



Department of Justice
Canada
Federal Prosecution
Service

Ministère de la Justice
Canada
Service fédéral
des poursuites

The Federal Prosecution Service



THIRD EDITION

Canada



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The Federal Prosecution Service



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Preface

Unlike some other common law jurisdictions in which the prosecution service is an independent organization, the Canadian Federal Prosecution Service is an integral part of the federal Department of Justice. It is staffed by full-time public servants and by agents recruited from the private bar.

The Federal Prosecution Service is composed of men and women dedicated to excellence and the pursuit of criminal justice. Day in and day out these professionals breathe life into the words of Mr. Justice Cory, then of the Ontario Court of Appeal, in *R. v. Logiacco*:¹

... [T]he role of the Crown Attorney in the administration of justice is of critical importance to the courts and to the community. The Crown prosecutor must proceed courageously in the face of threats and attempts at intimidation. He must see that all matters deserving of prosecution are brought to trial and prosecuted with diligence and dispatch. He must be industrious to ensure that all the arduous preparation has been completed before the matter is brought before the court. He must be of absolute integrity, above all suspicion of unfair compromise or favouritism. The Crown prosecutor must be a symbol of fairness, prompt to make all reasonable disclosures and yet scrupulous in attention to the welfare and safety of witnesses. Much is expected of the Crown prosecutor by the courts. The community looks upon the Crown prosecutor as a symbol of authority and as a spokesman for the community in criminal matters Great trust is placed in the Crown prosecutor by the courts and by the public. Heavy obligations are imposed upon him in his quasi-judicial role. To be worthy of the trust and reliance which is placed in his office, he must conduct himself with becoming dignity and fairness.

The role of prosecution service that is independent from political or social pressures and that is staffed by able prosecutors who assert this independence in their day-to-day role cannot be over-emphasized. Exercising this role can only be asserted by individuals of strong

¹ (1984), 11 C.C.C. (3d) 374 at 378-379 (Ont. C.A.).

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personal character who have achieved a level of ability, training and experience that sets them apart from their colleagues in the legal profession. The prosecutor must provide advice during investigations, prepare and argue a case with fairness and firmness, and yet, know when non legal means of addressing society's dual concerns of security and rehabilitation are called for. Since the creation of the original Criminal Law Branch in 1967, which has evolved into today's Federal Prosecution Service, the Department of Justice has striven to instill in its prosecutors a sense of mission and of the high calling their actions must demonstrate.

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

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

² The late D.H. Christie, Q.C., March 1, 1967 to June 13, 1973 (former Chief Judge, Tax Court of Canada); J. A. Scollin, Q.C., October 1, 1973 to September 7, 1975 (currently Justice of the Manitoba Court of Queen's Bench); L.-P. Landry, Q.C., September 8, 1975 to March 26, 1979 (currently Justice of the Superior Court of Quebec); D.J.A. Rutherford, Q.C., December 23, 1980 to July 31, 1986 (currently Justice of the Ontario Superior Court of Justice); W.J.A. Hobson, Q.C., September 15, 1986 to August 4, 1987 (currently Barrister and Solicitor, Toronto); J.A. Isaac, Q.C., August 4, 1987 to February 20, 1989 (formerly Chief Justice, now supernumerary judge of the Federal Court of Canada); B.A. MacFarlane, Q.C., 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 of the Federal Prosecution Service (FPS) within the Canadian criminal justice system. Operating within the Department of Justice, the FPS is responsible for the delivery of prosecution and related criminal litigation and advisory services at the federal level.³

I The Canadian Criminal Justice System

Canada is a federal state whose Constitution divides authority in criminal law matters between the federal and provincial governments. The power to enact criminal law and procedure rests with the federal government. The provinces, however, have jurisdiction over the administration of justice, including the establishment and maintenance of the criminal courts.⁴ Criminal proceedings are conducted in the ordinary courts of the provinces (provincial, superior and appellate), with ultimate recourse to the Supreme Court of Canada.⁵

— The legislative framework

Several pieces of federal legislation provide the foundation and general framework within which the criminal justice system operates. The main body of criminal law is contained in the *Criminal Code*, which enacts an extensive but not exhaustive catalogue of crimes and a general procedural scheme for their enforcement. Criminal offences are also found in a number of other federal statutes, including the *Controlled Drugs and Substances*

³ Although the function has existed within the Department for decades, the term "Federal Prosecution Service" has only been in official use since October 1996. It was first used by the then Deputy Minister and Deputy Attorney General of Canada, George Thomson, in a speech to the first Annual Conference of the Legal Operations Sector of the Department of Justice, Ottawa, October 21, 1996.

⁴ *Constitution Act, 1867*, ss. 92(14). The provinces also have ancillary authority under ss. 92(15) to enact penal sanctions for the enforcement of provincial laws.

⁵ Under present law, both the Crown and an accused have an automatic right to appeal to the Supreme Court of Canada in certain criminal cases. In all other cases, an appeal may only be brought with leave of the Court.

Act,⁶ the *Customs Act*, the *Excise Act* and the *Income Tax Act*. A special regime for the administration of youth justice exists under the *Youth Criminal Justice Act*.

— Responsibility for prosecutions

Jurisdiction over prosecutions is not allocated by the Constitution. Traditionally, it has been shared between the federal and provincial governments.⁷ Both the federal and provincial Attorneys General have authority to prosecute criminal offences. Throughout most of Canada, the provinces conduct prosecutions under the *Criminal Code* while the Attorney General of Canada prosecutes non-*Code* federal offences. In the Yukon, Northwest Territories and Nunavut, the Attorney General of Canada prosecutes both *Code* and non-*Code* offences. From this shared prosecutorial responsibility flows the need for federal-provincial cooperation and coordination in the enforcement of the criminal law.⁸

— Presumption of innocence and standard of proof

At the heart of the Canadian criminal trial process lies the presumption of innocence.⁹ The onus is on the prosecution to prove the guilt of the accused beyond a reasonable doubt.¹⁰ If a judge or jury has a reasonable doubt on all the evidence, the accused is entitled to be acquitted. Charges will only be

⁶ In force May 14, 1997, replacing the *Narcotic Control Act* and parts of the *Food and Drugs Act*.

⁷ Responsibility for police and correctional services is also shared. At the federal level, the Solicitor General exercises responsibility for the Royal Canadian Mounted Police and the Correctional Service of Canada. It is also responsible for parole and security intelligence services.

⁸ For example, the Attorney General of Canada may prosecute *Code* offences with the consent and on behalf of a provincial Attorney General where it is more efficient and cost-effective to do so. This will generally occur where the *Code* offences are related to some federal charge (e.g., firearms offences related to a drug charge).

⁹ The presumption of innocence has constitutional status in Canada pursuant to s. 11(d) of the *Canadian Charter of Rights and Freedoms*.

¹⁰ The Supreme Court of Canada has held that “[a] reasonable doubt is not an imaginary or frivolous doubt. It must not be based on sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.” A belief that the accused is probably or likely guilty is not enough, but neither is absolute certainty required. To convict, a judge or jury must be sure that the accused committed the offence: *R. v. Lifchus*, [1997] 3 S.C.R. 320 at 337.

laid or continued if the evidence establishes a reasonable prospect of conviction and it is in the public interest to prosecute.

— The *Charter*

The criminal law and its application are subject to the *Canadian Charter of Rights and Freedoms*.¹¹ As the fundamental law of the land, the *Charter* guarantees basic rights and freedoms that may be enforced by the courts in the face of legislative provisions or government action that infringe them. The courts have the power to strike down as unconstitutional legislation that offends the *Charter* and to remedy *Charter* breaches occurring in the criminal process, including the investigation and prosecution stages.

— The courts

Central to the criminal justice system are the courts. In contrast to other legal systems (notably, the civil law system), the trial judge does not play an inquisitorial role in the trial process.¹² His or her task is to ensure that the parties observe the rules of procedure and to render a decision on the issues in non-jury trials or charge the jury in jury trials. Judges also have a critical role to play in protecting the rights of accused persons in the criminal process by adjudicating claims of *Charter* infringement. In this respect, the courts perform the dual function of enforcing the criminal law and protecting individual rights. Such a balancing of competing demands is considered essential in dispensing criminal justice on the view that:

*The law derives its moral authority, as distinct from its legal authority, from its commitment to protect as well as to control or punish those who come before it and especially those whom public opinion would condemn.*¹³

¹¹ Enacted as part of the *Constitution Act, 1982*.

¹² Also in contrast to some other jurisdictions, Canadian judges are not elected. They are appointed by the federal and provincial governments.

¹³ Friedenber, E.Z., "Law in a Cynical Society". In *Law in a Cynical Society: Opinion and Law in the 1980s*, edited by D. Gibson and J.K. Baldwin (Vancouver: Carswell Legal Publications, 1985), at p. 417.

II The Role of the Prosecutor in Canada

Although it is possible for private citizens to conduct prosecutions of criminal offences in Canada, private prosecutions are rare. The federal and provincial Attorneys General, through counsel acting on their behalf, are responsible for prosecuting violations of the criminal law within their respective spheres of authority. Prosecutions are conducted in the name of the Crown.

— Independence from the police

Unlike their American counterparts, Canadian prosecutors do not participate actively in the conduct of criminal investigations.¹⁴ Though they can and do provide legal advice and assistance to the police at the investigative stage of the criminal process,¹⁵ prosecutors do not perform an investigative role in their own right or as agents of the police. The investigation and prosecution functions are distinct from, and independent of, each other.

— Prosecutors as “ministers of justice”

Prosecutors are subject to weighty ethical, procedural and constitutional obligations. Traditionally, their role has been regarded as that of “minister of justice” rather than partisan advocate. Their functions are imbued with a public trust, and it is expected that they will discharge their duties with fairness, objectivity and integrity. Their role is not to win convictions at any cost but to put before the court all available, relevant and admissible evidence necessary to enable the court to determine the guilt or innocence of the accused.

The Supreme Court of Canada explained this in *Boucher v. The Queen*¹⁶ where it stated:

¹⁴ Also in contrast to some of their American counterparts, Canadian Crown prosecutors are not elected officials.

¹⁵ For example, prosecutors assist the police by making applications to the court for wiretap authorizations, search warrants and restraint orders for proceeds of crime.

¹⁶ [1955] S.C.R. 16, at pp. 23-24; 100 C.C.C. 263, at p. 270.

The Role of the Prosecutor in Canada

“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 all 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 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 the dignity, the seriousness and the justness of judicial proceedings.”

It is therefore clearly recognised in Canadian law that prosecutors must be fair and impartial, yet steadfast and resolute in discharging their responsibilities.

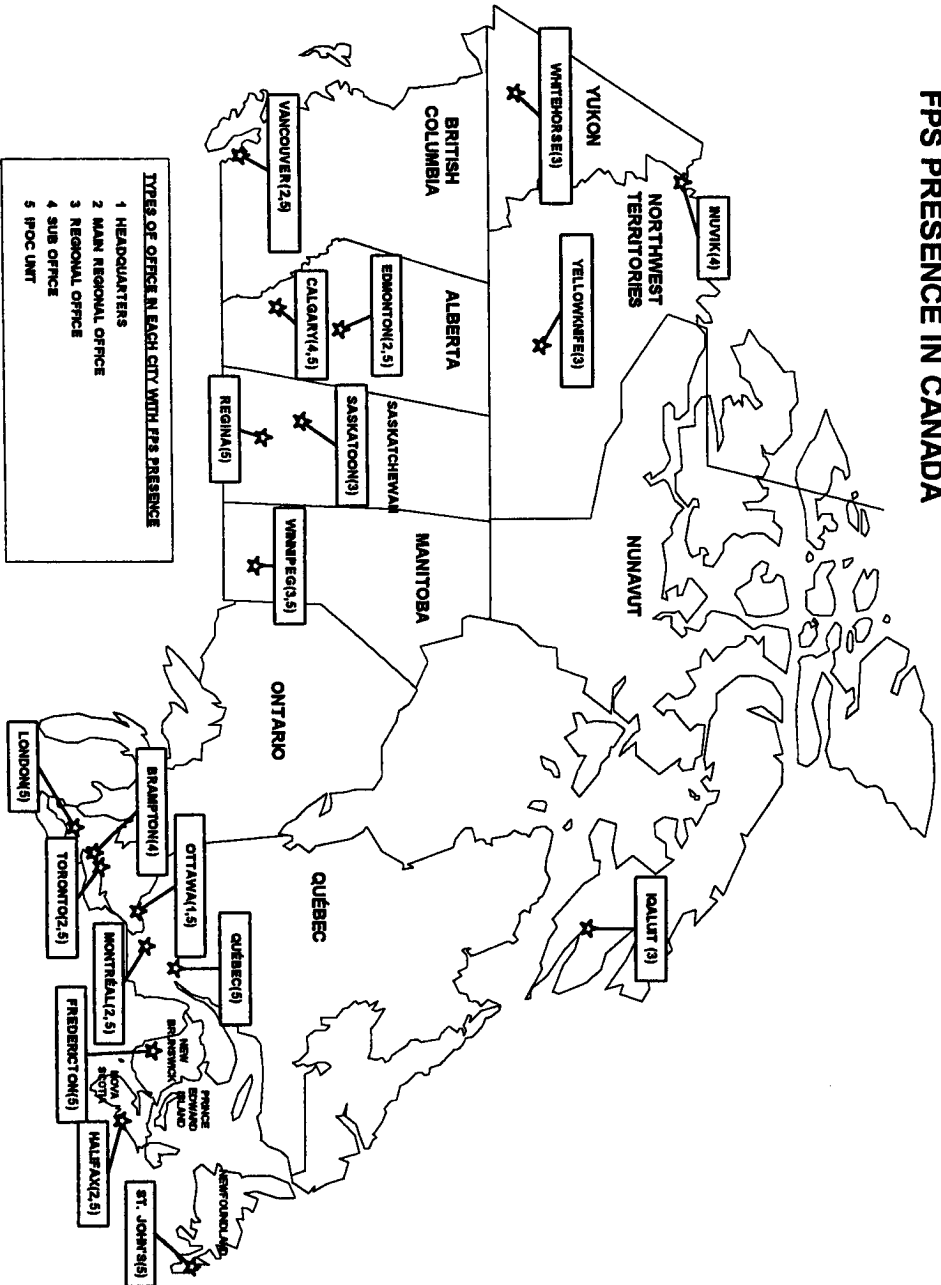
— The exercise of discretion

Canadian criminal law grants broad discretion to the Attorneys General and, through them, to prosecuting counsel. The exercise of prosecutorial discretion is subject to established policies and guidelines. At the federal level, these policies and guidelines are set out in the *Federal Prosecution Service Deskbook*.¹⁷ It is the main document governing the conduct of federal criminal prosecutions and is intended to assist prosecutors in the principled discharge of their prosecutorial duties while informing the public of the basis upon which prosecutorial discretion is exercised.¹⁸

¹⁷ Among the policies included in the *FPS Deskbook* are the Decision to Prosecute Policy, which outlines the criteria for deciding whether to commence or continue a prosecution, the Management of Criminal Litigation Policy, which governs the overall approach to prosecutions, the Alternative Measures (Diversion) Policy and the Policy on Communications with the Media.

¹⁸ The *FPS Deskbook* is published in hard copy and is also electronically available through the Internet. The website address is <http://canada.justice.gc.ca>.

FPS PRESENCE IN CANADA



III The Federal Prosecution Service (FPS)

1. ORGANIZATION

The FPS is a national entity within the Department of Justice. It unites all staff counsel and prosecution agents engaged in the delivery of prosecution and related services at the federal level across Canada. Headed by the Assistant Deputy Attorney General (ADAG) (Criminal Law), the FPS consists of a central component, a regional component and the prosecutors with the Competition and Consumer Law Division within the Departmental Legal Services Unit at Industry Canada. The FPS has been an organizational member of the International Association of Prosecutors since its creation in 1995.

1.1 The Central Component: The Criminal Law Branch

The Criminal Law Branch is located at Headquarters in Ottawa and is composed of two sections: the Criminal Law Section (FPS/CLS) and the Strategic Prosecution Policy Section (FPS/SPPS).

1.1.1 The FPS/CLS

Managed by a Senior General Counsel (Criminal Law) under the general direction of the ADAG (Criminal Law), this Section consists of the Ottawa/Hull Prosecution Group (FPS/Ottawa-Hull), the International Assistance Group (FPS/IAG), and a group of criminal law specialists, including the Supreme Court of Canada Criminal Appeals Coordinator, who coordinates all criminal cases before the Supreme Court of Canada in which the federal Crown is a party or intervener.

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

The FPS/IAG carries out the responsibilities of the Minister of Justice as the central authority for Canada in extradition and mutual legal assistance matters. It reviews and coordinates all requests for extradition or mutual assistance made to or by Canada in criminal matters, negotiates treaties, and

assists in the development of extradition and mutual legal assistance policies and legislation.¹⁹

On a broader level, the FPS/CLS assists in the exercise of functional responsibility for federal criminal litigation, except for drug, proceeds of crime and national security matters (which fall within the mandate of the FPS/SPPS). This includes all tax and environmental prosecutions, as well as prosecutions under the *Immigration Act*, *Fisheries Act* and *Competition Act*. The Section also advises on criminal law and federal enforcement policy and programs and is responsible for the ongoing review and updating of the *FPS Deskbook*. Finally, the Section provides direction, assistance and support to the Department's northern offices and sub-offices in criminal law matters.

1.1.2 The FPS/SPPS

This Section, managed by a Senior General Counsel under the general direction of the ADAG (Criminal Law), has the primary Headquarters responsibility for providing strategic direction and assistance on drug, money laundering and proceeds of crime prosecutions, with particular emphasis on organized crime, as well as wiretap issues and prosecutions. It supports and coordinates with regional counsel in the development of strategic approaches to these prosecutions and develops prosecution policies in these and related areas. It also manages the development of proceeds-of-crime law, an emerging and highly specialized area of law. It works in partnership with other interested government departments, such as the Ministry of the Solicitor General, and coordinates the Department's participation in police-run Integrated Proceeds of Crime Units. It also provides operational advice in the development of criminal law policy and amendments. SPPS counsel are, in addition, involved at all levels of the development, refinement and implementation of domestic drug legislation and in pursuing Canada's Drug Strategy.

At the international level, the Section is the focal point for the Department's operational activities to combat transnational drug trafficking, money laundering and other forms of organized crime. In concert with the FPS/IAG, FPS/SPPS counsel liaise closely with foreign prosecution and

¹⁹ For more information on the work of the FPS/IAG, see *International Assistance Group — Central Authority for Canada for Mutual Legal Assistance and Extradition* (April 1995, 2^d ed., 1999), published by the Department of Justice.

investigative agencies and participate in international criminal justice forums.

The Section incorporates the National Security Group which is responsible for advising the ADAG (Criminal Law) on legal matters arising under the *Canadian Security Intelligence Act*, the *Official Secrets Act*, the *Security Offences Act* and on national security and intelligence matters generally.

Also incorporated within the Section is the Agent Affairs Unit (FPS/AAU), which is responsible for coordinating the Department's overall agent supervision program and for supporting the work of regional agent supervisors.

1.2 Regional Component

The regional component of the FPS is comprised of staff prosecutors working in the Department's ten Regional Offices and three sub-offices as well as prosecution agents working under their supervision. The Regional Offices are organized in five administrative regions, each headed by a Senior Regional Director. Some regions contain more than one Regional Office:

- the Atlantic Region covers the four Atlantic provinces. The Regional Office is in Halifax;
- the Quebec Region covers the province of Quebec (with the exception of western Quebec, which is covered by the FPS/Ottawa-Hull at Headquarters). The Regional Office is in Montreal;
- the Ontario Region covers the south-western part of the province of Ontario. The Regional Office is in Toronto, with a sub-office in Brampton. The eastern and northern parts of the province are covered by the FPS/Ottawa-Hull at Headquarters;
- the Prairies, Northwest Territories and Nunavut Region covers the three prairie provinces, the Northwest Territories and Nunavut.²⁰ The main Regional Office is in Edmonton, with a sub-office in Calgary. In addition, there are Regional Offices in Saskatoon, Winnipeg,

²⁰ Effective April 1, 1999, the Northwest Territories were divided in two to create a new eastern territory called Nunavut, with Iqaluit as its capital. Yellowknife is the capital of the remaining Northwest Territories.

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Yellowknife and Iqaluit. The Yellowknife Office is also responsible for a sub-office in Inuvik;

- the British Columbia and Yukon Region covers the province of British Columbia and the Yukon Territory. The main Regional Office is in Vancouver. There is a second Regional Office in Whitehorse.

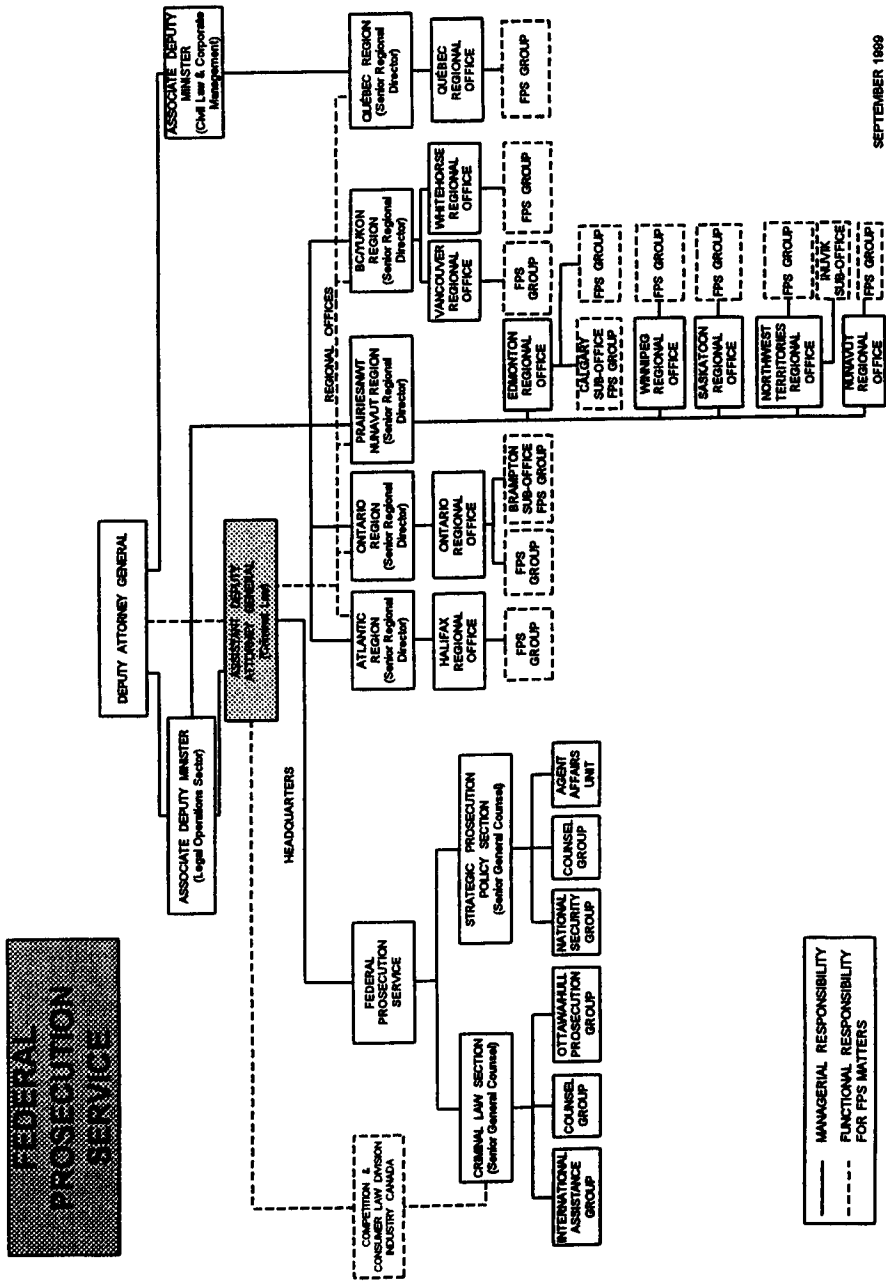
1.3 Industry Canada Departmental Legal Services Unit

Since the mid-1960s, the Competition and Consumer Law Division of the Departmental Legal Services Unit at Industry Canada²¹, in addition to providing the usual array of advisory services to the Competition Bureau, has conducted prosecutions on behalf of the Attorney General of Canada under the *Competition Act*²². Prosecutors in that unit work in close cooperation with the Regional Offices.

²¹ And its predecessors in the former Department of Consumer and Corporate Affairs.

²² Including telemarketing fraud offences.

Organization



2. MANDATE

The mandate of the FPS is as broad and varied as the law with which it deals. Over 50 federal statutes²³ impose duties and responsibilities on the Minister of Justice and Attorney General of Canada that involve or are related to the prosecution of criminal offences. While both the Minister of Justice and the Attorney General of Canada have responsibilities in the criminal law field, their functions are distinct.²⁴

Broadly speaking, the Minister of Justice is responsible for substantive criminal law and procedure (including policy development and law enactment), for extradition and mutual legal assistance matters, and for international criminal justice issues.

The Attorney General of Canada is responsible for the conduct of federal prosecutions and other criminal litigation and for the provision of legal advice to investigative agencies and government departments on the criminal law implications of investigations and prosecutions.

The FPS supports both the Minister of Justice and the Attorney General of Canada in the discharge of their criminal law mandate.

3. FUNCTIONS

The functions of the FPS are broadly divided into prosecution and prosecution-related functions. In carrying out these functions, the FPS acts as a centre of legal expertise for criminal law, national security and federal law enforcement matters.

3.1 Prosecution Function

²³ Including the *Criminal Code*, the *Controlled Drugs and Substances Act*, the *Extradition Act*, and the *Mutual Legal Assistance in Criminal Matters Act*.

²⁴ In Canada, the offices of Minister of Justice and Attorney General of Canada are held by the same person, who is an elected official and a member of Cabinet.

As mentioned above, the federal prosecution mandate is national in scope.²⁵ In the Northwest Territories, Nunavut and the Yukon, the Attorney General of Canada is responsible for all criminal prosecutions (including prosecutions under the *Criminal Code* and other federal statutes). In the rest of Canada, the federal Attorney General is responsible for the prosecution of non-*Code* federal offences and conspiracies or attempts to commit federal offences.

The bulk of federal prosecutorial work involves offences related to organized crime, such as drug offences, money laundering and other proceeds of crime offences.²⁶ In all provinces except Quebec and New Brunswick, the Attorney General of Canada prosecutes all drug offences under the *Controlled Drugs and Substances Act* whether the charges originate with the RCMP or with another police force. In Quebec and New Brunswick, the Attorney General of Canada only prosecutes drug cases investigated by the RCMP. In 1979, the Supreme Court of Canada ruled in *R. v. Hauser*²⁷ that the federal and provincial governments have concurrent jurisdiction to prosecute drug offences. In Quebec and New Brunswick, the provincial Attorneys General have exercised their jurisdiction and prosecute drug offences investigated by provincial and municipal police forces.

The FPS acts as prosecutor in all matters within the prosecution jurisdiction of the Attorney General of Canada. Approximately 300 staff prosecutors²⁸ and more than 300 standing and *ad hoc* agents carry out the prosecution function.²⁹

²⁵ The prosecution mandate of the Attorney General of Canada is set out in s. 2 of the *Criminal Code*.

²⁶ The federal prosecution mandate largely mirrors and supports the mandate of the Royal Canadian Mounted Police (RCMP). As Canada's federal police force, the RCMP operates in all provinces and territories to enforce those federal statutes for which it is responsible, including the *Controlled Drugs and Substances Act*, the *Customs Act* and the *Excise Act*. The RCMP is the only police force in the Northwest Territories, Nunavut and the Yukon and therefore enforces the *Criminal Code* in the territories as well. In most provinces, the RCMP also provides provincial and municipal policing services under contract.

²⁷ [1979] 1 S.C.R. 984.

²⁸ A complement of approximately 100 support staff and paralegals also contributes to the prosecution effort.

²⁹ Agents are members of the private bar who have been appointed to act on behalf of the Attorney General of Canada.

3.1.1 Staff Prosecutors

Staff prosecutors are full-time employees of the Department of Justice located at Headquarters in Ottawa, in the Regional Offices and in the Departmental Legal Services Unit at Industry Canada. In addition, a number of prosecutors have been designated by the Solicitor General of Canada as agents for the purpose of wiretap applications under Part VI of the *Criminal Code*.

Prosecutors from Headquarters and the Regional Offices with *Criminal Code* prosecution experience may also be called upon to supplement or replace Crown counsel in the Department's northern offices and sub-offices. Known as the "Northern Flying Squad", they act as relief prosecutors on the territorial court circuits. There are about 20 members of the squad.

3.1.2 Agents

Private sector lawyers are appointed as agents to conduct prosecutions and other criminal litigation on behalf of the Attorney General of Canada. They are generally engaged in areas where there is no Regional Office or sub-office, where travel costs would be prohibitive or where it is otherwise impractical or not cost-effective to handle cases in-house.

Agents are supervised by 'agent supervisors' in the Regional Offices with the support of the FPS/AAU at Headquarters in Ottawa. In addition to the *FPS Deskbook*, which governs their substantive work, agents are subject to a comprehensive set of Terms and Conditions which govern their relationship with the Department of Justice.

3.2 Prosecution-Related Functions

3.2.1 General

In addition to the prosecution of offences, the FPS performs a variety of related functions. These include the provision of expert advice on criminal law, national security and federal law enforcement matters to the Minister of

Justice, law enforcement agencies and government departments with law enforcement responsibilities; development and implementation of federal criminal litigation policies; international cooperation in criminal matters such as processing and execution of mutual legal assistance requests and litigation on behalf of foreign states in extradition cases; agent supervision and coordination; management of the prosecution function; participation in international criminal justice forums; and operational support in the development of amendments to the *Criminal Code* and other federal criminal legislation.

Although the Criminal Law Branch at Headquarters has traditionally carried out the prosecution-related functions of the FPS, the Regional Offices are becoming increasingly involved as well.

3.2.2 Integrated Proceeds of Crime Units

Integrated Proceeds of Crime (IPOC) Units are specialized and multidisciplinary task force units staffed by FPS counsel, police investigators, customs investigators, forensic accountants and administrative support staff. Their primary focus is the investigation and prosecution of organized crime groups and their primary goal is to deprive organized criminals of the profits and property derived from their illegal activity. There are 13 units operating across Canada.³⁰ They are generally housed in RCMP premises and operate under an inter-agency Memorandum of Understanding.

Investigators and prosecutors in the IPOC Units work as teams on proceeds of crime and money laundering investigations. In addition to providing on-site legal advisory services to the police and other members of the units on a variety of issues relating to the conduct of these investigations, IPOC counsel also oversee the drafting of applications for judicial wiretap authorizations, special search warrants and restraint orders, assist in the preparation of police briefs and disclosure materials, and attend at court as required to obtain judicial orders.

³⁰ The units are located in Vancouver (British Columbia), Edmonton (Alberta), Calgary (Alberta), Regina (Saskatchewan), Winnipeg (Manitoba), Toronto (Ontario), Ottawa (Ontario), London (Ontario), Montreal (Quebec), Quebec City (Quebec), Halifax (Nova Scotia), Fredericton (New Brunswick), and St. John's (Newfoundland).

IPOC counsel report directly to the FPS Group Head in the local, or nearest, Regional Office. To preserve the independence of the Attorney General of Canada and ensure objectivity, the ultimate decision to prosecute rests not with IPOC counsel but with the FPS Group Head or the Regional Director. In all but exceptional cases, prosecutions are conducted by regional counsel rather than IPOC counsel.

4. MANAGEMENT

4.1 Functional Direction of the ADAG (Criminal Law)

The ADAG (Criminal Law) exercises functional responsibility or leadership over all the prosecution and prosecution-related functions of the FPS.

The need for effective functional leadership was captured in a recent report on the civil litigation function within the Department. The comments in that report 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.³¹

In carrying out his functional responsibilities, 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 Attorney General of Canada in criminal litigation, including all criminal cases to be heard by

³¹ Report on the Review of the Civil Litigation Function at Headquarters, 1997.

the Supreme Court of Canada in which the Attorney General is a party or intervener;

- is responsible generally for the substance and quality of prosecutions, legal advisory and international assistance work carried out by FPS counsel reporting to the FPS Group Heads, Regional Directors and the two Senior General Counsel of the Criminal Law Branch;
- develops and implements prosecution and related criminal litigation policies for the Department;
- advises the Minister, the Deputy Minister and government departments and agencies on issues related to the enforcement of the 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 Sector Management Board

The FPS is managed by the ADAG (Criminal Law) under the umbrella direction of the Sector Management Board within the Legal Operations Sector of the Department of Justice. The Board includes the five Senior Regional Directors.

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 National Working Group

The management of the FPS is supported at the operational level by the National Working Group, which is chaired by the ADAG (Criminal Law) and comprises the regional FPS Group Heads,³² the two Senior General Counsel at Headquarters, the head of the FPS/IG and the head of the FPS/AAU. The mandate of the group is to discuss substantive issues of national importance (*e.g.*, national policies), reach agreement on consistent strategies and approaches to deal with legal issues across the country and make recommendations to the Sector Management Board as required.

5. TRAINING

5.1 Staff Prosecutors

The FPS is committed to enhancing the skills and knowledge of prosecution counsel and maintaining professional standards through ongoing training and continuing legal education. It has implemented a strategic training program that addresses the basic needs of junior prosecutors as well as the developmental needs of more experienced prosecutors.

For example, an intensive, in-house training program for prosecutors with two to five years' experience and for counsel entering the prosecution service from other fields is offered through the School for Prosecutors.³³ Held annually in Ottawa, the week-long program offers sessions on substantive and procedural criminal law matters, as well as policy, prosecutorial ethics and professional responsibility. The Annual FPS Conference, held since 1978, has become a key tool enabling prosecutors to meet and exchange views and experiences. It has also evolved into an invaluable training device. Each year, a specific theme is explored as the conference moves to a different region. The XXth Annual Conference will coincide with the advent of the new millenium in 2000.

³² Including the head of the Ottawa/Hull Prosecution Group and the head of the Competition and Consumer Division DLSU at Industry Canada.

³³ The School is open to foreign prosecutors as well. Though of principal benefit to those from common law jurisdictions, the School is also open to those from other jurisdictions. Enrolment can be arranged through the Principal, School for Prosecutors, Criminal Law Branch at the address shown on pages 30-33 of this booklet.

A Day in the Life of the FPS

Racial and cultural sensitivity training has also been instituted to assist prosecutors working in an ethnically diverse society and in the North. Training seminars for IPOC counsel and national training for police and prosecutors on the operation of the criminal organizations provisions of the *Criminal Code* are provided as well.

A local training program, consistent with national minimum standards, is delivered at the regional level under the responsibility of the FPS Group Head. National training activities supplements the local program.

5.2 Agents

Since 1994, all standing agents must undergo a mandatory training program on appointment. Subsequently, agent supervisors in each administrative region monitor the quality of prosecution services provided by agents and may recommend specific additional training. Agents are also kept abreast of legal developments of interest through a variety of communications vehicles and are invited to participate in the School for Prosecutors program.

6. A DAY IN THE LIFE OF THE FPS

The broad mandate of the FPS ensures a long, varied and interesting day of work for federal prosecutors. On any given day, in offices across the country, prosecutors and other counsel will be engaged in a mix of work that reflects the diversity of the federal prosecution function. Some work is common to most offices; other work is dictated by the local environment. The following is a snapshot of a day in the life of the FPS.

The day dawns clear and bright in Canada's easternmost province, Newfoundland. Seagulls dip and wheel over Witless Bay as the "longliners" and a fleet of smaller fishing craft head out to the Atlantic for the day's catch, the loud chugging of their engines fading gradually into silence as they disappear over the horizon. In nearby St. John's, prosecution agents are getting ready for another long day in Provincial Court. They are prosecuting a pair of foreign sea captains for illegal fishing off the Canadian coast under the *Coastal Fisheries Protection Act*. It is not contested that the accused were fishing. The sole issue is the accuracy of the navigational equipment aboard

the Canadian Forces surveillance aircraft that located the foreign trawlers three miles inside Canadian waters. The defence contends that the trawlers' own satellite navigation systems put the vessels well outside the Canadian fishing zone and that they are more reliable than the CF's aerial surveillance system. The trial will unfold as a battle of navigation experts as both sides lead scientific evidence.

Down the coast in Halifax, Nova Scotia, prosecutors in the Atlantic Regional Office are preoccupied with a catch of a different kind. They are at their desks early to prepare for the second week of a major drug importing prosecution involving the crew of a ship found unloading tons of hashish onto smaller boats off the Nova Scotia coast. The drug shipment originated in Colombia and was destined for distribution across the eastern seaboard. The accused say they thought they were in international waters and never intended to import the hash into Canada. They also allege unconstitutional search and seizure in violation of s. 8 of the *Charter*.

Mid-morning in Montreal and the sky is overcast. Traffic streams across the Champlain Bridge into the city's island core with its chic boutiques and glass-sheathed office towers, while in historic Old Montreal horse-drawn *calèches* carry tourists through narrow streets and cobblestoned squares, past the imposing Notre Dame Basilica in *Place d'Armes* and the ornate City Hall in *Place Vauquelin*. On the ninth floor of the Guy Favreau Complex, senior prosecutors in the Quebec Regional Office meet to discuss pressing prosecution issues. High on the list is the smuggling of alcohol and tobacco across the Canada - U.S. border and resulting charges under the *Excise Act* and proceeds of crime legislation. Recent police and customs investigations have focused on a sophisticated smuggling ring that is directing much of the heavy cross-border traffic in contraband. Also high on the list is a major drug trial set to commence later in the week. The accused are members of a biker gang involved in the distribution of drugs in Quebec. Media interest in the trial is intense; court security will be tight; and bilingual prosecutors will appear to ensure an equally fair trial to both English and French-speaking accused. Meanwhile, in Quebec Superior Court, a five-member prosecution team is in the fourth month of a drug and money laundering "mega trial" that is expected to go on for at least two years. There are 40 accused, 34 defence counsel and over 10 tons of documentary evidence that discloses a network of criminal activity stretching from Canada to the United States, the United Kingdom, Switzerland, Holland, Panama and Colombia.

A Day in the Life of the FPS

It is raining in the nation's capital. Counsel in the FPS/Ottawa-Hull are in the midst of a tax evasion prosecution of a public figure under the *Income Tax Act* while others are preoccupied with pending drug and related proceeds of crime prosecutions. A junior lawyer is in Remand Court for the arraignment of several accused on federal charges. In No. 1 Court, an articling student is prosecuting a man for camping on Parliament Hill in contravention of the *Public Works Nuisance Regulations*.

At Headquarters, the FPS/IAG will process requests for the arrest and extradition of fugitives wanted in a dozen countries before the day is out. They will also forward requests to Britain, France, China and the U.S. for assistance in gathering evidence for Canadian police investigations. One member of the Group is in Rome attending a Diplomatic Conference on the Creation of a Permanent International Criminal Court while another is preparing to fly to Lima, Peru with officials of the Department of Foreign Affairs and International Trade to negotiate a Mutual Legal Assistance Treaty. Down the hall, counsel in the FPS/SPPS are finalizing an arrangement to share the proceeds of crime forfeited in Canada with U.S. police agencies that provided the tip and other assistance in a major drug investigation. At the other end of the hall, staff in the ADAG's office are coordinating the agenda for the next federal/provincial/territorial heads of prosecution conference to be chaired by the ADAG, while the ADAG himself holds a teleconference with FPS Group Heads to discuss the impact of a recent court decision on federal prosecutions. Across the street in the Supreme Court of Canada, counsel from the Vancouver Regional Office is urging the Court to rule that s. 10(b) of the *Charter* does not apply to an exculpatory statement given by an accused to Canadian police officers who interviewed him in the U.S.

It already promises to be a long day for the largest prosecution group in Toronto. Specialized teams within the Group will spend the day in the office preparing wiretap applications, reviewing and approving charges under various tax statutes, and poring over data with forensic accounting experts in preparation for a complex proceeds of crime prosecution. The Revenue Canada Team has a major income tax fraud trial on its hands that is expected to last a year, while the Immigration Offence Team is prosecuting a couple for alien smuggling and related forged passport offences. In Old City Hall, where all first appearances for the City of Toronto return, prosecutors will handle as many as 30 bail hearings and preliminary inquiries, most of them drug-related, before the court adjourns for the day. Back at the office, prosecutors in the Complex Case Team are preparing for a biker trial due to start in less than three months. The 22 accused will be tried on charges of trafficking in cocaine

and marijuana as well as some 600 related firearms charges. In the Brampton sub-office, which covers the Pearson International Airport, counsel are gearing up for a drug importing trial. The accused was a passenger on a flight from Tokyo to New York that made an unscheduled stop in Toronto. He was found to be carrying heroin in his body during the stopover. He argues that, since the stopover was unscheduled, he had no intention to import the drug into Canada.

The rain in Ottawa would be welcome on the prairies. Instead, the midday sun burns down on endless acres of parched wheatfields and the Department's Regional Offices in Manitoba, Saskatchewan and Alberta. In Winnipeg, a team of lawyers is preparing to prosecute farmers under the *Canadian Wheat Board Act* for illegally exporting grain to the U.S. In Saskatoon, Crown counsel are prosecuting illegal satellite transmissions under the *Broadcasting Act*. In Edmonton, counsel are preparing income tax and GST cases for trial. Another lawyer will be in court on an application to intervene in a case between the Law Society and a provincial prosecutor who was disciplined for failing to provide timely disclosure in a murder case. Prosecutors in the Calgary sub-office are preoccupied with the trial of a cocaine smuggler caught at the airport. Customs officials found half a kilo of the drug sewn into the lining of two jackets in his luggage. The accused says he didn't know it was there.

The day is longest in the far north, at least in summer. Prosecutors in the Yellowknife Regional Office in the Northwest Territories have a raft of "routine" cases on the court docket — impaired driving, theft, assault, and "pop and chip" B&E's³⁴ under the *Criminal Code*, as well as possession and trafficking charges under the *Controlled Drugs and Substances Act*. In the Whitehorse Regional Office in the Yukon, counsel are two days into a murder trial. Counsel from both offices are out on circuit, prosecuting in remote communities across the territories. There is a vicious sexual assault case on the docket in the Baffin. It is the accused's second conviction for the same offence in the same community. Too often, offenders in the North seem locked in a cycle of crime and punishment.

The sun sinks slowly into the Pacific Ocean off Canada's scenic west coast, burnishing the snow-capped peaks of the rugged Coast Mountains that overlook Vancouver and silhouetting the graceful spans of the Lion's Gate Bridge that stretches across Burrard Inlet. A cruise ship, sleek and soft white against the crimson sky, glides under the bridge and slips into the harbor

³⁴ Minor break and enter offences are called "pop and chips" in the North.

where it berths alongside the big ocean freighters that have come from the Orient. Prosecutors in the Regional Office in Vancouver wind down after a day of trials involving drug smugglers, marijuana growers and tax evaders. Others have spent the day prosecuting or preparing to prosecute regulatory offences under a variety of federal statutes — everything from *Fisheries Act* offences³⁵ to pollution charges and boating infractions under the *Canada Shipping Act*.³⁶ One lawyer spent the day in court prosecuting a container importer for illegally importing 2,210 kg of pork legs, 1,250 kg of pork pieces, 530 kg of pigeons, 1,050 kg of chicken legs and 1,056 kg of pork sausages from the People's Republic of China (Hong Kong Special Administration District) in contravention of the *Health of Animals Act* and the *Meat Inspection Act*. Still other counsel spent the day representing the U.S. in an extradition case and applied for search warrants to gather evidence for foreign police investigations under mutual legal assistance requests. As the last prosecutor turns off the lights in Vancouver, prosecutors in the Atlantic Office are already sound asleep.

³⁵ The Vancouver Office prosecutes a large number and variety of *Fisheries Act* offences, including fishing without a licence, incidentally catching an octopus and failing to return it to the water, exceeding crab or oyster quotas, fishing for shrimp in the close time, depositing a deleterious substance into waters frequented by fish, destroying fish by means other than fishing, and causing the harmful alteration, disruption or destruction of fish habitat by unauthorized means.

³⁶ Frequently prosecuted boating offences include: speeding in a motor vessel, operating a passenger vessel without a master on board, being under sail in a harbor, operating a vessel without proper lighting, life-saving or fire-fighting equipment, and failing to carry pryrotechnic distress signals.

7. ADDRESSES

7.1 FPS Offices (Department of Justice)

HEADQUARTERS

Criminal Law Branch

Department of Justice Headquarters
2nd Floor
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Tel. (613) 957-4757
Fax (613) 954-2958

FPS/Ottawa-Hull
Department of Justice Headquarters
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ATLANTIC REGION

Atlantic Regional Office

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5251 Duke Street
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Fax (902) 426-7274

QUEBEC REGION

Quebec Regional Office

Guy Favreau Complex
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200 René-Lévesque Blvd. West
Montreal, Quebec
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Fax (514) 496-9054

ONTARIO REGION

Ontario Regional Office

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130 King Street West
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Toronto, Ontario
M5X 1K6
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Fax (416) 973-8253

Brampton Sub-office
197 County Court Blvd., Suite 100
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L6W 4P6
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Fax (905) 454-2168

Winnipeg Regional Office

Centennial House
310 Broadway Avenue, Suite 301
Winnipeg, Manitoba
R3C 0S6
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Fax (204) 984-1350

Saskatoon Regional Office

5th Floor, 101 - 22nd Street East
Saskatoon, Saskatchewan
S7K 0E1
Tel. (306) 975-4763
Fax (306) 975-5013

PRAIRIES , NORTHWEST TERRITORIES AND NUNAVUT REGION

Edmonton Regional Office

211 Bank of Montreal Bldg.
10199 – 101st Street
Edmonton, Alberta
T5J 3Y4
Tel. (403) 495-2972
Fax (403) 495-6940

Nunavut Regional Office

Building 224
Arnakudluk Building
P.O. Box 1030
Iqaluit, Nunavut
X0A 0T0
Tel. (867) 979-5324
Fax (867) 979-4889

Calgary Sub-office
Suite 510
606 – 4th Street S.W.
Calgary, Alberta
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BRITISH COLUMBIA AND YUKON REGION

Vancouver Regional Office

Robson Court
900 - 840 Howe Street
Vancouver, British Columbia
V6Z 2S9
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Fax (604) 666-1599

Northwest Territories Regional Office

Joe Tobie Building, 3rd Floor
5020 - 48th Street
P.O. Box 8
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Fax (867) 920-4022

Whitehorse Regional Office

Elijah Smith Building
200 - 300 Main Street
Whitehorse, Yukon
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Fax (403) 667-3979

Inuvik Sub-office
Inuvialuit Building
201 - 107 MacKenzie Road
P.O. Box 2840
Inuvik, Northwest Territories
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Tel. (867) 777-3075
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**The FPS is accessible
on the Internet at**

<http://canada.justice.gc.ca>

7.2 IPOC Offices

ALBERTA

IPOC Unit – RCMP
920 - 16th Avenue N.E.
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Fax (403) 230-6439

IPOC Unit – RCMP
11140 – 109th Street
Edmonton, Alberta
T5G 2T4
Tel. (403) 412-4178
Fax (403) 412-5170

BRITISH COLUMBIA

IPOC Unit – RCMP
RCMP Headquarters, “E” Division
5255 Heather Street
Vancouver, B.C.
V5Z 1K6
Tel. (604) 264-3250
Fax (604) 264-3202

MANITOBA

IPOC Unit – RCMP
1091 Portage Avenue
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Fax (204) 984-1191

NEW BRUNSWICK

IPOC Unit – RCMP
P.O. Box 3900
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NEWFOUNDLAND

IPOC Unit - RCMP
P.O. Box 9700
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Fax (613) 993-4888

IPOC Unit - RCMP
345 Harry Walker Parkway South
Newmarket, Ontario
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Fax (905) 953-7532

IPOC Unit - RCMP
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QUEBEC

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Westmount, Québec
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Tel. (514) 939-8678
Fax (514) 939-8460

IPOC Unit - RCMP
925 9th Street
Ste-Foy, Québec
G2E 5W1
Tel. (418) 648-4289
Fax (418) 648-4141

SASKATCHEWAN

IPOC Unit - RCMP
Bag Service 2500
6100 Dewdney Avenue
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