....

55.

(a) How often do you discuss general policy concerning the prosecution of offences or the administration of criminal justice with journalists or other members of the media? (%)

- Always: 0
- Frequently: 0
- Sometimes: 11.6
- Rarely: 32.6
- Never: 55.8

(b) Under what circumstances:

.....

56.

(a) How often do you discuss particular cases with which you are involved with journalists or other members of the media? (%)

- Always: 0
- Frequently: 7.0
- Sometimes: 18.6
- Rarely: 30.2
- Never: 44.2

(b) Under what circumstances:

- Answer: *Usually avoided. Just to provide name/date of court appearance.*

57.

(a) How often do you give information or suggestions to correctional officials concerning the treatment of particular offenders? (%)

- Always: 0
- Frequently: 2.3
- Sometimes: 14.0
- Rarely: 23.3
- Never: 60.5

(b) Please explain:

58.

(a) How would you describe the treatment presently accorded Black people in the criminal justice system as opposed to Whites?

	Prosecutor: (%)	Defence: (%)
• Equal:	85.0	58.3
• Better:	7.5	4.2
• Worse:	7.5	37.5

Explain:

(b) How would you describe the treatment presently accorded Native peoples in the criminal justice system as opposed to Whites?

	Prosecutor: (%)	Defence: (%)
• Equal:	82.9	51.1
• Better:	12.2	8.9
• Worse:	4.9	37.9

Explain:

59.

Please use the remaining space on this questionnaire to outline any issues, positive or negative, concerning the prosecution of offences and the administration of justice in the province which we may not have addressed in this questionnaire or which have become a matter of particular concern to you in your work as a Prosecuting Officer.

(ii) Questionnaire to Defence Counsel

1.

(a) How long have you acted as defence counsel in criminal prosecutions? (%)

- Less than 1 year: 0
- Between 1 and 5 years: 45.1
- Between 5 and 10 years: 19.6
- Between 10 and 15 years: 25.5
- Between 15 and 20 years: 7.8
- More than 20 years: 2.0

2.

What percentage of your practice is devoted to acting as a defence counsel? (%)

- Less than 20%: 19.6
- Between 20% and 40%: 17.6
- Between 40% and 60%: 29.4
- Between 60% and 80%: 15.7
- Over 80%: 17.6

3.

Have you ever been employed by the Attorney General as a:(%)

(a) Prosecuting Officer:

- Yes: 2.1
- No: 97.9

(b) Assistant Prosecuting Officer:

- Yes: 4.2
- No: 95.8

(c) Per diem Prosecuting Officer:

- Yes: 2.0
- No: 98.0

(d) In another capacity (*please specify*)

.....

4.

How often do you act as defence counsel in the following courts:

(a) Provincial Court: (%)

- Always: 24.0
- Frequently: 52.0
- Sometimes: 18.0
- Rarely: 6.0
- Never: 0

(b) County Court: (%)

- Always: 9.8
- Frequently: 25.5
- Sometimes: 31.4
- Rarely: 27.5
- Never: 5.9

(c) Supreme Court Trial Division: (%)

- Always: 9.8
- Frequently: 11.8
- Sometimes: 35.3
- Rarely: 25.5
- Never: 17.6

(d) Supreme Court Appeal Division: (%)

- Always: 7.8
- Frequently: 9.8
- Sometimes: 37.3
- Rarely: 31.4
- Never: 13.7

(e) Supreme Court of Canada: (%)

- Always: 6.0
- Frequently: 0.0
- Sometimes: 4.0
- Rarely: 8.0
- Never: 82.0

(f) Youth Court: (%)

- Always: 15.7
- Frequently: 49.0
- Sometimes: 3.9
- Rarely: 25.5
- Never: 5.9

5.

What is the population of the jurisdiction in which you most frequently act in criminal matters? (%)

- Under 10,000: 2.0
- Between 10,000 and 19,999: 18.4
- Between 20,000 and 29,999: 4.1
- Between 30,000 and 39,999: 14.3
- Between 40,000 and 99,999: 14.3
- Between 100,000 and 199,999: 22.4
- Over 200,000: 24.5

6.

As you know some Prosecuting Officers are assigned to a particular court for extended time periods. Have you experienced any difficulties when acting against a prosecuting officer who has appeared before the same judge for a prolonged period of time? If yes, give some examples.

7.

Do Prosecuting Officers make disclosure of their case to you:

(a) Automatically (*i.e.* without a request from you)? (%)

- Always: 7.8
- Frequently: 9.8
- Sometimes: 23.5
- Rarely: 29.4
- Never: 29.4

(b) Only after a request for the disclosure of information? (%)

- Always: 41.7
- Frequently: 45.8
- Sometimes: 10.4
- Rarely: 2.1
- Never: 0

8.

How often are you given unrestricted access to the Crown's file in a particular case? (%)

- Always: 15.7
- Frequently: 39.2
- Sometimes: 21.6
- Rarely: 11.8
- Never: 11.8

9.

How often are the following pieces of information made available to you?

(i) Crown sheets: (%)

- Always: 78.4
- Frequently: 11.8
- Sometimes: 7.8
- Rarely: 2.0
- Never: 0

(ii) All statements made by the accused: (%)

- Always: 64.7
- Frequently: 29.4
- Sometimes: 5.9
- Rarely: 0
- Never: 0

(iii) All statements made by witnesses: (%)

- Always: 23.5
- Frequently: 29.4
- Sometimes: 39.2
- Rarely: 7.8
- Never: 0

(iv) Names of persons who may have evidence whom the Crown intends not to call: (%)

- Always: 8.0
- Frequently: 10.0
- Sometimes: 16.0
- Rarely: 46.0
- Never: 20.0

(v) Police reports: (%)

- Always: 11.8
- Frequently: 23.5
- Sometimes: 27.5
- Rarely: 23.5
- Never: 13.5

(vi) Other: (*Please specify*)

10.

(a) How often do Prosecuting Officers impose conditions on the way in which you use this information? (%)

- Always: 27.5
- Frequently: 13.7
- Sometimes: 19.6
- Rarely: 29.4
- Never: 9.8

(b) What kind of conditions, if any, are most often imposed?

.....
(c) Why in your opinion do Prosecuting Officers impose these conditions?

(i) to protect witnesses: (%)

- Always: 10.9
- Frequently: 26.1
- Sometimes: 34.8
- Rarely: 19.6
- Never: 8.7

(ii) to prevent the loss of physical evidence: (%)

- Always: 2.3
- Frequently: 2.3
- Sometimes: 23.3
- Rarely: 37.2
- Never: 34.9

(iii) because of a bad prior experience with you or other defence counsel: (%)

- Always: 4.7
- Frequently: 18.6
- Sometimes: 23.3
- Rarely: 27.9
- Never: 25.6

(iv) because the investigating officer has expressed personal opinions in some of the documents in the file: (%)

- Always: 2.3
- Frequently: 9.3
- Sometimes: 44.2
- Rarely: 27.9
- Never: 16.3

(v) Other: (%)

- Always: 5.9
- Frequently: 41.2
- Sometimes: 29.4
- Rarely: 5.9
- Never: 17.6

Explain:

11.

(a) In your experience, how much evidence do Prosecuting Officers usually call when conducting a preliminary inquiry?

(i) only enough evidence to get a committal for trial: (%)

- Always: 10.2
- Frequently: 53.1
- Sometimes: 28.6
- Rarely: 8.2
- Never: 0

(ii) all witnesses known to the Crown likely to be called at trial: (%)

- Always: 0
- Frequently: 30.6
- Sometimes: 20.4
- Rarely: 34.7
- Never: 14.3

12.

(a) How frequently are guilty pleas the product of plea negotiation? (%)

- Always: 0
- Frequently: 56.9
- Sometimes: 39.2
- Rarely: 3.9
- Never: 0

(b) Please estimate in percentage terms:

13.

(a) How often do Prosecuting Officers initiate plea negotiations? (%)

- Always: 0
- Frequently: 5.9
- Sometimes: 25.5
- Rarely: 64.7
- Never: 3.9

(b) In your opinion how often have the following factors led the Prosecuting Officer to suggest a negotiated plea?

(i) uncertainty about the availability of sufficient proof to sustain a conviction: (%)

- Always: 6.0
- Frequently: 30.0
- Sometimes: 50.0
- Rarely: 12.0
- Never: 2.0

(ii) to prevent a backlog in case load on the court docket: (%)

- Always: 0
- Frequently: 10.0
- Sometimes: 28.0
- Rarely: 42.0
- Never: 20.0

(iii) to gain the accused's cooperation in the prosecution of others: (%)

- Always: 0
- Frequently: 6.0
- Sometimes: 48.0
- Rarely: 38.0
- Never: 10.0

(iv) a consideration of the interests of the victim: (%)

- Always: 0
- Frequently: 4.0
- Sometimes: 68.0
- Rarely: 24.0
- Never: 6.0

(v) a recommendation of a departmental superior: (%)

- Always: 0
- Frequently: 0
- Sometimes: 17.0
- Rarely: 55.3
- Never: 27.7

(vi) Other? Explain: (%)

- Always: 0
- Frequently: 42.9
- Sometimes: 21.4
- Rarely: 0
- Never: 35.7

14.

(a) How often do you initiate plea negotiations? (%)

- Always: 8.0
- Frequently: 60.0
- Sometimes: 26.0
- Rarely: 6.0
- Never: 0

(b) What factors motivate you in such negotiations?

(i) to minimize the length and severity of the accused's sentence: (%)

- Always: 11.8
- Frequently: 68.6
- Sometimes: 17.6
- Rarely: 2.0
- Never: 0

(ii) to permit the accused to avoid the public disgrace of a trial: (%)

- Always: 0
- Frequently: 9.8
- Sometimes: 25.5
- Rarely: 52.9
- Never: 11.8

(iii) to obtain for the accused a faster and less expensive procedure:
(%)

- Always: 3.9
- Frequently: 54.9
- Sometimes: 29.4
- Rarely: 7.8
- Never: 3.9

(iv) to quickly dispose of an unwanted case: (%)

- Always: 0
- Frequently: 0
- Sometimes: 7.8
- Rarely: 21.8
- Never: 70.6

(v) Other: *(Please specify)*

15.

(a) Which of the following have you requested (or have Prosecuting Officers offered) in return for a plea of guilty? *(see next page)*

(i) a reduction in the charge to a lesser or included offence: (%)

- Always: 0
- Frequently: 47.1
- Sometimes: 43.1
- Rarely: 7.8
- Never: 2.0

(ii) a withdrawal of other charges: (%)

- Always: 0
- Frequently: 62.7
- Sometimes: 37.3
- Rarely: 0
- Never: 0

(iii) a favourable recommendation as to the severity of the sentence:
(%)

- Always: 3.9
- Frequently: 54.9
- Sometimes: 29.4
- Rarely: 7.8
- Never: 3.9

(iv) use of summary conviction procedure rather than proceeding by
way of indictment: (%)

- Always: 2.0
- Frequently: 17.6
- Sometimes: 51.0
- Rarely: 27.5
- Never: 2.0

(v) a promise by the Prosecuting Officer not to oppose release on bail
or release after conviction but before sentence: (%)

- Always: 0
- Frequently: 3.9
- Sometimes: 13.7
- Rarely: 47.1
- Never: 35.3

(vi) a promise by the Prosecuting Officer not to apply for a harsher
penalty in accordance with s. 592 of the *Criminal Code* where the
accused has a previous conviction for the same offence: (%)

- Always: 0
- Frequently: 3.9
- Sometimes: 19.6
- Rarely: 39.2
- Never: 37.3

(vii) a promise not to force a jury trial under s. 498 of the *Criminal Code*: (%)

- Always: 0
- Frequently: 2.0
- Sometimes: 17.6
- Rarely: 33.3
- Never: 47.1

(viii) a promise not to charge friends or family of the accused: (%)

- Always: 0
- Frequently: 2.0
- Sometimes: 17.6
- Rarely: 33.3
- Never: 47.1

(ix) a promise or a recommendation as to the type of treatment, the place of imprisonment, or the time of parole: (%)

- Always: 0
- Frequently: 9.8
- Sometimes: 29.4
- Rarely: 35.3
- Never: 25.5

(x) Others? (*Explain*)

16.

(a) How often are pre-sentence reports made available to you for use in sentencing hearings? (%)

- Depends: 2.0
- Always: 25.5
- Frequently: 58.8
- Sometimes: 11.8
- Rarely: 0
- Never: 2.0

(b) In making submissions on sentencing, how often are you guided by the information found in pre-sentence reports? (%)

- Always: 7.8
- Frequently: 62.7
- Sometimes: 25.5
- Rarely: 2.0
- Never: 2.0

17.

(a) As you are aware, Prosecuting Officers, in some situations, prepare "Summaries for Trial Judges". Comment on any problems associated with the presentation to Trial Judges of these summaries?

.....

(b) How often are these summaries made available to you? (%)

- Depends: 2.4
- Always: 19.0
- Frequently: 7.1
- Sometimes: 11.9
- Rarely: 11.9
- Never: 47.6

(c) If these summaries have been disclosed to you, how often have you objected either to the general use of these summaries or to the way in which particular information was presented in a summary? (%)

- Always: 0
- Frequently: 6.3
- Sometimes: 21.9
- Rarely: 25.0
- Never: 46.9

18.

(a) How often do you participate in pre-trial conferences in criminal matters? (%)

- Depends: 8.2
- Always: 6.1
- Frequently: 10.2
- Sometimes: 24.5
- Rarely: 30.6
- Never: 20.4

(b) What issues are most often discussed in pre-trial conferences?

.....

(c) Please comment on the value of pre-trial conferences?

.....

19.

(a) In your experience, how often do pre-trial conferences have an impact on plea negotiation? (%)

- Always: 0
- Frequently: 9.3
- Sometimes: 20.9
- Rarely: 46.5
- Never: 23.3

(b) Please give examples:

.....

20.

(a) In matters heard in the following courts, how often do you feel that judges have read the transcript of the preliminary inquiry?

(i) Judges of the County Court: (%)

- Depends: 2.3
- Always: 2.3
- Frequently: 36.4
- Sometimes: 25.0
- Rarely: 22.7
- Never: 11.4

(ii) Judges of the Nova Scotia Supreme Court - Trial Division: (%)

- Depends: 2.3
- Always: 7.9
- Frequently: 26.3
- Sometimes: 42.1
- Rarely: 15.8
- Never: 5.3

(iii) Judges of the Supreme Court - Appeal Division: (%)

- Depends: 5.7
- Always: 11.4
- Frequently: 20.0
- Sometimes: 22.9
- Rarely: 25.7
- Never: 14.3

(b) Is this satisfactory? (*Please explain*)

.....

21.

(a) Do you think there ought to be a "special prosecutions" unit in the Attorney General's Department which would prosecute particularly complex or sensitive cases? (%)

- Yes: 60.4
- No: 33.3
- Depends: 6.3

(b) If your answer to (a) was yes, state briefly your reasons why such a unit would be valuable and what kinds of offences it might handle.

.....

(c) If your answer to (a) was no, state why you think a special prosecutions unit is not advisable.

.....

22.

(a) How would you describe the treatment presently accorded Black people in the criminal justice system as opposed to Whites? (%)

- Equal: 58.3
- Better: 4.2
- Worse: 37.5

(b) How would you describe the treatment presently accorded Native peoples in the criminal justice system as opposed to Whites? (%)

- Equal: 51.1
- Better: 8.9
- Worse: 37.8

23.

Please use the remaining space on this questionnaire to outline any issues, positive or negative, which you feel are relevant to the administration of justice in Nova Scotia. More specifically, do you object to or applaud procedure(s) followed by the Attorney General's Department or by particular Prosecuting Officers?

