

Chapter 4

Section 4.02

Ministry of the Attorney General

Criminal Prosecutions

Follow-up to VFM Section 3.02, 2012 Annual Report

RECOMMENDATION STATUS OVERVIEW					
	# of Actions Recommended	Status of Actions Recommended			
		Fully Implemented	In Process of Being Implemented	Little or No Progress	Will Not Be Implemented
Recommendation 1	1		1		
Recommendation 2	1		1		
Recommendation 3	3		3		
Recommendation 4	1		1		
Recommendation 5	1		1		
Recommendation 6	1		1		
Total	8	0	8	0	0
%	100	0	100	0	0

Background

The Criminal Law Division (Division) of the Ministry of the Attorney General (Ministry) prosecutes criminal charges on behalf of the Crown before provincial courts. The Division received about 229,000 cases in 2013 and about 247,000 in 2012. Criminal cases, which often involve multiple charges, are received each year from more than 60 police forces in Ontario. A Crown attorney is to prosecute a criminal charge only if it is in the public interest to do so and there is a reasonable prospect of conviction.

The Division operates from a head office in Toronto, six regional offices and 54 Crown attorney offices across the province. The Division's operating expenses totalled \$254 million in 2013/14 fiscal year (\$256 million in the 2011/12 fiscal year), 86% (84% in 2012) of which was spent on staffing. The Division employs about 1,500 staff (1,500 in 2012), including about 950 (950 in 2012) Crown attorneys. (Crown attorneys, deputy Crown attorneys, and assistant Crown attorneys are appointed under the *Crown Attorneys Act*. We refer to all these positions collectively as Crown attorneys or prosecutors.)

In our 2012 report we noted that the number of Crown attorneys and the overall staffing costs for

the Division had more than doubled since our last audit in 1993. Yet the number of criminal charges that Crown attorneys disposed of per year had not substantially changed—572,000 in 1992, compared to 576,000 in 2011.

We noted that partly as a result of the Charter of Rights and Freedoms, many cases were more complex than they used to be, so more time was needed to prosecute them. Also, more Crown attorneys had been assigned to cases involving guns and gangs and other dangerous and high-risk offenders. However, it was difficult to gauge the actual impact of this on prosecutors' workloads because the Division made little use of data to analyze the relative workload, efficiency and effectiveness of its Crown attorneys. Instead, it relied more on informal oversight by senior staff at each of the 54 Crown attorney offices. We had reported the same issue in 1993 and we stated again in 2012 that we continued to believe the Division would benefit from having information systems to provide it with reliable data on prosecutors' workloads, the outcomes of prosecutions, the average time it takes to resolve charges, and other key performance indicators, at the level of both local offices and individual Crown attorneys. We reported that the Division could also make better use of information on court activities that is already available, until it completed the development of its own information systems.

Our other major 2012 observations included the following:

- The Division did not formally assess its prosecutorial performance. It did not gather information on how efficiently charges were screened by Crown attorneys before a case was prosecuted; how long it took Crown attorneys and staff to prepare cases; whether court diversion programs for resolving minor criminal charges were used appropriately; the number of bail release applications and their results; and the outcomes of cases. For example, the rates at which some Crown attorney offices went to trial were up to 20 times higher than the rates of other offices.

- No staffing model had been established to determine how many Crown attorneys should be at each local office, and there was no benchmark for what a reasonable workload for each Crown attorney should be. Workloads varied significantly among local offices and between regions—572 charges per Crown attorney at one office and 1,726 at another office, for example.
- Of the Division's six regions, the Toronto Region disposed of the most charges in total in fiscal 2011/12, but it did so at the highest cost per charge—\$437, compared to the average of \$268 for the other regions. The Toronto Region also disposed of an average of 40% fewer charges per Crown attorney than the average of other regions.
- A electronic case-management system, originally projected to cost \$7.9 million and be completed by March 2010, had been significantly delayed because of weak project management oversight, and the fact that insufficient resources had been dedicated to the project.

We made a number of recommendations for improvement and received commitments from the Ministry that it would take action to address our recommendations.

Status of Actions Taken on Recommendations

The Division has made some progress on all of the recommendations we made in 2012; however, the Division will not be able to further improve and demonstrate its efficiency and effectiveness until its information and case management systems are completed and fully implemented in all its Crown attorney offices across the province, scheduled for April 2016. The Ministry was developing key performance indicators specifically for the Division. The Division should also have its own annual report as of the year ending March 31, 2015, which is

planned to contain more useful information about its prosecution services.

The status on each of our recommendations is as follows.

Managing Operations

Recommendation 1

To ensure that decisions on the use of legal and support staff resources and results of prosecutions are supported by timely, relevant and accurate information, the Criminal Law Division of the Ministry of the Attorney General should identify what information is needed and develop systems as soon as possible to deliver this information to its regional and local Crown-attorney-office management. The Ministry should also use this information to hold the Division accountable for demonstrating the cost-effective use of its resources. Until such time as the Division can gather its own information on its activities, it should make better use of the available ministry information on courthouse activities to more effectively oversee operations and report on its use of resources.

Status: In the process of being implemented.

Details

The Division completed a review of existing information and data relating to prosecutions within the Ministry in order to identify gaps. It has also canvassed other jurisdictions to consider how information is managed by their prosecution services. Subsequently, the Ministry decided to cancel its ongoing Crown Management Information System (CMIS, discussed later under recommendation 5) and replace it with a new Crown management system named SCOPE (Scheduling Crown Operations Prepared Electronically). SCOPE, a system in use at one of the 54 Crown offices for a number of years, has been re-engineered for use across the entire Division. Specific business intelligence data that will be captured includes:

- number of matters that are diverted;
- number of bail release applications;
- specificity on bail release conditions;

- information on bail release violations;
- specificity on disposition types and reasons;
- reasons for stays and withdrawals of charges;
- reasons for adjournments; and
- information on guilty pleas and guilty verdicts.

SCOPE will also make a number of business processes more efficient. For example, it allows more than one person to work on a case file at a time. As well, electronic case supporting materials can now be stored as part of the case file and will not go missing as did paper files; SCOPE tools will be used at every office in the same way; and offices in other locations across Ontario will be able to view files elsewhere, eliminating the physical transfer of paper files. SCOPE will allow the Division to better support electronic Crown briefs submitted by police. At the time of our follow-up, six police forces, including Toronto, were submitting Crown briefs electronically. The Division plans to complete the rollout of SCOPE to all Crown offices across the province by April 2016. The Division was working with the Ministry's Justice Technology Services to address infrastructure issues such as bandwidth and server environments, and was assessing Crown and court locations identified as potential key roll-out sites.

To make better use of available ministry information in the meantime to more effectively oversee operations and report on its use of resources, the Division has continued participating in the Ministry's Justice on Target (JOT) strategy to make the courts more effective and efficient.

In 2012, a regional Director of Crown Operations co-chaired a JOT metrics committee that established case progression benchmarks that take case complexity into account. This included changing the measurement from the number of charges to the number of cases, which the Ministry considers a better indicator of prosecutors' work volume because the charging practices of police vary. (Other Canadian jurisdictions also capture and report data on a case basis rather than a charge basis, so the change will allow Ontario to see how it compares.) A baseline for 2011 data was then established regarding how many appearances and

the number of days it took to dispose of cases in three categories: less complex, more complex, and combined federal and provincial cases. Regional directors of Crown operations, together with criminal court leaders, established annual local goals for each site in their jurisdiction to improve performance. The first full year of reporting against targets will be for the 2013 calendar year.

Reporting on the ministry website for the JOT metrics occurred semi-annually for the preceding 12 months, with the most recent reporting period ending June 30, 2013. The results for the period showed improvement upon the 2011 benchmarks. The Ministry will be reporting once annually going forward and was to report for the 2013 calendar year at the end of September 2014.

The Ministry advised us that additional innovations in case management are taking place under the JOT strategy, as discussed below.

- A case-management forum was held in February 2014. Leading practices were shared and a commitment was made by each court location on steps needed to improve case progression. The Assistant Deputy Attorneys General of the Court Services Division and the Criminal Law Division were to support and monitor implementation of the commitments. At the time of our follow-up, the governance structure for the JOT had recently changed, and the Expert Advisory Panel had not held any further meetings in 2014. The two Assistant Deputy Attorneys General (Court Services Division and Criminal Law Division), the Associate Deputy Attorney General and the Associate Chief Justice are effectively the JOT's governance committee.
- The Crown-led initiatives pool assigns a temporary Crown office resource to assist in implementing new case management improvement initiatives developed within Crown offices. The additional staff person helps prevent negative impacts on day-to-day operations while the implementation is in process. To date, these case management

improvement initiatives have introduced efficiencies in: trial readiness and triaging of cases scheduled for trial; bail; youth cases; earlier resolution; case management; and alternative dispute resolution.

- The Bail Experts Table was formed in June 2012 and includes representatives from the Division and other stakeholders involved in the bail phase of prosecution. In October 2013, their 34 recommendations and 10 leading practices were finalized, and the Division is playing a role in their implementation. Recommendations include the establishment and regular meeting of local committees for identifying and addressing bail issues, and the development of a protocol between courts and detention centres to minimize disruption should problems arise in the transport of accused from detention centres to court.
- As of April 1, 2014, the Division instituted a new standard practice requiring Crown attorneys to report delays that have occurred in individual cases to their regional director in two instances: where a whole case is withdrawn because the Crown attorney believes a stay would be ordered due to the delay; and where defence applications have or have not been successful for withdrawal of cases based on protections offered under Section 11(b) of the Canadian Charter of Rights and Freedoms. As reducing the number of cases lost due to delay is important to the Division, delays of this sort are now reported on a quarterly basis to the Assistant Deputy Attorney General and they will be included in the Division's first annual report, scheduled to be published for the year ending March 31, 2015.

Oversight Of Prosecutors

Recommendation 2

In order for the Criminal Law Division to adequately oversee its prosecutions, monitor its costs and assess its performance, it should regularly analyze the trends,

rates and reasons for stays and withdrawals, adjournments, trial rates, bail release violations, guilty pleas and guilty verdicts, and use of diversion programs. In addition, the Division should compare its performance to other provinces and, where Ontario's overall trends differ from those of other large provinces, determine the reasons for such differences.

Status: In the process of being implemented.

Details

The Ministry's new software application, SCOPE, is being developed to allow the Division to gather its own meaningful and relevant data to enable performance assessment and analysis of trends. Over time, incremental program enhancements will increase the capabilities of the system. The system will collect data, including reasons for stays and withdrawals, adjournment data, trial rates, bail release violations, plea data and case resolution data. SCOPE will also produce case information reports and identify outcomes, trends and reasons for dispositions in criminal proceedings. In November 2013, SCOPE was implemented in Toronto offices, which handle about 30% of the criminal cases prosecuted in the province.

In addition, the Division is providing learning and skills development training to its staff to support oversight of effective and timely prosecutions. The Ministry, along with the Richard Ivey School of Business and the University of Western Ontario Business School, developed an executive leadership program focused on leading and managing change, applying evidence-based decision-making, applying process improvements, and leading and developing staff. This program was provided to almost 100 Crown attorneys.

In addition to the executive leadership program, the Division was working with the Ivey School on a leadership development program that would effectively support the ability of Crown attorneys to oversee prosecutions. The program is intended to help create a culture of communication and collaboration and promote an organization-wide perspective of a "one law firm" approach.

At the time of our follow-up, development of the program was expected to be completed by the fall of 2014, and directors, regional managers and corporate managers were to start taking the course in January 2015.

SCOPE is expected to allow trends to be examined across the Division and provide the necessary data and business intelligence information to make meaningful jurisdictional comparisons. However, these comparisons will be limited to the extent that other provinces have similar systems in place for gathering data, and have similar functionality. The Division states that five other Canadian jurisdictions have expressed an interest in SCOPE as a Crown management system for their own use.

The Division has taken additional qualitative and quantitative steps regarding oversight of its prosecution services. The Division convened a special meeting regarding case management in early 2014 with the Federal/Provincial/Territorial Heads of Prosecution Committee to compare efforts regarding resource allocation and methodology, and to seek advice regarding the path Ontario was taking to allocate resources effectively.

Managing Workloads

Recommendation 3

To ensure that Crown attorneys have the workload flexibility to devote a similar amount of time to charges of a similar nature, the Criminal Law Division should:

- *establish benchmarks for what a reasonable workload for each Crown attorney should be;*

Status: In the process of being implemented.

Details

The Division has set a goal to work toward a comparison of Crown attorney workload and workforce metrics, and has taken a number of steps to implement this recommendation.

Since our audit, the Division has reviewed its previous attempts to measure Crown attorneys' workloads in order to set benchmarks and it has also researched other jurisdictions' attempts.

Developing a tool to measure and fairly allocate cases and balance workloads is a work in progress, given the many factors that influence a Crown attorney's workload, including the seniority of Crowns in the office, the number of administrative support staff, the frequency with which cases go to trial versus being resolved beforehand, and many others. As part of the discussions regarding such a tool, it was decided to categorize case difficulty in the SCOPE software application using different levels of complexity, and then provide data on the number of cases in each category. The case rating mirrors the rating approach used by the Public Prosecution Service of Canada.

The Division has documented the factors affecting workload, many of them beyond its control. Some workload factors are easily determined, such as case volume and case complexity. Other factors, which may be particular to the local office, are not, such as the litigious nature of the local defence bar, or the responsiveness of police in investigating and providing disclosure to the Crown. Additionally, cases are dynamic and their complexity can change throughout a prosecution. For example, a witness may later recant or not testify at trial, causing the Crown to have to seek out other ways to prosecute.

The Division convened a meeting with a number of Canadian federal and provincial heads of prosecution services in March 2014 to discuss and share experiences regarding resource allocation and methodology. The Ministry told us that many jurisdictions struggled with creating a model for workload measurement and resource allocation.

- *collect and analyze information on workloads and cost variances between regions and Crown attorney offices to identify opportunities to use resources as efficiently as possible and address inconsistencies; and*

Status: In the process of being implemented.

Details

With regard to collecting and analyzing information on workloads and cost variances between regions and Crown attorney offices, the Division

has compiled baseline staffing levels and case data for all Crown offices and is introducing a number of determinants of workload for the tool. The Ministry engaged consultants in the fall of 2013 to establish workload and workforce allocation metrics, and a “proof of concept” tool was delivered in July 2014 that can apply analytics principles to workforce and workload data. Technical issues had been resolved, but subjective factors that skew data from one Crown attorney office to another were being worked through. At the time of our follow-up, the Division was evaluating the tool and considering its applicability to its SCOPE project. Any reallocation of staff that the results suggest is warranted will still have to be further evaluated and changes negotiated through the collective bargaining process.

- *ensure that management has the ability and flexibility to address temporary and permanent workload pressures by, for example, relocating prosecutors and support staff between Crown attorney offices, and using contract lawyers where and when appropriate.*

Status: In the process of being implemented.

Details

With regard to ensuring that management has the ability and flexibility to address temporary and permanent workload pressures, the Division prepared a business case in February 2014, requesting the creation of a “flex counsel pool” that would alleviate workload pressures by enabling the reallocation of resources to Crown attorney offices with the greatest need. The flex counsel pool would consist of existing, experienced Crown counsels, who would backfill for those Crown attorneys assigned to initiatives such as bail veting and early resolution of cases, and others in Crown offices who need experienced assistance. The Division received ministry approval for seven positions; however, it will also have to seek funding approval for the 2014/15 fiscal year to fill the positions. Currently, the Division continues to manage imbalances in workload caused by major criminal cases, when senior Crowns with well-developed

skills are temporarily deployed to the Crown office prosecuting a major case. The redeployment allows the regular work to carry on at the Crown office along with the major crime prosecution.

Quality Assurance

Recommendation 4

To ensure that regional and division management have adequate assurance that cases are prosecuted in a consistent, timely and effective manner that meets expected standards, the Criminal Law Division should perform a periodic, objective review of a sample of files from each Crown attorney relating to the prosecutions each one handled during the year.

Status: In the process of being implemented.

Details

Following discussions with its regional directors, the Division prepared a business case in February 2014, requesting additional staff to implement a quality assurance process through a Divisional Inspectorate Office. The Inspectorate Office's mandate would be to investigate various aspects of criminal prosecutions to determine the reasons for specific outcomes and recommend improvement where necessary. The initiative is aligned with the Ministry's strategic goal of instilling a culture of continuous evaluation and improvement, increasing public reporting of outcomes and improving evidence-based decision-making. The Ministry approved eight new positions for establishing an Inspectorate Office; however, it will also have to seek funding approval for the 2014/15 fiscal year to fill these positions.

Also, as mentioned earlier, the Division was working with the Richard Ivey School of Business at the University of Western Ontario to develop a leadership development program to support the ability of Crown attorneys to effectively oversee prosecutions. Development of the program was expected to be completed by the fall of 2014. Directors, regional managers and corporate managers were to start taking the course in January 2015.

Crown Management Information System (CMIS)

Recommendation 5

To ensure that the paper-intensive processes currently used by the Criminal Law Division are replaced with an electronic case-management system to better manage and track prosecutions and staff resources, the Ministry of the Attorney General should significantly strengthen project management to mitigate the challenges posed by its Crown Management Information System (CMIS). In addition, the Ministry should formally evaluate existing case-management systems in other jurisdictions to identify any potential for achieving savings and shortening the time to get the required system in place.

Status: In the process of being implemented.

Details

Subsequent to our audit in 2012, the Ministry recognized that technology-related change management would be better addressed as a Ministry-wide initiative (that would also include the Division) to enable it to improve its business processes and improve efficiency of its operations. In response to pressures and criticisms that had been raised, the Ministry took four steps. It undertook a Ministry-wide strategic planning exercise; implemented an Innovation Office with a mandate for change management; changed its internal governance structure for information technology projects to introduce rigour and active management and measurement of IT initiatives; and replaced its program of large-scale technology-driven initiatives such as CMIS with targeted, incremental and strategic business-focused projects. The Ministry also reported to Treasury Board/Management Board of Cabinet on discontinuing the CMIS project because of: problems with governance, controllership and project management; considerable technology investment costs; its contribution to a loss of employee productivity in the Division; the lack of case management functionality; and significant system performance issues. Under the new change-management process

of the Ministry, the Division has identified the following business-focused projects:

- electronic disclosure of the Crown brief, the report police services provide to the Crown attorney after they lay charges;
- audio and visual file disclosure;
- a defence counsel disclosure portal;
- criminal-case handling resource management and scheduling; and
- knowledge management and document management.

The new Criminal Law Division Innovation Committee chaired by the Assistant Deputy Attorney General includes members from key project stakeholders and oversees the project that has SCOPE replacing CMIS. The Committee meets weekly to manage its progress. The Division is funding the development and implementation of SCOPE internally, and has put in place a separate Financial Information Technology Governance Committee that meets monthly to review technology expenditures, validate changes, ensure accurate forecasts, and manage the total cost of ownership for maintenance and operation of existing computer systems.

To evaluate existing case-management systems in other jurisdictions, the Division canvassed prosecution services in other jurisdictions and conducted site visits. It decided to redevelop and enhance an existing software application named SCOPE that had been developed in a local Crown attorney office and used for some time as primarily a scheduling tool.

The Project Management Resource Centre of the Ministry's new Innovation Office helped the Division set up governance and project management for the SCOPE project, including a Toronto pilot project. According to the Ministry, the cost to redevelop the SCOPE application was about \$380,000, as well as \$910,000 for ministry salary costs allocated to the project. In addition, the Division spent \$400,000 to implement a system to allow the Toronto Police Service to electronically transfer Crown briefs to Crown attorneys.

As of June 1, 2014, the number of the CMIS installations at Crown offices in the province had been reduced from 10 to four. The Division plans to convert the remaining four CMIS legacy installations to SCOPE by March 31, 2015. The Division also plans to implement SCOPE in the remainder of the province within 24 months, starting with the major centres with the highest case volumes and most significant charges. At the time of our follow-up, the Division was working with the police community to determine its readiness for electronic disclosure and finalize a roll-out plan and budget for implementing SCOPE across the province.

Performance Measurement and Public Reporting

Recommendation 6

Particularly given the importance of the Criminal Law Division to the mandate of the Ministry of the Attorney General, the Ministry should develop performance indicators specifically for the Division, and should publicly report on the Division's progress toward those indicators. It should also consider liaising with other provinces' prosecution services to develop common performance measures that would allow for comparison, benchmarking and the identification of best practices.

Status: In the process of being implemented.

Details

The Division had established a steering committee to develop its first annual report for the year ending March 31, 2015. The report is expected to be made publicly available and will include a statistical review of the volume and nature of work done by the Division, as well as a description of initiatives, programs and training undertaken. The report is to be released in the spring of 2015.

The Division reported to us that it was continuing to explore quantitative and qualitative performance indicators, both within the Ministry and with other prosecution services for public reporting. The Division has canvassed other jurisdictions directly

and through the Federal/Provincial/Territorial Heads of Prosecution Committee in 2013 and 2014 regarding two possible performance indicators: tracking stays of charges under Section 11(b) of the Charter of Rights and Freedoms; and their use of direct indictments. Such stays are the withdrawal of charges based on an individual's right to be tried in a reasonable amount of time. The Division attempts to keep the number of these stays to a minimum. On the other hand, direct indictments, when approved by a court under certain circumstances, allow cases to progress more quickly to trial because they avoid preliminary inquiries. The Division advised us that they found there was no consistent approach in other jurisdictions reporting information on stays and direct indictments.

The Ministry completed its ministry-wide 2014-19 strategic plan in September 2013, which

identified its vision, mission, values and priorities, and it was developing key performance indicators to accompany the strategic plan. In the late fall of 2013, the Division announced its internal mission, vision and values statements, consistent with the Ministry strategic plan and strategies for communications, technology, learning and leadership. The Division was expected to develop measures that are aligned around the Ministry's key performance indicators.

As noted earlier, the Division continues to participate in the Justice on Target strategy and its efforts to reduce the average number of appearances and days to disposition for most cases in the system. The measures established for the Justice on Target strategy set annual targets for each courthouse to achieve. Progress on these targets has a direct impact on the efficiency of the Division's prosecution services.