

Public Prosecutions Act

CHAPTER 21 OF THE ACTS OF 1990

as amended by

1999 (2nd Sess.), c. 16; 2022, c. 25



© 2022 Her Majesty the Queen in right of the Province of Nova Scotia
Published by Authority of the Speaker of the House of Assembly
Halifax

This page is intentionally blank.

CHAPTER 21 OF THE ACTS OF 1990
amended 1999 (2nd Sess.), c. 16; 2022, c. 25

**An Act to Provide for an Independent
Director of Public Prosecutions**

Table of Contents

(The table of contents is not part of the statute)

	Section
Short title.....	1
Purpose of Act.....	2
Interpretation.....	3
Director of Public Prosecutions.....	4
Qualifications and appointment.....	5
Power and duties of Attorney General.....	6
Meeting between Attorney General and Director.....	6A
Extraordinary prosecution.....	6B
Deputy Director of Public Prosecutions.....	7
Crown attorneys.....	8
Regional crown attorneys.....	9
Chief crown attorneys.....	10
Powers, authorities and duties.....	11
Qualifications.....	12
Annual report.....	13
Appointment of barrister.....	14
Existing prosecuting officers.....	15
House of Assembly Act amended.....	16
Repeal of Prosecuting Officers Act.....	17
Proclamation.....	18

Short title

1 This Act may be cited as the *Public Prosecutions Act*. 1990, c. 21, s. 1.

Purpose of Act

2 The purpose of this Act is to ensure fair and equal treatment in the prosecution of offences by

- (a) establishing the position of Director of Public Prosecutions;
- (b) providing for a public prosecution service; and
- (c) providing for the independence of the Director of Public Prosecutions and the public prosecution service. 1990, c. 21, s. 2.

Interpretation

3 In this Act, “prosecution” includes the decision whether to prosecute or not, the prosecution proceeding itself and matters arising therefrom, and appeals. 1990, c. 21, s. 3.

Director of Public Prosecutions

4 There shall be a Director of Public Prosecutions who

(a) is the head of the public prosecutions service and is responsible for all prosecutions within the jurisdiction of the Attorney General conducted on behalf of the Crown;

(b) may conduct all prosecutions independently of the Attorney General except that the Director of Public Prosecutions shall comply with all instructions or guidelines issued by the Attorney General in writing and published pursuant to this Act;

(c) is, for the purpose of the *Criminal Code* (Canada) and the *Summary Proceedings Act*, the Attorney General's lawful deputy in respect of prosecutions;

(d) shall advise police officers in respect of prosecutions generally or in respect of a particular investigation that may lead to a prosecution when the police request such assistance;

(e) may issue general instructions or guidelines to a chief crown attorney, a regional crown attorney or a crown attorney in respect of all prosecutions or a class of prosecutions, and shall cause such instructions or guidelines to be published;

(f) may issue instructions or guidelines to a chief crown attorney, a regional crown attorney or a crown attorney in a particular prosecution. 1990, c. 21, s. 4.

Qualifications and appointment

5 (1) The Director of Public Prosecutions

(a) shall be a barrister with a total of at least ten years standing at the Bar of Nova Scotia or of another province of Canada, and if of another province, shall, within one year of appointment, become a practising member of the Bar of Nova Scotia;

(b) shall be appointed by the Governor in Council, on the recommendation of the Attorney General, after consultation with the Chief Justice of Nova Scotia, the Chief Justice of the Supreme Court and the Executive of the Nova Scotia Barristers' Society;

(ba) shall be appointed for a term of seven years and is not eligible to be re-appointed;

(c) holds office during good behaviour;

(d) has the status of deputy head and the provisions of the *Civil Service Act* and regulations relating to a deputy or a deputy head apply to the Director of Public Prosecutions; and

(e) shall be paid the same salary as the Chief Judge of the provincial court.

(2) The Director of Public Prosecutions may be removed from office for cause by a resolution of the Assembly.

(3) Where, while the Assembly is not sitting, the Director of Public Prosecutions fails to be of good behaviour, or is unable to perform the duties of office, the Governor in Council may appoint a person to be Acting Director of Public Prosecutions who shall take over the duties of the Director of Public Prosecutions.

tions until the Governor in Council sooner rescinds the appointment of the Acting Director of Public Prosecutions.

(4) Where a vacancy occurs in the office of the Director of Public Prosecutions in a manner other than that referred to in subsection (2), the Governor in Council may appoint a person to be Acting Director of Public Prosecutions until a Director of Public Prosecutions is appointed pursuant to this Act. 1990, c. 21, s. 5; 1999 (2nd Sess.), c. 16, s. 1; 2022, c. 25, s. 1.

Power and duties of Attorney General

6 The Attorney General is the minister responsible for the prosecution service and is accountable to the Assembly for all prosecutions to which this Act applies and

(a) after consultation with the Director of Public Prosecutions, may issue general instructions or guidelines in respect of all prosecutions, or a class of prosecutions, to the prosecution service and shall cause all such instructions or guidelines to be in writing and to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette;

(b) after consultation with the Director of Public Prosecutions, may issue instructions or guidelines in a particular prosecution, and shall cause such instructions or guidelines to be in writing and to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette except where, in the opinion of the Director of Public Prosecutions, publication would not be in the best interests of the administration of justice, in which case the Director of Public Prosecutions, instead, shall publish as much information concerning the instructions or guidelines as the Director of Public Prosecutions considers appropriate in the next annual report of the Director of Public Prosecutions to the Assembly;

(c) may consult with the Director of Public Prosecutions and may provide advice to the Director of Public Prosecutions and, subject to clauses (a) and (b), the Director of Public Prosecutions is not bound by such advice;

(d) may consult with members of the Executive Council regarding general prosecution policy but not regarding a particular prosecution;

(e) may exercise statutory functions with respect to prosecutions, including consenting to a prosecution, preferring an indictment or authorizing a stay of proceedings, after consultation with the Director of Public Prosecutions and shall cause notice of such action to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette. 1990, c. 21, s. 6; 1999 (2nd Sess.), c. 16, s. 2.

Meeting between Attorney General and Director

6A The Attorney General and the Director of Public Prosecutions shall meet at least twelve times a year, on a monthly basis if possible, to discuss policy matters, including existing and contemplated major prosecutions. 1999 (2nd Sess.), c. 16, s. 3.

Extraordinary prosecution

6B (1) In this Section, “extraordinary prosecution” means an unexpected or unforeseen prosecution that cannot be undertaken within the budget

appropriated for the public prosecution service but is of such a magnitude and importance that, in the opinion of the Director of Public Prosecutions, the prosecution should be undertaken notwithstanding the lack of financial resources.

(2) The Director of Public Prosecutions may spend in any fiscal year an amount that is not more than five per cent more than the amount appropriated for the public prosecution service for that year for the purpose of undertaking an extraordinary prosecution.

(3) The Governor in Council shall provide the additional funds referred to in subsection (2) through a supplementary appropriation.

(4) Where the Governor in Council has provided the funds referred to in subsection (3) and deems it advisable to conduct a review of the need for the additional funds, the Governor in Council may appoint a qualified person to conduct the review. 1999 (2nd Sess.), c. 16, s. 3.

Deputy Director of Public Prosecutions

7 (1) The Governor in Council may, on the recommendation of the Attorney General, appoint a barrister in the public service with a total of at least ten years standing at the Bar of Nova Scotia or of another province of Canada to be Deputy Director of Public Prosecutions for a term of five years.

(2) The person appointed under subsection (1) may be re-appointed for one additional term of up to five years by the Governor in Council on the recommendation of the Attorney General.

(3) The Deputy Director of Public Prosecutions is responsible to the Director of Public Prosecutions and may exercise all of the powers and authority of the Director of Public Prosecutions and, for that purpose, is a lawful deputy of the Attorney General.

(4) Notwithstanding subsections (1) and (2), the Deputy Director of Public Prosecutions in office when this Section comes into force continues in office until the Deputy Director resigns, retires or is terminated. 2022, c. 25, s. 2.

Crown attorneys

8 There shall be crown attorneys to conduct prosecutions and the crown attorneys are responsible to the Director of Public Prosecutions and, where applicable, to a chief crown attorney or a regional crown attorney. 1990, c. 21, s. 8.

Regional crown attorneys

9 There may be a regional crown attorney to supervise crown attorneys within a geographic area determined by the Director of Public Prosecutions, and a regional crown attorney is responsible to the Director of Public Prosecutions. 1990, c. 21, s. 9.

Chief crown attorneys

10 There may be a chief crown attorney to supervise crown attorneys and, where applicable, regional crown attorneys, and a chief crown attorney is responsible to the Director of Public Prosecutions. 1990, c. 21, s. 10.

Powers, authorities and duties

11 A chief crown attorney, a regional crown attorney and a crown attorney have all the powers, authorities and duties provided by the criminal law of Canada for prosecutors, for prosecuting officers or for counsel acting on behalf of the Attorney General. 1990, c. 21, s. 11.

Qualifications

12 All chief crown attorneys, all regional crown attorneys and all full-time crown attorneys shall be barristers appointed pursuant to the *Civil Service Act* upon the recommendation of the Director of Public Prosecutions after a competition. 1990, c. 21, s. 12.

Annual report

13 The Director of Public Prosecutions shall report annually to the Assembly in respect of prosecutions. 1990, c. 21, s. 13.

Appointment of barrister

14 (1) The Director of Public Prosecutions may appoint a barrister to take charge of and conduct a particular prosecution or to take charge of and conduct criminal business to the extent specified in the terms of the appointment.

(2) A barrister appointed pursuant to this Section shall be known and designated as a crown attorney and, when acting within the terms of the appointment, has all the powers and authority of a crown attorney.

(3) The Director of Public Prosecutions may, from time to time, vary the terms of appointment of a crown attorney pursuant to this Section or may, at any time, revoke the appointment. 1990, c. 21, s. 14.

Existing prosecuting officers

15 Notwithstanding Section 12, all prosecuting officers and assistant prosecuting officers employed by the Province immediately before the coming into force of this Act are crown attorneys for the purpose of this Act. 1990, c. 21, s. 15.

House of Assembly Act amended

16 *amendment*

Repeal of Prosecuting Officers Act

17 Chapter 362 of the Revised Statutes, 1989, the *Prosecuting Officers Act*, is repealed. 1990, c. 21, s. 17.

Proclamation

18 This Act comes into force on and not before such day as the Governor in Council orders and declares by proclamation. 1990, c. 21, s. 18.

Proclaimed - July 24, 1990
In force - September 1, 1990