



# AUDIT OF THE PUBLIC PROSECUTION SERVICE OF CANADA DESKBOOK COMPLIANCE

Internal Audit and Evaluation Division

March 2025



Public Prosecution  
Service of Canada

Service des poursuites  
pénales du Canada

Canada 

As recommended by the Departmental Audit Committee, subject to approval by the Director of Public Prosecutions, on December 12, 2024.  
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## FINDINGS

### Background

To ensure public confidence in its administration, prosecutorial discretion must be exercised in a manner that is objective, fair, transparent, and consistent.

The Public Prosecution Service of Canada (PPSC) Deskbook (Deskbook) is a means of achieving this goal. It is a compilation of the directives and guidelines that provide instruction and guidance to federal prosecutors, whether employees of the PPSC or private-sector agents, in the exercise of their prosecutorial discretion. It is therefore essential that the Deskbook be consulted, understood, and adhered to by federal prosecutors.

Senior management requested that an audit of compliance with the Deskbook be conducted to ensure that prosecutors<sup>A</sup>, both in-house and agents, were adhering to the instruction and guidance provided within the chapters.

### Chapter 2.12 The Disclosure of Police Misconduct Information - R v McNeil

Chapter 2.12 states “Crown counsel must perform a gatekeeper role in reviewing this material and withholding or redacting information that is irrelevant or privileged. The gatekeeper function requires that the Crown conduct a “studied analysis” to determine relevance.”

We found that some files lacked documentation, such as: no information in the file concerning the McNeil status of any officer involved in this investigation; no requests to the police for this information; no copies of reports confirming McNeil status; no analysis; and no disclosure. A few files indicated that the officer was McNeil positive but did not provide any further documentation, including an assessment of the relevance to the file.

Without evidence of the disclosure or analysis on file, we cannot determine that the Crown counsel or agents performed this studied analysis. Missed disclosure of a McNeil positive officer could negatively impact the outcome of the case.

### Chapter 2.13 Allegations of Misconduct by Persons Involved in the Investigation of Charges

Prosecutors may also become aware of allegations of serious misconduct that relates to the credibility and reliability of those involved in the investigation of charges, such as those who collected evidence and those who may be called as witnesses in a prosecution. From the files reviewed, a few did not align with Deskbook requirements.

However, the Deskbook does state “This policy assists prosecutors in fulfilling their obligations by establishing a process for the documentation of serious misconduct information and the specific follow-up expected to occur” and what we found in the files was a lack of documentation.

Without documentation we cannot conclude if all required parties were notified or what actions may have been taken.

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<sup>A</sup> For this audit report, the use of the terms “prosecutors” or “Crown counsel” include both in-house Crown counsel (PPSC employees) and agents. Agents are private-sector legal agents retained to conduct prosecutions on behalf of the federal Crown.

### What we expected to find

We expected to find that prosecution files complied with the instruction and guidance provided in the PPSC Deskbook chapter reviewed.

### General Comments from the File Review

- Agree with approach undertaken.
- Docket instructions were "withdraw charges (does not meet Deskbook criteria)".
- Minimal or no documentation, in particular for a Stay of Proceedings.
- No hard copy or electronic file to review.
- Disclosure sheet received but not completed.

### Chapter 3.11 Informer Privilege

Crown counsel has a duty to protect the identity of informers. Informer privilege is a non-discretionary rule which binds the police, Crown, and members of the judiciary.

For the few files reviewed where this Chapter was applicable, documentation was lacking including the checklist from municipal police forces and a documented assessment.

Lack of documentation on the files makes it difficult to determine what steps may have been taken. However, the lack of documentation does not imply the actions taken by prosecutors are non-compliant with this Chapter, but it does make it difficult to confirm compliance.

### **Chapter 3.19 Bail Conditions to Address Opioid Overdoses<sup>B</sup>**

The Deskbook states "The number of opioid overdoses and deaths has caused a public health emergency in many jurisdictions. Crown counsel must be mindful of bail conditions that may increase the likelihood of short-term detention, thereby contributing to the risk of opioid overdoses."

We found some files did not align with the practices previously included in this Chapter, which referred to bail conditions. Many of the files made no mention of referral to drug treatment court when this may have been an option. This might result in the appearance of inconsistent practice in the treatment of "similar" offences. Again, lack of documentation makes it difficult to determine compliance overall with the expectations of this Chapter.

### Chapter 5.5 Domestic Violence

The PPSC has jurisdiction to prosecute domestic violence cases in Canada's three territories. This Chapter also indicates instances when notifications are required, either by Crown counsel or Crown Witness Coordinators. The impact of not providing these notifications is dependent on the circumstances of the case.

Almost all files were stayed; many comments from the file review indicate a lack of cooperation by the victim and/or witness.

The lack of documentation, particularly for Chief Federal Prosecutor permissions or notifications and consultations, does not imply that actions taken by the prosecutors are non-compliant with the intent of this Chapter.

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<sup>B</sup> This Chapter was repealed on June 20, 2024, shortly after the completion of the file review, and guidance is now included in Chapter 3.18.

## Conclusion

In general, the work undertaken with prosecution files aligns with the guidance provided in the PPSC Guidebook. However, the lack of documentation makes it challenging to fully assess compliance.

### Chapter 2.3 Decision to Prosecute, section 6

Where a decision is made to not institute proceedings or to discontinue an existing prosecution, Crown counsel must document the reasons for that decision to a level of detail appropriate in the circumstances.

We found that most of the applicable files did document their decision to not prosecute. However, for those missing the documented reason(s), almost half were identified as low complexity files.

We also found undocumented decisions to prosecute or not was occurring more with in-house files than with agent files reviewed.

### **File Complexity**

Previous audit work in the regional offices reviewed prosecution files to assess completeness and accuracy of iCase recorded information. File complexity, when compared with what was recorded on the hard copy file, was often found to be different. The inaccuracy of the data could impact management decision-making when used to inform decisions.

In this audit, we found many of the files did not have the file complexity noted on the hard copy file. Of those recorded, most were the same as recorded in iCase.

As the file reviewers for this audit had the experience and knowledge to assess the file complexity ratings assigned, they disagreed with some of the ratings given in iCase. More than half of those files were noted as medium complexity and almost all of them were noted as low complexity on the hard copy file.

### **Recommendation 1**

The Deputy Director of Public Prosecutions should clarify the expectations, for each Chapter, of any required documentation. Consideration could be given to adjusting the expectations based on the complexity of the file, where applicable. Oversight and accountability should be established to ensure that the requirements are being met to support an objective, fair, transparent, and consistent approach to prosecutions, with discretion given to Chief Federal Prosecutors to identify an oversight mechanism that best fits their office.

## MANAGEMENT RESPONSE AND ACTION PLAN

No.	Recommendation	Risk	Management Response and Action Plan	Office of Primary Interest	Target Date
1	<p>The Deputy Director of Public Prosecutions should clarify the expectations, for each Chapter, of any required documentation. Consideration could be given to adjusting the expectations based on the complexity of the file, where applicable. Oversight and accountability should be established to ensure that the requirements are being met to support an objective, fair, transparent, and consistent approach to prosecutions, with discretion given to Chief Federal Prosecutors to identify an oversight mechanism that best fits their office.</p>	Medium	<p>Management agrees with this recommendation.</p> <p>The Deputy Director will issue a memorandum to prosecutors, paralegals, and legal assistants to identify the expectations with respect to documenting prosecutorial decisions.</p> <p>The Executive Council will discuss information management practices and oversight mechanisms that can be implemented to meet these expectations.</p> <p>Chief Federal Prosecutors will review their region's recordkeeping practices and develop oversight mechanisms to ensure that their regions meet these expectations.</p>	HQ Counsel Group	<p>Issuance of the memo: March 31, 2025</p> <p>Full implementation: December 31, 2025</p>

# APPENDIX A – AUDIT INFORMATION

## Statement of Assurance

The audit was conducted in conformance with the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing and with the Treasury Board Policy and Directive on Internal Audit as supported by the results of the external quality assurance assessment.

## Scope

The following chapters of the PPSC Deskbook were included:

- [Chapter 2.12 The Disclosure of Police Misconduct Information - R v McNeil](#)
- [Chapter 2.13 Allegations of Misconduct by Persons Involved in the Investigation of Charges](#)
- [Chapter 3.11 Informer Privilege](#)
- [Chapter 3.14 Testimony of Police Officers and Police Civilian Agents](#)
- Chapter 3.19 Bail Conditions to Address Opioid Overdoses
- [Chapter 5.5 Domestic Violence](#)

Chapter 3.14 was not applicable to any of the files reviewed, therefore, there are no findings to report. In addition to these Chapters, we were requested to review whether decisions to prosecute or not were documented in the file, as per Chapter 2.3. However, this request was made after files from three regions (National Capital Region, Ontario, and Québec) were completed so their files were not included in this part of the audit.

## Methodology

The audit methodology included, but was not limited to:

- Data analysis related to prosecution files.
- Review and analysis of a sample of prosecution file, including both in-house and agent managed files.

Retired PPSC Crown counsel were engaged as part of this audit to perform the file review to ensure compliance with the Institute of Internal Auditor's Global Standard 3.1 Competency.

A sample of 336 prosecutions files was taken from all eleven regional offices, including both in-house and agent managed files.

<b>Alberta Regional Office</b>	<b>47</b>	<b>Ontario Regional Office</b>	<b>68</b>
Agent	21	Agent	35
In-house	26	In-house	33
<b>Atlantic Regional Office</b>	<b>15</b>	<b>Québec Regional Office</b>	<b>4</b>
Agent	9	Agent	3
In-house	6	In-house	1
<b>British Columbia Regional Office</b>	<b>36</b>	<b>Saskatchewan Regional Office</b>	<b>29</b>
Agent	21	Agent	10
In-house	15	In-house	18
<b>Manitoba Regional Office</b>	<b>23</b>	In-House/Agent	1
Agent	1	<b>Northwest Territories Regional Office</b>	<b>29</b>
In-house	22	In-house	29
<b>National Capital Regional Office</b>	<b>37</b>	<b>Nunavut Regional Office</b>	<b>37</b>
Agent	32	In-house	37
In-house	5	<b>Yukon Regional Office</b>	<b>11</b>
		In-house	11
<b>Total Files</b>			<b>336</b>

Retired PPSC Crown counsel were engaged as part of this audit to perform the file review to ensure compliance with the Institute of Internal Auditor's Global Standard 3.1 Competency.

### Audit Criteria

1. PPSC prosecution files comply with the PPSC Deskbook.

## APPENDIX B – LIST OF ACRONYMS/ABBREVIATIONS

PPSC	Public Prosecution Service of Canada
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