



Department of Justice  
Canada

Ministère de la Justice  
Canada

# The Federal Prosecution Service



Canada

# The Federal Prosecution Service



Published by authority of the Minister of Justice  
and Attorney General of Canada

by Communications and Executive Services  
Department of Justice  
Ottawa, Ontario  
K1A 0H8

March 1997

# Table of Contents

- Preface .....5
- Introduction .....6
- I Organization .....6
  - 1.1 Central Component: The Criminal Law Branch .....6
    - 1.1.1 *Criminal Law Section* .....6
    - 1.1.2 *Strategic Prosecution Policy Section* .....7
  - 1.2 Regional Component .....8
  - 1.3 Industry Canada – Departmental Legal Services Unit .....8
- II Mandate .....9
- III Responsibilities .....10
  - 3.1 Prosecution Function .....10
    - 3.1.1 *In-house Prosecutors* .....11
    - 3.1.2 *Agents* .....11
  - 3.2 Prosecution-related Functions .....11
    - 3.2.1 *General* .....11
    - 3.2.2 *Integrated Proceeds of Crime (IPOC) Units* .....12
- IV Management .....13
  - 4.1 Functional Direction of the  
Assistant Deputy Attorney General (Criminal Law) .....13
  - 4.2 Management Board .....14
  - 4.3 The National Working Group .....14
- V Training .....15
  - 5.1 In-house Prosecutors .....15
  - 5.2 Agents .....15



# Preface

Contrary to some other common law jurisdictions where the prosecution service is a completely independent organization, the Canadian Federal Prosecution Service is an integral part of the Federal Department of Justice. As such, it is staffed by full-time public servants and by agents recruited from the private bar.

The Canadian Federal Prosecution Service is comprised of men and women dedicated to excellence. Day in and day out these professionals breath life into the words of Rand J. of the Supreme Court of Canada in the leading case of *Boucher v. The Queen*<sup>1</sup>

*It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that the available legal proof of the facts is presented; it should be done firmly and pressed to its legitimate strength, but it also must be done fairly. The role of the prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of dignity, seriousness and the justness of judicial proceedings.*

The tradition of excellence in the Federal Prosecution Service is well established. Like my predecessors<sup>2</sup>, I am proud to be the head of an organization devoted to the pursuit of justice.

D.A. Bellemare, Q.C.  
Assistant Deputy Attorney General  
(Criminal Law)

Ottawa, January 30, 1997

<sup>1</sup> [1955] SCR 16; 110 CCC 263, at 270

<sup>2</sup> D. Christie, March 1, 1967 to June 13, 1973 (currently Associate Chief Judge, Tax Court of Canada); J. Scollin, April 17, 1974 to September 7, 1975 (currently Justice of the Manitoba Queen's Bench); L-P Landry, Sept. 8, 1975 to March 26, 1979 (currently Justice of the Superior Court of Quebec in Hull); D. Rutherford, Dec. 23, 1980 to July 31, 1986 (currently Justice of the Ontario Court of Justice, General Division); W. Hobson, September 15, 1986 to April 1, 1987 (currently Barrister and Solicitor, Toronto); J. Isaac, August 4, 1987 to February 20, 1989 (currently Chief Justice of the Federal Court of Canada); B.A. MacFarlane, April 17, 1989 to April 17, 1993 (currently Deputy Minister of Justice and Deputy Attorney General of the Province of Manitoba).

## Introduction

The purpose of this booklet is to provide an overview of the role and mandate of the Federal Prosecution Service, which is responsible for the delivery of prosecution services in Canada at the federal level. Although the function has existed for several decades, the expression "Federal Prosecution Service" was officially coined by the Deputy Minister of Justice and Deputy Attorney General of Canada on October 21, 1996.<sup>3</sup>

The prosecutorial discretion of the Attorney General of Canada must be exercised independently and in an objective and consistent fashion. The independence required to exercise the prosecution function has been protected through a number of safeguard. The consistency required in the exercise of discretion is controlled through public guidelines contained in the *Crown Counsel Policy Manual*.

## I Organization\*

The Federal Prosecution Service (FPS) is a national entity which constitutes an integral part of the Department of Justice. It comprises a central component, the Criminal Law Branch, and has components throughout the country, in each of the Regional Offices of the Department.

### 1.1 The Central Component: The Criminal Law Branch

The Criminal Law Branch, which is headed by the Assistant Deputy Attorney General (ADAG) (Criminal Law), is located at Justice Headquarters in Ottawa and is comprised of two sections: the Criminal Law Section and the Strategic Prosecution Policy Section.

#### 1.1.1 The Criminal Law Section

A Senior General Counsel (Criminal Law) manages this Section under the general direction of the ADAG (Criminal Law). It consists of the Ottawa/Hull Prosecution Group, the International Assistance Group (IAG), and a group of criminal law specialists, including the Supreme Court of Canada Criminal Appeals Coordinator and Environmental Prosecutions Coordinator.

<sup>3</sup> George Thomson, Speech to the first Annual Conference of the Legal Operations Sector, Ottawa Congress Centre, October 21, 1996, p. 6.

\* See list of addresses on page 16

This Section assists in the exercise of functional responsibility for federal criminal litigation except for drugs, proceeds of crime and national security matters. This includes all tax and environmental prosecutions, and prosecutions under the *Immigration Act*, *Fisheries Act* and *Competition Act*.

The Supreme Court of Canada Criminal Appeals Coordinator coordinates with the Litigation Committee any criminal cases before the Supreme Court of Canada in which the Queen in right of Canada is a party or intervenor. The Section advises on criminal law and federal enforcement policy and programs and is also responsible for the ongoing review and updating of the *Crown Counsel Policy Manual* (The Deskbook). Finally, the section provides direction, assistance and support to the northern offices and sub-offices.

The International Assistance Group handles mutual assistance, extradition and rendition requests, develops extradition and mutual assistance policies and negotiates treaties. It discharges the Minister's duties under the *Extradition Act*, the *Fugitive offenders Act* and the *Mutual Legal Assistance in Criminal Matters Act*, and related treaties.

The Ottawa-Hull Prosecution Group is responsible for all prosecutions in the National Capital Region and supervises prosecution agents in eastern and northern Ontario and western Quebec.

### 1.1.2 *The Strategic Prosecution Policy Section*

A Senior General Counsel manages this section under the general direction of the ADAG (Criminal Law). It has the primary Headquarters responsibility for providing assistance and direction on all drug, money laundering and proceeds of crime investigations, wiretap issues and prosecutions; on national security issues; and with respect to the management of the law relating to these and other specified areas. Its main task is to support regional office counsel in the development of strategic approaches to the drug, proceeds of crime and national security prosecution work of the Department, and to develop prosecution policies in these areas. It also acts in a liaison capacity with government agencies in relation to drug proceeds and national security prosecutions and provides input on policy issues from prosecutors to those responsible for the development of legislation on substantive criminal law and procedure.

The section assists in the exercise of functional responsibility for all disclosure issues, the emerging issue of state funding of defense counsel, and the pilot projects to replace crown agents with in-house counsel. It has also been given the responsibility of coordinating the development of the "proceeds of crime law" within the FPS, both in the Integrated Proceeds of Crime (IPOC) units and in the prosecution groups.



As mentioned, the Strategic Prosecution Policy Section also includes a national security component which is responsible for advising the ADAG (Criminal Law) on legal matters arising under the *Canadian Security Intelligence Service Act*, the *Official Secrets Act*, the *Security Offences Act* and national security and intelligence matters generally.

Finally, the Director of the section has the overall responsibility, through the Agent Affairs Unit, for the agent supervision program within the Department.

## 1.2 Regional Component

The regional component of the FPS is made up of in-house prosecutors working in the various regional offices of the Department. These regional offices and sub-offices have been organized in five administrative regions, each headed by a Senior Regional Director. A region may contain more than one regional office:

- The Atlantic Region covers the four Atlantic provinces. The Atlantic Regional Office is located in Halifax;
- The Quebec Region covers the Province of Quebec (with the exception of what is called "Western Quebec," which is covered by the Ottawa/Hull prosecution group located in Ottawa). The Quebec Regional Office is located in Montreal;

- The Ontario Region covers the south-western part of the Province of Ontario. The Ontario Regional Office is located in Toronto. The eastern and northern parts of the province are covered by the Ottawa/Hull Prosecutions Group, located in Ottawa.
- The Prairies and Northwest Territories Region, which covers the three prairie provinces and the NWT, contains several offices. The main Regional Office is in Edmonton, with a sub-office in Calgary; other Regional Offices are located in Saskatoon, Winnipeg and Yellowknife. The Yellowknife Regional Office is also responsible for two sub-offices located in Iqaluit and Inuvik.
- The British Columbia and Yukon Region covers the Province of British Columbia and the Yukon. The main Regional Office is in Vancouver; the other Regional Office is in Whitehorse.

The regional component of the FPS also includes a number of standing and *ad hoc* agents who operate under the supervision of the Regional Offices and the support of the Agents Affairs Unit.

## 1.3 Industry Canada (CCA) Departmental Legal Services Unit

Since the early 1980's, the Departmental Legal Services Unit (DLSU) at Industry Canada, in addition to providing the usual array

of advisory services, has conducted prosecutions on behalf of the Attorney General of Canada under the *Competition Act*. Prosecutors in that unit work in close cooperation with regional offices and are also subject to the prosecution policies contained in the *Crown Counsel Policy Manual*.

## II Mandate

The statutory responsibilities of the Minister of Justice and the Attorney General of Canada are set out in over 50 federal statutes. Those responsibilities which form the mandate of the Federal Prosecution Service, can be found, inter alia, in the *Controlled Drugs and Substances Act*\*, the *Criminal Code*, the *Department of Justice Act*, the *Extradition Act*, the *Mutual Legal Assistance in Criminal Matters Act* and the common law.

The *Criminal Code* defines the prosecution mandate of the Attorney General of Canada as follows:

*Attorney General,*

(a) ...

(b) *with respect to*

(i) *the Northwest Territories and the Yukon Territory, or*

(ii) *proceedings commenced at the instance of the Government of Canada and conducted by or on behalf of that Government in respect of a contravention of, a conspiracy or attempt to contravene or counseling*

*the contravention of any Act of Parliament other than this Act or any regulation made under any such Act*

*means the Attorney General of Canada and includes his lawful deputy.*

Accordingly, with respect to the Northwest Territories and the Yukon, the Attorney General of Canada prosecutes all offences under the *Criminal Code* and other federal statutes.

Elsewhere in Canada, violations of the *Criminal Code* are prosecuted by the provincial attorneys general, and the Attorney General of Canada only prosecutes violations of federal statutes other than the *Criminal Code* (e.g., the *Competition Act*, the *Environment Protection Act*, etc.) and conspiracies and attempts to violate these statutes. In all provinces except Québec and New Brunswick, the Attorney General of Canada prosecutes all violations of drug laws (the *Controlled Drugs and Substances Act*) whether the charges originate from the RCMP or from any other police force. In Québec and New Brunswick, the Attorney General of Canada only prosecutes drug cases investigated by the RCMP. In 1980, the Supreme Court of Canada, in the case of *Hauser*, recognized that both the federal and provincial governments had concurrent prosecutorial jurisdiction with respect to drug offences. In Québec and New Brunswick, the provincial attorneys

\* When in force, it will replace the *Food and Drugs Act* and the *Narcotic Control Act*

general have exercised their jurisdiction and prosecute drug offences investigated by provincial and municipal police forces.

The *Department of Justice Act* sets out the duties and responsibilities of the Minister of Justice and the Attorney General of Canada. Section 4 assigns a legal advisory role to the Minister of Justice for the Governor General and the Privy Council. The Minister is also responsible for advising on all matters referred by the Crown. Under s. 5, the Attorney General provides legal advice to all government departments and has the conduct of all litigation, for and against the Crown.

Many federal statutes give the Attorney General additional powers and duties both directly and through the role of the prosecutor under the *Criminal Code*. The Attorney General, through the Department of Justice, provides legal advice to investigative agencies and government departments on the criminal law implications of investigations and prosecutions.

In mutual legal assistance and extradition, the Minister of Justice is required to act as central authority for the making and receiving of requests for assistance involving a foreign state, and to provide counsel to assist with the implementation of requests in Canada. Regional office counsel normally are assigned to act for the foreign state. In addition, the Minister

must personally authorize the surrender of any fugitive to a foreign country.

### III Responsibilities

The Minister of Justice and Attorney General of Canada is responsible for carrying out many varied duties which either involve or are related to the prosecution of offences. Broadly speaking, the FPS performs the criminal litigation responsibilities of the Attorney General of Canada and the Minister of Justice; that is the *prosecution function* and the *prosecution-related functions*.

The FPS acts as prosecutor in all matters prosecuted by the Attorney General of Canada on behalf of the Crown. It provides legal advice to all law enforcement agencies and government departments with federal law enforcement responsibilities. It provides litigation counsel to act for foreign states in extradition and mutual assistance matters. It assists with the development of amendments to federal statutes with a law enforcement component. It acts as a centre of expertise for criminal law, national security and federal law enforcement matters.

#### 3.1 The Prosecution Function

As its name indicates, this function refers to the actual prosecution of offences. This function is carried out by approximately 200 "in-house" or

staff prosecutors<sup>4</sup> and by more than 300 standing agents.<sup>5</sup> *Ad hoc* agents may also be appointed on a case-by-case basis where required.

### 3.1.1 "In-House" Prosecutors

"In-house" prosecutors are full time employees of the Department of Justice located in the regional offices and sub-offices. The Ottawa/Hull Prosecution Group, which is part of the Criminal Law Branch in Ottawa, and the prosecutors of the Bureau of Competition Policy, are also part of the central component of the FPS.

Prosecutors assigned elsewhere within the Department may be called upon to supplement the work of Crown counsel in the two northern offices and sub-offices. They are known as the "Northern Flying Squad". There are approximately 20 flying squad members (experienced prosecutors from regional offices and Headquarters) for the Northwest Territories and the Yukon. The flying squad comprises lawyers from southern offices and Headquarters who have had *Criminal Code* prosecution experience.

Regional prosecutors conduct criminal litigation on behalf of the Attorney General of Canada in the regions. To ensure consistency, the prosecutorial

function is exercised in accordance with policies contained in the *Crown Counsel Policy Manual* which constitutes the main document governing the conduct of criminal litigation at the federal level.

In addition, a number of prosecutors have also been designated by the Solicitor General of Canada as agents for the purpose of wiretap applications.

### 3.1.2 Agents

Private sector lawyers are also hired as agents of the Attorney General of Canada, both standing and *ad hoc*. They are supervised by 'agent supervisors' located in regional offices<sup>6</sup>, appointed on the basis of competence and subject to certain terms and conditions of employment. Agents represent the Attorney General of Canada and, for that reason, they, like "in-house" prosecutors, must apply the prosecution policies contained in the *Crown Counsel Policy Manual*.

## 3.2 Prosecution-related Functions

### 3.2.1 General

Prosecution-related functions include all the various functions performed by the FPS other than the actual prosecution of offences. These functions

<sup>4</sup> A large number of support staff and paralegals (approximately 100) also contribute to the prosecution effort.

<sup>5</sup> Standing agents are members of the private bar who have been appointed to act on behalf of the Attorney General of Canada.

<sup>6</sup> A national Agents Affairs Unit, located in Ottawa, supports the efforts of local agent supervisors and coordinates the overall elements of the supervision structure.

range from administrative functions performed to support the Minister or the Deputy Minister in the exercise of their respective responsibilities, to policy-oriented functions performed in support of litigation or legislation.

Prosecution-related functions will include activities such as the provision of advice to the Minister of Justice, investigative agencies or other government departments; assistance in the development of policies by investigative agencies; implementation of mutual legal assistance requests; litigation in extradition cases; supervision and coordination of the work of agents; the development of policy and consistent arguments in federal prosecutions and negotiations to ensure adequate funding; management of the federal prosecution function; and liaison with the Criminal Law Policy Section in the development of legislative amendments to the *Criminal Code* and other federal statutes.

Although the prosecution-related functions are traditionally carried out in Headquarters by the Criminal Law Branch, these functions are increasingly carried out in the regions.

### 3.2.2 *Integrated Proceeds of Crime (IPOC) Units*

Integrated Proceeds of Crime (IPOC) units are staffed by Justice counsel, police investigators, forensic accountants and administrative support.

Operating under a Memorandum of Understanding, IPOC counsel report directly to the Prosecution Group Head in the local regional office. There are IPOC units in Montreal, Toronto, Vancouver, Edmonton, Calgary, Regina, Winnipeg, Ottawa, London, Quebec City, Halifax, Fredericton and St. John's. As a rule, these units are housed in RCMP premises in each of these cities.

The primary goal of the IPOC initiative is to intensify, and make more efficient, the investigation and prosecution of major organized crime criminals and crime groups operating in Canada. This innovative program reflects the necessity of a multidisciplinary approach to law enforcement.

Investigators and prosecutors in these units are working as teams on proceeds of crime and money laundering investigations. In addition to providing an on-call advisory service to the police and other members of the units on a wide variety of issues related to the conduct of their investigations, IPOC counsel also supervise the initial drafting of court applications for special search warrants and restraining orders, attend at court to obtain the special search warrants and restraining orders, and draft any submissions needed to obtain the approval of the Attorney General for the giving of undertakings.

## IV Management

### 4.1 Functional Direction of the Assistant Deputy Attorney General (Criminal Law)

The ADAG (Criminal Law) exercises functional responsibility or functional leadership over all prosecutions and prosecution-related functions conducted on behalf of the Attorney General of Canada.

The need for effective functional leadership was very well captured in a recent report on the civil litigation function within the department; these remarks are equally applicable to the management of criminal litigation:

Functional leadership is necessary to ensure consistency in the positions taken in government litigation, co-ordination in the conduct of litigation by all offices, uniformly high standards of service and optimal use of senior litigation expertise and resources across the country. It is also necessary to ensure proper appreciation and consideration of legal and policy issues and proper co-ordination of legal and policy positions. Finally, leadership is essential to forge consensus and force critical decisions on important litigation issues and to spearhead efforts to secure adequate resourcing for litigation.<sup>7</sup>

The core functional responsibility of the ADAG (Criminal Law) is to assist the Minister of Justice and Attorney General of Canada in discharging the duties imposed on them by common law, treaties and legislation, including the *Controlled Drugs and Substances Act*, the *Department of Justice Act*, the *Criminal Code*, the *Extradition Act*, the *Official Secrets Act*, and the *Mutual Legal Assistance in Criminal Matters Act*. More specifically, the ADAG (Criminal Law):

- plays a leadership role in the conduct of criminal litigation, and exercises responsibility for the position to be advanced by the Minister of Justice and Attorney General in criminal litigation, including all criminal cases to be heard by the Supreme Court of Canada;
- has responsibility for the substance and quality of prosecutions, legal advisory and international assistance work in the criminal context, carried out by counsel reporting to the prosecution group heads, regional directors and the two Senior General Counsel of the Criminal Law Branch;
- develops and implements criminal prosecution and related litigation policy for the Department;

<sup>7</sup> Report on the Review of the Civil Litigation Function at Headquarters, 1997.

- advises the Minister, the Deputy Minister and government departments and agencies on issues related to the enforcement of criminal law, including practice, procedure and cases, national security and federal law enforcement;
- discharges the Attorney General's duties under legislation, common law and treaties in criminal law matters; and
- is involved in decisions relating to the sufficiency and deployment of prosecution resources.

#### 4.2 Management Board

The FPS is managed by the ADAG (Criminal Law) with the assistance of a Management Board chaired by the ADAG (Criminal Law) and comprising the five Senior Regional Directors and the two Senior General Counsel of the Criminal Law Branch. The mandate of this board is two-fold: it has responsibility for the allocation of resources within the FPS, and for advising the ADAG (Criminal Law) on major strategic directions and policies of the FPS.

This management structure recognizes the need to provide the FPS with national direction while acknowledging that the day-to-day exercise of the functional responsibility of the ADAG (Criminal Law) in the regions has been delegated to regional directors. They, in turn, are accountable to the ADAG for the effective delivery of prosecution services in their respective regions.

#### 4.3 The National Working Group

The Management Board is supported at the operational level by the National Working Group which comprises all the regional prosecution group heads,<sup>8</sup> the two Senior General Counsel at Headquarters, the head of the International Assistance Group and the head of the Agents Affairs Unit. It is co-chaired by the two Senior General Counsel. The mandate of this group is to discuss substantive issues of national importance (e.g., national policies), to agree on consistent strategies and approaches to deal with legal issues across the country and to make recommendations to the Management Board, when required.

<sup>8</sup> Including the head of the Ottawa/Hull Prosecution Group and the head of the Competition Bureau DSLU.

# V Training

## 5.1 In-house Prosecutors

The quality of federal prosecution services across the country is dependent upon the existence of effective training. The FPS has implemented a strategic training program that addresses the basic needs of new prosecutors, as well as the development needs of more experienced prosecutors.

A training program, which must meet national minimum standards, is delivered at the regional level to reflect local circumstances. The local program is supplemented by national training activities.

## 5.2 Agents

Since 1994, upon appointment, every standing agent receives a mandatory training program. Subsequently, the agent supervisors in each administrative region monitor the quality of prosecution services provided by agents and may recommend specific additional training. In addition, to ensure that agents are kept current on recent legal developments of interest, new communication vehicles have been developed, such as the *Agents Tribune*.



# Addresses

## Headquarters

Criminal Law Branch  
Department of Justice  
Justice Building  
239 Wellington Street  
Ottawa, Ontario  
K1A 0H8  
(613) 957-4800

*As of December 1997*  
Criminal Law Branch  
Department of Justice  
284 Wellington Street  
Ottawa, Ontario  
K1A 0H8  
(613) 957-4800

Ottawa-Hull Prosecutions  
Department of Justice  
222 Queen St., 5th Floor  
Ottawa, Ontario  
K1A 0H8  
(613) 957-7000

## Regions

Atlantic Regional Office  
Suite 1400, Duke Tower  
5251 Duke Street  
Halifax, Nova Scotia  
B3J 1P3  
(902) 426-7142

Quebec Regional Office  
Guy-Favreau Complex  
200 René-Lévesque Boul. West  
East Tower, 9th floor  
Montreal, Quebec  
H2Z 1X4  
(514) 283-7176

Ontario Regional Office  
2 First Canadian Place  
Suite 3400, Exchange Tower  
P.O. Box 36  
Toronto, Ontario  
M5X 1K6  
(416) 973-3103

## Prairies and Northwest Territories Region

Edmonton Regional Office  
211 Bank of Montreal Bldg.  
10199 - 101 Street  
Edmonton, Alberta  
T5J 3Y4  
(403) 495-2972

Calgary Sub-Office  
P.O. Box 1048  
Calgary, Alberta  
T2P 3H2  
(403) 299-3962

Winnipeg Regional Office  
Centennial House  
310 Broadway Avenue, Suite 301  
Winnipeg, Manitoba  
R3C 0S6  
(204) 983-2345

Saskatoon Regional Office  
Churchill Building  
229 4th Ave., S. 7th Floor  
Saskatoon, Saskatchewan  
S7K 4K3  
(306) 975-4763

Yellowknife Regional Office  
Joe Tobie Building  
5020-48th Street, 3rd Floor  
P.O. Box 8  
Yellowknife, Northwest Territories  
X1A 1N3  
(403) 920-7711

Inuvik Sub-Office  
Inuvialuit Building  
201-107 MacKenzie Road  
P.O. Box 2840  
Inuvik, Northwest Territories  
X0E 0T0  
(403) 979-3075

Iqaluit Sub-Office  
Building 224  
Arnakudluk Building  
P.O. Box 1030  
Iqaluit, Northwest Territories  
X0A 0H0  
(819) 979-5324

## British Columbia and Yukon Region

Vancouver Regional Office  
Robson Court  
900-840 Howe Street  
Vancouver, British Columbia  
V6Z 2S9  
(604) 775-7475

Whitehorse Regional Office  
Elijah Smith Building  
200 - 300 Main Street  
Whitehorse, Yukon  
Y1A 2B5  
(403) 667-3991