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Nerschorn  
presentation

**Submission of the Director Public Prosecutions  
to the  
Law Amendments Committee**

October 18, 2019

Good afternoon. Today, I am here as the Director of Public Prosecutions to voice my grave concerns about Bill 203 which would eliminate the right to binding arbitration for this province's Crown Attorneys.

If passed, the bill would be a disaster for the Public Prosecution Service and Nova Scotia's criminal justice system. Let me tell you why.

Our province's Public Prosecution Service was established in 1990 as this country's first independent public prosecution service. Labour

relations during those first few years were tense; Crown Attorney morale was low. At the core of the problem was the unresolved issue of an independent mechanism to set salaries for Crown Attorneys. Our Crown Attorneys chose to strike. They hit the picket line in 1998. It was a dark time for the prosecution service and for criminal justice in Nova Scotia.

In 2000, under the leadership of then Attorney General, the late Michael Baker, an independent salary setting mechanism was finally established. Since then, we've had a very positive and sustained period of labour relations.

The Nova Scotia Crown Attorneys Association bargained in good faith with the government and the government bargained in good faith with the Crown Attorneys. When an agreement couldn't be reached,

**the matter went to binding arbitration which settled on what was fair and proper for both parties.**

**The last negotiated agreement was reached in 2016. The Crown Attorneys accepted the government's pattern wage offer in return for a 30-year framework agreement.**

**That agreement is now being violated. As a lawyer, I believe in the principle that agreements must be honored. I support bargaining in good faith. I support that Charter rights must be respected. I trust legal processes—like arbitration.**

**Binding arbitration is particularly well-suited to an independent organization like the public prosecution service.**

**As Director of Public Prosecutions, I first heard of this Bill on the day it was introduced. I had no opportunity to voice my opinion, one that would have been based on 48 years of experience in the operation of a prosecution service. This is disrespectful of my office.**

**I support our Crown Attorneys and the important work that they do. I understand their anger with this Bill. I'm angry, too. I have told them so. As head of the independent Public Prosecution Service, I stand with them in their opposition to this Bill.**

**This Bill will designate Crown Attorneys an essential service and will give them the right to strike. The Bill is right about one thing. Crowns are an essential service. They are what stands between the people of this province and murderers . . . child molesters . . . and thieves. But saying Crown Attorneys have the right to strike is meaningless.**

**A strike would bring mayhem to the courts. Public safety would be jeopardized. There's not one Crown Attorney that wouldn't be considered essential.**

**Every day, as it is, we struggle to cover the Courts across the province with the 100 Crown Attorneys we have. Crown Attorneys put in countless hours of unpaid overtime. To say this Bill confers a right to strike is misleading and disingenuous. What Crown Attorneys would be able to strike? What murders . . . sexual assaults . . . or child pornography cases would be left unprosecuted?**

**If Crowns were to strike, government would be forced to contract with the private sector as was done in 1998. In the private sector only criminal defence lawyers are experts in criminal law. And they would be in conflict.**

**All that private civil lawyers were able to do in 1998 was adjourn cases. We could get away with that then. Today, in the world of Jordan . . . cases would be tossed.**

**This Service has statutory independence as it relates to prosecutorial decision-making, but it relies on government to decide its funding.**

**There is a line where the decision to fund or not to fund . . . to approve a request or not . . . affects independence operationally. The potential for a strike by Crown Attorneys is very much an operational effect; and it is one that greatly concerns me.**

**I am also concerned with the risk to recruitment and retention if salaries do not remain competitive. Nova Scotia currently has a team of first-rate Crown Attorneys who want to be compensated fairly and treated with respect. Only an independent salary-setting mechanism can ensure this remains the case.**

**Our Crown Attorneys are skilled professionals. On Wednesday, I witnessed them receiving the devastating news of this Bill as they were settling into a session of continuing legal education. They left to demonstrate their opposition to this Bill. And then, being the true professionals they are, they came back to continue honing their skills as Crown Attorneys in the face of this blow to their morale.**

**I thank them for their dedication and professionalism.**

**In 2000, in announcing the initial framework agreement between the government and the Crown Attorneys Association, Attorney General Michael Baker said: . . . *“This is a banner day for the province’s Public Prosecution Service. It means a more positive, constructive relationship between the Crown Attorneys and government and provides a solution to the longstanding issue of how wages are set for this independent service.***

He went on: *It's time these individuals and their contributions to the public service be recognized and appreciated."*

Wise words which I commend to you today.

Thank you.



News release

# Crowns Accept Salary-Setting Proposal

[Public Prosecution Service \(../search?dept=40\)](#)

February 1, 2000 - 2:00 PM

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Nova Scotia's Crown attorneys and the provincial government have reached an agreement on a salary-setting mechanism for the province's prosecutors.

"This is a banner day for the province's Public Prosecution Service," said Attorney General Michael Baker. "It means a more positive, constructive relationship between Crown attorneys and government and provides a solution to the long-standing issue of how wages are set for this independent service."

The long-standing salary issue was addressed in an independent review of the service conducted last year by retired judge Fred Kaufman. Mr. Kaufman urged that Crown attorneys and government come up with an agreement on their own. He said this option was preferable to the alternative of amending the Civil Service Collective Bargaining Act to establish a bargaining unit of staff lawyers.

"This government has always been firmly committed to resolving this issue," said Mr. Baker. "And, I am delighted we were able to reach this agreement on our own, as Mr. Kaufman urged, without having to resort to legislation."

The agreement outlines a procedure for discussion, negotiation and arbitration aimed at determining salaries for all non-managerial Crown attorneys within the Public Prosecution Service. It also provides a mechanism for dispute resolution and formally recognizes the Nova Scotia Crown Attorneys Association as the representative body for the 65 non-managerial Crown attorneys in 16 offices across the province.

"Crown attorneys perform an important service for Nova Scotia and Nova Scotians," said Mr. Baker. "Prosecuting those accused of crimes such as murder, sexual assault, robbery and the like is vital to the public safety and compensation for doing so should be fair and just."

The agreement was hammered out by a working group established by government in December, comprising representatives of the Crown Attorneys' Association, the Department of Human Resources and management of the Public Prosecution Service. Now that the working group has the go-ahead, it will begin the groundwork for actual salary negotiations.

Mr. Baker made the announcement today with Anne Calder of the Nova Scotia Crown Attorneys Association.

Last year, Nova Scotia Crown attorneys prosecuted some 42,000 cases including 56 murders, 313 robberies, 465 sexual assaults, 2,200 break and enters and 4,600 thefts.

"It's time these individuals and their contributions to the public service be recognized and appreciated," said Mr. Baker.

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#### FOR BROADCAST USE:

The province and its Crown attorneys have hammered out an agreement.

The deal provides a new way to settle disputes and negotiate wages for the province's Crown prosecutors.

It also fulfills another recommendation put forward in the report on the Public Prosecution Service by retired judge Fred Kaufman.

Attorney General Minister Michael Baker says his government made a commitment

to settle the issue and succeeded.

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kjd

February 1, 2000

2:00 p.m.

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