

## The Attorney-General in Government

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*This article is based upon the text of an address delivered to a forum on "The Role of the Attorney-General and Minister of Justice" held 17 October 1986 at the University of New Brunswick, Fredericton. The author reviews the conflicting roles of the Attorney-General in his non-prosecutorial capacity and the Minister of Justice with emphasis on the Canadian provincial context. It outlines the balancing of interests and responsibilities of a cabinet minister bound for some purposes to doctrines of ministerial responsibility and cabinet solidarity, and for other purposes to doctrines of integrity, independence and quasi-judicial decision-making in the administration of justice. This paper may be viewed as a companion piece to the author's "Police Power and the Role of the Provincial Minister of Justice" (1979), 27 (#1) Chitty's L.J. 13. G.F.G.*

*L'article suivant est fondée sur une présentation faite à un groupe d'étude sur les fonctions: du Procureur Général et du Ministre de la Justice le 17 octobre 1986 à l'Université du Nouveau-Brunswick à Fredericton. L'auteur a discuté les possibilités de conflits fonctionnels du Procureur Général dans ses responsabilités autres que Directeur des Poursuites Publiques et comme Ministère de la Justice, en ce qui a trait aux responsabilités provinciales au Canada. Il discute du besoin d'équilibrer les fonctions et les responsabilités d'un ministre et d'un membre du conseil exécutif solidaire avec ses collègues, en matière gouvernemental et en même temps le besoin d'intégrité, d'indépendance et de qualités quasi-judiciaires du premier responsable pour l'administration de la justice dans la province. La présentation peut s'annexer à l'ouvrage déjà publiée sous le titre "Police Power and the Role of the Provincial Minister of Justice" (1979), 27 (No. 1) Chitty's L.J. 13, également écrit par M. Gregory.*

Throughout the Commonwealth the functions of Attorney-General are vested in officeholders with varying degrees of independence from the electoral process or from the cabinet. While the Office of Attorney-General in England and Wales is the original model, it is now unique among all Commonwealth coun-

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tries in that the office is held by an elected member of the government who does not hold a place in cabinet. The other extreme is found in a number of jurisdictions where the Attorney-General's prosecutorial functions are carried out by a civil servant, who may or may not be subject to direction.

While the Attorney-General's office in New Brunswick is not unique, what is unusual is the combination of such a wide range of responsibilities in the officeholder through his accompanying appointment as Minister of Justice. The *Executive Council Act* of New Brunswick provides that the Lieutenant-Governor may appoint from the members of his Council an Attorney-General who shall also be Minister of Justice.<sup>1</sup> This provision was inserted in the Act in 1979. It reversed the 1967 amendment which first introduced the title and office of Minister of Justice, making that office *ex officio* and giving primacy to the title of Attorney-General. The 1979 amendment represented a part of a process attempting to draw attention to the distinction between the two offices; other steps in that process included alterations in the structure of the department to create separate divisions for carrying out the roles of Attorney-General and Minister of Justice and the use of distinctive stationery.

Small jurisdictions such as New Brunswick, with a population of 700,000, enjoy the complete range of provincial government powers but must attempt to exercise them with a population and tax base equivalent to a city of moderate size. The result, rightly or wrongly, has been a concentration of government functions. The Attorney-General - Minister of Justice and his department in New Brunswick are vested with the responsibilities of a number of ministers and departments in larger jurisdictions. In Ontario, for example, the equivalent roles are carried out by the separate departments of the Attorney-General, Solicitor-General, Corrections, Consumer and Commercial Relations, Financial Institutions and the young offender functions of Community and Social Services. These six departments are presided over by four different ministers. So that the reader will appreciate this concentration of function in the one officeholder in New Brunswick, an organization chart has been appended to this paper which outlines the structure of the department and the division of responsibilities (Appendix A). The most relevant responsibilities of the attorney and minister have been delineated in greater detail in Appendix B; the scope of the fields of policy and administration assigned to the two offices by custom as well as by legislation or cabinet assignment have been identified. In addition, lists of the statutes that the attorney and minister are required to administer have been provided in Appendix C. To place this in context, of the 384 public statutes of the province, the Attorney-General is responsible for the content and administration of seventy-one, and the Minister of Justice is obliged to attend to seventy-five. As a result, one cabinet minister is responsible for just under forty percent of all legislation administered by government.

The imposition of such a broad range of responsibilities on the Attorney-General in this province is a relatively recent phenomenon, although he has

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<sup>1</sup> *Executive Council Act*, S.N.B. 1979, c. 19.

always had the complete field of criminal justice and civil legal matters. The abolition of county government in the late 1960s and other influences have resulted in a growth of the legal burdens such that the department's legal staff has been increased from five to about ninety, representing ten percent of the practising lawyers in this province. The Attorney-General's department employs ten percent of the regular civil service and in numbers is the third largest department of government.

It should be noted that New Brunswick is not alone in vesting many functions in the hands of the Attorney-General - Minister of Justice. On the other hand, larger jurisdictions in this country are consistently moving to an assignment of the non-Attorney-General functions to another minister and department; the federal government, Alberta, Ontario and most recently Quebec have effected such a division since the 1960s.

While disaffection with the combination in one officeholder of the roles of Attorney-General and Minister of Justice does not appear widespread in this jurisdiction, there have been suggestions that it is timely to conduct a reappraisal of the office. Accordingly, the purpose of this paper is to discuss the scope of the responsibilities of these two offices in those fields not encompassed by his duties of criminal prosecutions and his relationship to the judiciary. While the emphasis is upon these offices in the context of the Province of New Brunswick, many aspects will be relevant to other Canadian jurisdictions that have combined a wide range of responsibilities. The essence of this exercise is not a mere identification of responsibilities, but an appreciation of the consequences upon our perception of the Office of Attorney-General that flow from the combination of responsibilities in one officeholder. Some of the results of combining many responsibilities are undoubtedly positive; some are not. It is surely a matter of individual judgment to assess the relative importance of these positive and negative results. We should assess whether this consolidation of functions justifies our expectations, or our fears, and the extent to which they have been realized in tangible benefits or real challenges to credibility and public confidence.

### **Distinctions Between the Offices**

At the outset two basic propositions can be identified. First, the Office of Attorney-General is the more permanent role embodying customary legal responsibilities as the state's prosecutor and the state's lawyer. It is an office with more than two hundred years of history, one of the original offices of the colony and province. The duties of the Minister of Justice, on the other hand, while equally important in such fields as ensuring effective policing, are assigned by statute or executive act and most are of relatively recent origin. As such, the Minister of Justice could readily be divested of some or all of these responsibilities by reassignment to other members of the cabinet, or to a new portfolio — a Home Secretary as in England, or a Solicitor-General as at the federal level in Canada. Centuries of custom do not permit us, as a practical matter, to contemplate a similar reassignment of portions of the legal role of the Attorney-General. Hence, the scope of the Attorney-General's role is largely unalterable. This, however, is not to suggest that the role could not be

assigned to an individual who is not a member of cabinet, or even a non-elected official. Secondly, public confidence in the integrity of the Attorney-General and his decisions is a fundamental necessity; a higher standard must be met than is demanded of the Minister of Justice. The aspect of the Attorney-General's role that is most sensitive is undoubtedly found in the prosecutions field, but his role as legal advisor and counsel to government in non-criminal and legislative matters can also affect public confidence if not properly discharged. This role is all the more sensitive, in part because his powers and discretions are considerable but also because he alone is responsible to carry them out. The exercise of the Attorney-General's discretionary powers cannot be directed by government colleagues; he is not subject to majority cabinet rule or cabinet solidarity. Sole authority, therefore, in the exercise of his discretionary powers engenders a requirement of public confidence in the propriety of those decisions.

If public confidence can be shaken by prosecutorial decisions of doubtful motivation, can we reasonably expect the public to be indifferent to the manner in which the Attorney-General discharges his other legal obligations? Similarly, can he expect to maintain public confidence if, wearing his other hat as Minister of Justice, legitimate questions of propriety arise as to the manner in which he has carried out those functions, particularly, but not exclusively, in the administration of the coroner system, sheriffs, policing or corrections? Integrity and the appearance of integrity is required of all government functions and all members of cabinet. The Minister of Justice is a cabinet member like all others, save the Attorney-General. His decisions are expected to take into account their political results. In this context, the word "political" may refer to public interest or, within reason, to party political considerations. Checks and balances are present: the judiciary may review the results of his administration; the police have a public role in carrying out their investigative functions and he has no authority, legislated or otherwise, to intervene in their investigations; his decisions must have the support of the rest of the government and may be reversed without that support. This is in sharp contrast with the Attorney-General whose decisions in that office are historically not reviewable or reversible by the judiciary, the police or cabinet. Hence, my second proposition that it is essential that the Attorney-General enjoy public confidence in the manner in which he wields absolute authority within the bounds of his legal duties as well as his prosecutorial responsibilities.

There are certain standards of conduct that I believe must be present if that essential public confidence in the Attorney-General is to be achieved. These standards include the following:

- The Attorney-General must constantly realize that we depend upon the integrity of the individual who holds the Office of Attorney-General.
- The Attorney-General must be responsible and accountable for the exercise of his powers, whether carried out personally or by agents (prosecutors and solicitors) in his name. Furthermore, that obligation of accountability, if not owed to the executive branch

of government or to the judiciary must be owed to the legislature or parliament.

- The Attorney-General should refrain from excessive partisan political activity or speech.
- The Attorney-General must provide sufficient information to the public and to the legislature or his opposite number in opposition so that confidence will be maintained in his motives and his actions.
- The Attorney-General must conduct his personal affairs and his other duties as Minister of Justice in such a manner that his integrity in fulfilling the Attorney-General function will not be suspect.

An examination of the last of these standards — that is, the nature of the non-prosecution duties of the Attorney-General and the duties of the Minister of Justice — may aid in addressing current questions. Should the Attorney-General be an elected member of a political party? Should the Attorney-General be a member of the government and of cabinet? Should the individual occupying the Office of Attorney-General also be vested with the duties imposed on the office of Minister of Justice? These are the considerations to which I now turn.

### **Attorney-General as Legal Advisor to Government**

The Attorney-General's role as legal advisor to government is assigned by custom and by executive direction. He acts as the government's lawyer. This role includes rendering advice, and making representations before courts and tribunals for departments of government and related agencies, such as school boards. In this regard there exists a solicitor-client relationship and the Attorney-General's role is to provide non-binding advice; he takes instructions on his clients' cases as would any lawyer.

On occasion the Attorney-General will encounter a situation in which he, in good conscience, cannot participate as counsel to a government department or agency. This is not a common situation but it does arise from time to time. Engaging private counsel on behalf of the client department is a possible solution. On other occasions, he may simply refuse to act. In a recent example of this, the Attorney-General consistently provided counsel in licensing proceedings before a board established pursuant to provincial legislation. However, when the board acquired enforcement staff the Attorney-General advised that, in his opinion, standards of natural justice were being violated and he would not participate in any further proceedings. This difficulty was eventually overcome by an amendment to the board's legislation removing the basis for an objection on grounds of natural justice.

It is not difficult to find an example of one of many inherent conflicts that must be resolved in carrying out the role of legal advisor. The Attorney-General will provide advice and assistance, through one of his solicitors, to a minister of another department. The Attorney-General will then be obliged to

advise the entire cabinet through the Clerk of the Executive Council, and quite independently, by *another* of his solicitors, on exactly the same subject matter. Not infrequently the legal advice is contradictory because the clients' interests are different. One client is an individual minister and department; the other client is the government as a whole. Such conflicts are usually resolved without great difficulty when the Attorney-General provides his personal opinion to cabinet on the proper course for the government as a whole.

A related duty requires the Attorney-General to prepare all draft legislation and regulations. Once again this is in the nature of legal advice and assistance to client ministers and departments. His opinion on the constitutional validity of the legislative proposals is given and usually accepted, although this is not always the case. The client department and minister may elect to reject his advice and proceed with legislation despite the Attorney-General's view of constitutional invalidity. This is so whether the constitutional issue is one of federal-provincial division of powers, or a potential violation of the new standards of the *Canadian Charter of Rights and Freedoms*.<sup>2</sup> Since the implementation of the *Charter* for example, a legislative proposal was characterized by the Attorney-General as offensive to the right of freedom of association in section 2. The government received the advice, processed the bill anyway, and it was subsequently enacted by the Legislature. In another example, regulations which probably offend the language provisions of the *Charter* have been approved by cabinet. Here the Attorney-General pointed out the constitutional problem but acknowledged that no other practical course existed due to the volume of translation required.

The Attorney-General also has a role in civil issues before the courts, in which he acts not as counsel to government but fulfills his own independent role as what is sometimes referred to as "guardian of the public interest". In that capacity he may apply, and is ordinarily extended the right, to intervene *ex officio* in private litigation where a public interest issue is apparent. This would normally be expected to arise where the interests of the public or the government are unlikely to be adequately argued before the court because of the limited interests of the private litigants. A more limited appearance by the Attorney-General in private litigation is found in his application to make representations to the court as *amicus curiae* or "friend of the court". Here his appearance is not as a party to the litigation, as is the case in an intervention, but solely to present argument or to raise points of law in an effort to ensure that the court has received a more complete argument on a particular issue. It is conceivable, although perhaps highly unlikely, that such an intervention or appearance as *amicus curiae* could arise in a case in which the government or one of its agencies is one of the parties, and further that his intervention would be adverse. Participation in litigation independent of government also occurs when the Attorney-General agrees to lend his name in an *ex relator* action taken by a private litigant who advances a case to restrain a general or public wrong. The same objective could be accomplished by an application by the Attorney-General *ex officio* to obtain an injunction restraining a continued violation of the law. Both procedures are based on his obligation to enforce

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<sup>2</sup>Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982 (U.K.)*, 1982, c. 11.

the law and represent an alternative to a prosecution.

I will conclude this brief description of the Attorney-General's non-prosecutorial legal role with reference to three further instances of the exercise of discretion independent of the government. The first arises in the legislated requirement that the Attorney-General's fiat be obtained prior to a private litigant advancing an application for an injunction to abate a nuisance emanating from an industrial activity. In one case the fiat was refused in spite of obvious air pollution from an industrial plant, due to the Attorney-General's judgment of the extent of the economic consequences if the injunction was obtained. Prior to reaching that conclusion, the Attorney-General sought the views of the Minister of Economic Growth who emphasised the adverse economic consequences of such an injunction. In another case, noxious fumes from farming operations have twice resulted in granting the fiat in the last two years in spite of the objections of the minister and department of another branch of government. In all such cases the Attorney-General consults within the government, but reaches his own conclusion on the proper course. Finally, the Attorney-General provides a form of public interest representation in hearings before the appropriate tribunal determining utility rates. The representations, by counsel retained by the Attorney-General as "the public intervenor", are independent of any provincial government interest of instruction and are based solely on an assessment of the public interest.

### **Responsibilities of the Minister of Justice**

The duties imposed on the Minister of Justice may be conveniently divided into two categories. Significant duties relate to the field of criminal justice. The other wide area consists of a mixture of legislated assignments primarily falling under the heads of consumer affairs and corporate administration, including financial institutions.

The involvement of the Minister of Justice in criminal justice spans the operation of a highway traffic police force (New Brunswick Highway Patrol), contractual relations with the provincial police force (Royal Canadian Mounted Police) (whose services are purchased from the government of Canada), liaison with the provincial police commission, support and policy direction to police agencies and all other aspects of the government's responsibility to ensure that citizens in all parts of the province enjoy a reasonable standard of police protection and service. Specifically, the minister is concerned with: ineffective police agencies, police misconduct, financial support for more advanced police techniques and activities, the development of regional police agencies, the promotion of good relations and cooperative enforcement efforts among police agencies, determining the appropriate responsibility in terms of subject matter and geography for a number of police agencies created by the federal, provincial and municipal governments.

Most of the activity of the Minister of Justice and his department in the policing field is intended to fulfill a provincial government's constitutionally assigned responsibility to police its territory. This is done largely by advice,

funding, moral suasion and other techniques common when several institutions share a portion of the burden of such subject matter. Legislated assignment of the minister's role in the police field or the imposition of standards was totally absent until ten years ago. The *Police Act* of 1977 attempts to fill this void and distributes duties to municipal government and to the Minister of Justice, and assigns a portion of his former role to the provincial police commission.<sup>3</sup>

The mode of operation regarding specific police investigations or prosecutions is to draw a line at that point where the Attorney-General's role should legitimately commence. Consequently, the Minister of Justice and that branch of his department working with the police community refrain from any involvement in particular cases. Their activity is confined to providing support and advice for the police agency as an institution and not with assistance or direction in individual investigations. The only exception would be the response to a request for assistance in manpower or expertise initiated by the police department attempting to cope with a case. The Attorney-General and his prosecutors conduct all relations with the police when specific cases are underway, both before and after the laying of a charge.

The distinction between a particular investigation and policy direction to police agencies is just one example of the sensitivity that must be employed by the individual who occupies the two cabinet roles and the officers in the Office of the Attorney-General and in the Department of Justice. When dealing with potential charges the role of Minister of Justice with respect to policing considerations, always gives way to that of the Attorney-General. In practical terms, the Director of Policing Services must be instructed and must understand that he is not to enter upon the exercise of functions of the Director of Public Prosecutions. The assistance and advice of the former to police agencies is general and may be applicable to a category of investigations; for example, clarifying the territorial limits of a municipal police officer's authority. But where that same question arises in an investigation, after the police officer has taken action, the assessment of its legality and the effect upon a prosecution become the business of the prosecutor.

It seems a natural consequence of the combination of roles in one cabinet minister that his views and expressions of policy will carry great weight with the police community — the more so if, as is often the case, individual heads of police agencies and police officers fail to fully appreciate the distinction in roles and which ministerial office they are encountering from time to time. Thus the view of the Attorney-General on whether a charge should be laid or not appears to the investigating police officer to emanate from the same minister who influences support services or funding to police agencies, i.e. the Minister of Justice. As a result, the Attorney-General's view on whether a charge should be laid probably becomes more influential. For example, the Attorney-General has issued a policy regarding drinking and driving offences that the case should not go forward until the police department furnishes a transcript of the offender's driving record, so as to detect previous offences and give the necessary notice that a higher penalty will be sought. This policy,

<sup>3</sup>S.N.B. 1977, c. P-92.



which has no force of law, is probably given greater weight because the Attorney-General's function is combined with that of Minister of Justice, and the latter can provide considerable benefits to the police department.

The combination of roles also permits the opportunity for mounting an effective and broad effort to combat a particular category of offence. The drinking and driving example is apt. Not only will the police community be more responsive to increased emphasis on this type of offence, but also fewer bureaucratic impediments will arise if the policy can be implemented by one minister responsible for policing, prosecutions, courts and corrections. Whether this facility in attacking a problem such as drinking and driving justifies the concentration of power and responsibility in the hands of one minister is a point worth discussing. We should not underestimate the effectiveness of concentrating such responsibility, or of the obstructive effect of dividing it in an overlapping fashion among two or more departments.

To illustrate the tangle of relationships that arise from the combination of roles inherent in the two offices we could examine a coroner's inquest into a highway accident resulting in death. The accident will be investigated by the New Brunswick Highway Patrol, a province-wide police agency which is the responsibility of the Minister of Justice. If that investigation results in the police conclusion that a charge of criminal negligence should be preferred, the potential charge will not ordinarily go forward if the Crown prosecutor, the agent of the Attorney-General, determines that there is insufficient admissible evidence. Due to the fact that a fatality has occurred, that matter is also within a coroner's purview and the latter will receive the information and advice of the police and the prosecutor in determining whether or not a public inquest should be held. Here the prosecutor's role changes to the extent that he becomes an advisor to the coroner. The prosecutor has no determinative role and assists in presenting the circumstances to the coroner and jury in accordance with the wishes and instructions of the coroner. The potential for a confusion of roles is increased due to the fact that the operation of the coroner system is the responsibility of the Minister of Justice, and that the coroner is also a sheriff, and as such a full-time employee of the Justice Department. This example of a highway fatality could raise even more apprehensions if we add the further circumstance that a primary cause of the fatal accident was the failure of adequate highway maintenance by another department of the same government, and that the minister of that department may be embarrassed if the coroner's inquest proceeds. It is also conceivable that suspicions will arise in the minds of family members interested in a prosecution or, failing that, in a coroner's inquest if their objectives are frustrated. This is especially the case when they are not exposed to all of the information and considerations found in the files of the various official participants. This information is rarely made public in any meaningful way. As such it is hardly necessary to state that great care must be taken by all participants to ensure that their decisions are properly motivated and will bear scrutiny; that is, decisions must be taken with a proper appreciation of the role in which the individuals are acting.

The duties of the Minister of Justice which lie outside the criminal justice field would seem to cause no inherent conflict in responsibilities, either with

the policing, court, or corrections duties of that minister, or with the duties of the Attorney-General. The administration of legislation relating to the land registry system, consumer protection, the insurance industry or the cooperative and credit union movement are quite detached. Nevertheless, we can await with some trepidation a situation of maladministration in one of these areas, particularly failed attempts to ensure the financial stability of insurance and trust companies or credit unions. Significant public losses frequently give rise to demands for retribution through prosecutions, and the Attorney-General's refusal to prosecute could be interpreted as a reluctance to take steps which would disclose shortcomings in carrying out his supervision of these companies as Minister of Justice.

### Conclusion

It is clear that there are problems inherent in combining the roles of the two ministers. The major problem lies in our perception of the Attorney-General and our confidence that his quasi-judicial decisions related to the criminal court process are accompanied by the proper degree of objectivity and integrity. But we should also be concerned with perceptions of his civil law roles requiring an equal degree of independence. It is unlikely that the Attorney-General's role as "guardian of the public interest" will flourish or continue to be accepted by the judiciary if there is no consensus that he can and does carry out his duties without regard for effect on party political interests, on the interests of his cabinet colleagues, and also the effect on his other responsibilities as Minister of Justice.

We should also be aware of the possibilities that officeholders or employees, such as prosecutors, acting in the name of the Attorney-General may receive inadequate instruction on their obligations or fail to appreciate fully the nature of their role as agents of the Attorney-General. This is an important consideration since sheer volume dictates that on many occasions these powers are not carried out by the Attorney-General personally, yet he remains responsible and accountable for them. Similar considerations apply to employees of the Minister of Justice. Another danger in the same vein can be found in the extension of a misplaced compassion by the civil or criminal legal staff for other bureaucrats in the government, especially those functioning in the Minister of Justice's fields of responsibility. Advice that is motivated in any degree by a desire to refrain from revealing the defaults of other bureaucrats or by an accommodation of the political or policy objectives of other ministries will impair our confidence in the exercise of the Attorney-General's role if that advice is supposed to be based on the merits of the situation in the assessment of the Attorney-General alone.

In addition we cannot discount the prevailing attitude of the media and of large segments of the community in suspecting the exercise of power by those in government. Again, in my view, these suspicions are frequently contributed to by a lack of information. Those on the inside of the wall that surrounds the Attorney-General may be comfortable in the correctness of their actions, but those on the outside who lack information and participation are seldom so comfortable. The public is forced, reluctantly, to rely upon integrity with little

information by which to assess its presence or absence. The climate of scepticism concerning the capacity of a mere mortal who occupies the office of Attorney-General is healthy in moderate degree, but destructive when carried to excess. Mistrust of authority and of those institutions vested with the power to make decisions is a significant factor in assessing the proper route to take on the questions addressed herein.

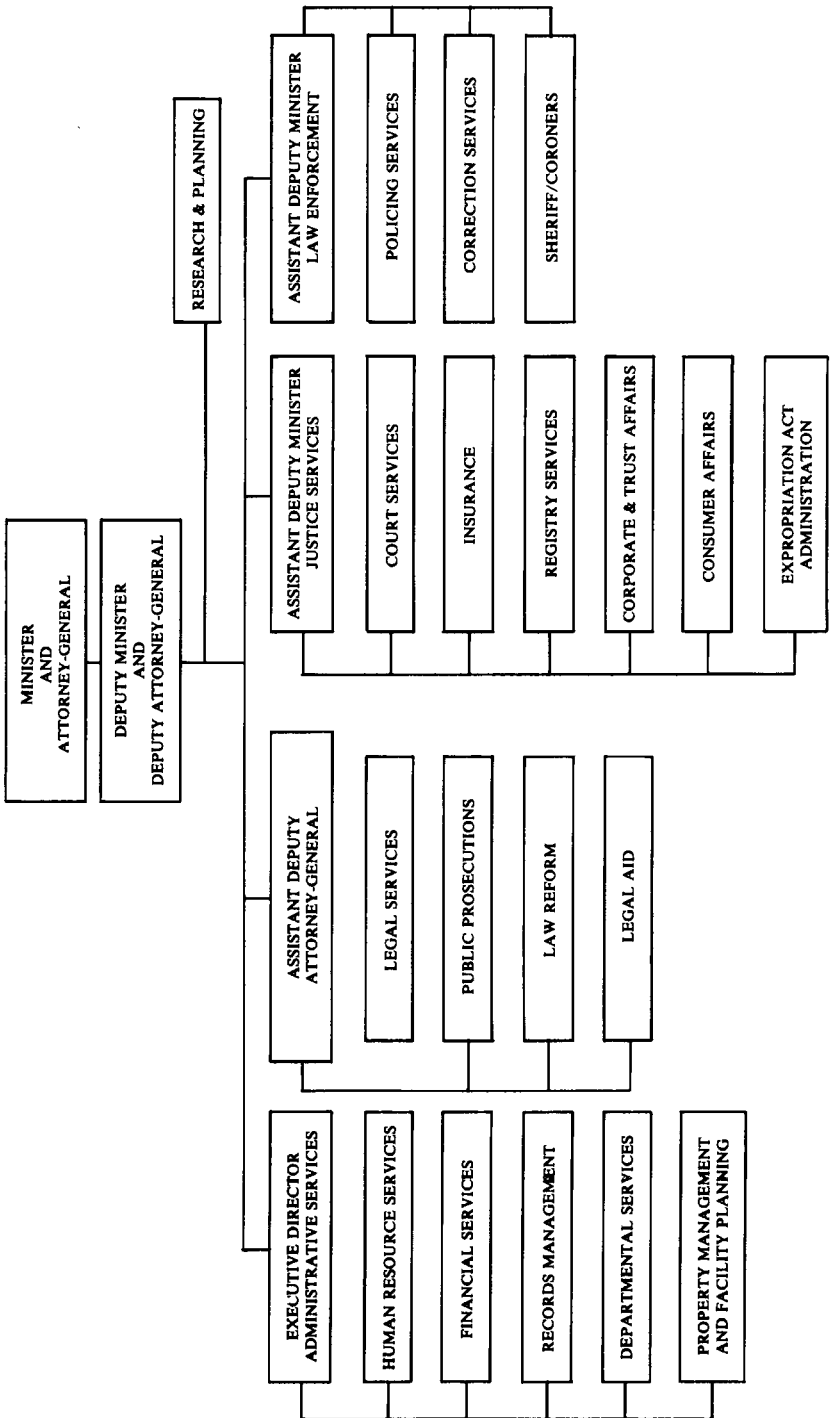
Change in the role or character of the offices of Attorney-General and Minister of Justice merely for the sake of change is not useful. An office that has evolved and exercised a concept of independence of action over centuries should not be altered lightly unless we are satisfied that change will represent an improvement. I would allude to alterations in the prosecutorial relationship of the Attorney-General and the police in England and Wales as an example. In that jurisdiction the police have traditionally controlled the decision to prosecute in the vast majority of cases, even to the extent of engaging and instructing the lawyer who will prosecute. This system has been the subject of repeated study in the last few decades, and repeated urging that apprehensions of police abuses should be corrected by a country-wide prosecutions system representing the Attorney-General and enjoying greater control over the decision to initiate charges. Such a change and shift in power is now being implemented. This example is raised merely to make the point that one may conclude that it is inevitable that the repository of the power will be the object of mistrust. That mistrust will not abate by reassigning power; we may succeed only in reassigning the focus of that mistrust.

What of the advantages of the status quo? I have alluded briefly to some, but the list must include a concern, in a small jurisdiction, for the size of government and the cost of divesting the Attorney-General and his department of the functions of the Minister of Justice. Nevertheless, I would assign relatively minor importance to such considerations. Maintenance of the status quo also preserves an assignment of responsibility for the complete range of legal requirements of government, and the criminal justice system, in one minister; this is traditional in this jurisdiction, and, until recently, common in Canada. I have already alluded to the move by large jurisdictions in this country to a separation of responsibilities. Further, the most positive result of a concentration of responsibilities is found in the efficiency and effectiveness that can be achieved in developing programs and policies to confront important social and law enforcement problems. Government efforts to deal with drinking and driving, police effectiveness in illicit drug trafficking, family violence and similar social problems, are greatly enhanced by a unification of the government's response in the hands of one minister and department. Those responses become more decisive and are free of the customary difficulties of ministerial and departmental contests over role.

On the other side of the scales is the fundamental necessity of maintaining public confidence in the objectivity of the Attorney-General's actions. Can such a concentration of responsibilities, the frequent involvement in contentious issues and the prevailing climate of scepticism of the exercise of governmental authority subsist with public confidence in the Attorney-General? Can we reasonably expect an acceptance of the apolitical motivation of the

Attorney-General when we require that the same person exercise political judgment and be subject to cabinet solidarity in his other functions as Minister of Justice? Is the problem one of structure, or of current attitudes toward power? Would we improve the situation by a freer flow of information, by greater candour in explaining the reasons behind the decisions? My own view, and probably that of most employees of the Department of Justice, is to favour any step that would reduce suspicion. The opinions of bureaucrats, of course, do not prevail. In some instances those views are self-serving, to the extent that each seeks to carry out his own particular function unencumbered by the problems accompanying the other branches of the department.

APPENDIX A  
DEPARTMENT OF JUSTICE



**APPENDIX B**  
**RESPONSIBILITIES OF THE ATTORNEY-GENERAL — MINISTER OF JUSTICE**

**DIVISION/  
 Branches**  
**ATTORNEY-GENERAL**

**MANDATE**

To provide legal services to all government departments and agencies, and to represent the Crown in matters of civil and constitutional litigation

To prosecute all offences under the Criminal Code of Canada and the Statutes of New Brunswick, and to administer criminal justice in the province

To provide advice to government departments and agencies on proposed legislation, to provide legislative drafting, and to carry out law reform studies in selected areas

To provide a legal aid program for New Brunswick residents in accordance with financial eligibility criteria. The program is administered by the Law Society of New Brunswick

**SERVICES/PROGRAMS**

- Civil legal services
- Legal advice respecting constitutional matters and the Charter of Rights and Freedoms
- Civil and constitutional litigation
- Administration of criminal justice
- Prosecution of all offences
- Family Court matters
- Preparation of legislation and regulations in both official languages
- Legal research and reform
- Data bases for provincial statutes and regulations
- Translation of legal documents from one official language to the other
- Legal advice to the Executive Council
- Information about legal rights and obligations, and legal representation
- Duty counsel

— Legal Services

— Public Prosecutions

— Law Reform

— Legal Aid

## RESPONSIBILITIES OF THE ATTORNEY-GENERAL — MINISTER OF JUSTICE (continued)

DIVISION/  
Branches

## LAW ENFORCEMENT

## — Policing Services

## MANDATE

To provide law enforcement services throughout the province for the maintenance of public order

## SERVICES/PROGRAMS

- Liaison between RCMP and municipal and provincial police forces
- Operation of a specialized police force (New Brunswick Highway Patrol) for traffic law enforcement
- Financial assistance to municipal police forces
- Negotiations for federal-provincial, federal-municipal and provincial-municipal policing agreements
- Gun control
- Regulation of security agencies industry and salvage dealers
- Crime prevention
- Liaison with provincial police commission
- Policing policy and legislation
- Drinking-driving countermeasures
- Training programs for NBHP and municipal police forces
- Programs, services, correctional institutions and facilities for adult and young offenders
- Community-based programs such as community services, restitution and fine option programs
- Alternatives to formal court proceedings — alternative measures program (young persons) and diversion (adults)
- Supervision of offenders on probation and temporary absence
- Preparation of pre-sentence/disposition reports
- Victim-witness program
- Special services for victims of family violence
- Programs for offenders to learn responsible behavior, such as drinking-driving programs
- Sheriff — Service of court documents
  - Execution of court orders
  - Transportation of prisoners and mental patients
  - Court functions (jury lists; security of Court)
  - Investigations of reported deaths
  - Inquests where necessary
- Coroner

## — Correctional Services

To protect society from individuals who present a danger to persons or property

## — Sheriff/Coroner

To enable the justice system to operate in an orderly manner/to investigate all reported deaths in the province

## RESPONSIBILITIES OF THE ATTORNEY-GENERAL — MINISTER OF JUSTICE (continued)

DIVISION/ Branches	MANDATE	SERVICES/PROGRAMS
JUSTICE SERVICES		
— Consumer Affairs	To administer consumer services and programs	<ul style="list-style-type: none"> <li>• Investigation of consumer complaints</li> <li>• Advice to consumers of their rights and responsibilities</li> <li>• Assistance to landlords and tenants through administration of the Rentalsman system</li> <li>• Incorporation, regulation, audit and inspection of Credit Unions, Caisses-Populaires and Co-operatives</li> <li>• Administration of consumer-oriented legislation, e.g., Direct Sellers Act, Cost of Credit Disclosure Act, Real Estate Act, etc.</li> </ul>
— Corporate & Trust Affairs	To administer corporate and trust law, with a view to ensuring that companies demonstrate competence and responsibility	<ul style="list-style-type: none"> <li>• Corporate, partnership and sole proprietorship registration and information to the public</li> </ul>
— Registry	To provide and administer a system of registration for real and personal property	<ul style="list-style-type: none"> <li>• Provision of Land Titles System (Moncton)</li> <li>• Registration information for real and personal property</li> </ul>
— Insurance	To supervise and regulate the business of insurance within New Brunswick	<ul style="list-style-type: none"> <li>• Regulation of insurers, agents, brokers, adjusters and appraisers</li> </ul>
— Expropriation Act Administration	To resolve objections to proposed expropriations	<ul style="list-style-type: none"> <li>• Administration of the Act and provision of Expropriation Hearings Officers</li> </ul>
— Courts and Services	To administer the four Courts in New Brunswick	<ul style="list-style-type: none"> <li>• Constitution, maintenance and administration of The Court of Appeal of New Brunswick, the Court of Queen's Bench (Trial and Family Divisions), the Provincial Court and the Probate Court</li> </ul>



## RESPONSIBILITIES OF THE ATTORNEY-GENERAL — MINISTER OF JUSTICE (continued)

DIVISION/ Branches	ADMINISTRATION	MANDATE	SERVICES/PROGRAMS
— Human Resource Services	To provide a comprehensive range of services in the field of human resource administration as well as the development and implementation of a comprehensive human resource management plan designed to promote the optimum utilization of the department's human resources		<ul style="list-style-type: none"> <li>• Job related recruitment and selection</li> <li>• Payroll preparation</li> <li>• Training</li> <li>• Personnel policy development and labour relations</li> <li>• Job classification and reclassification</li> <li>• E. E. O. — Affirmative Action</li> <li>• Language Training</li> <li>• Program development</li> </ul>
— Financial Services	To provide accounting, budgeting, monitoring financial and administrative support for the various departmental programs		<ul style="list-style-type: none"> <li>• Accounting services</li> <li>• Development and implementation of monthly management reports</li> <li>• Development of financial policy and procedures</li> <li>• Providing financial planning expertise in budget preparation, special projects, fee changes, etc.</li> <li>• Participation in negotiations of new or renewed cost-shared agreements</li> <li>• Preparing claims under cost-shared agreements</li> <li>• Providing financial forecasting</li> </ul>
— Research and Planning	To address the need for evaluation of departmental programs and policies		<ul style="list-style-type: none"> <li>• Design of departmental policies and programs to improve the administration of justice</li> <li>• Program evaluations</li> <li>• Co-ordination of automated information systems and office automation</li> </ul>
— Departmental Services	To provide departmental support services and advice in support of program managers		<ul style="list-style-type: none"> <li>• Design and implementation of departmental Official Languages Program</li> <li>• Telephone services and other communication services</li> <li>• Vehicle management</li> <li>• Forms</li> <li>• Signage</li> <li>• Inventory system and control</li> <li>• Parking</li> <li>• Building security</li> <li>• Purchasing services re furniture and equipment</li> <li>• Policy &amp; procedures</li> </ul>
— Records Management Services	To provide services and advice to program managers in the area of records management		<ul style="list-style-type: none"> <li>• Maintain centralized records system</li> <li>• Establish retention schedules for all program services</li> <li>• Mail services</li> </ul>
— Capital Projects and Maintenance Services	To plan, implement and control the various capital construction and renovation projects carried out in the department		<ul style="list-style-type: none"> <li>• Planning capital program (including budgets)</li> <li>• Budgeting control</li> <li>• Programming capital projects</li> <li>• Inspection and evaluation of existing facilities</li> <li>• Coordination of capital projects</li> </ul>

## APPENDIX C

STATUTES OF NEW BRUNSWICK UNDER THE ADMINISTRATION OF  
THE MINISTER OF JUSTICE AND ATTORNEY-GENERAL

## ATTORNEY-GENERAL DIVISION

Age of Majority	Legal Aid
Arbitration	Limitation of Actions
Attorney-General	Marital Property
Charter Compliance Acts	Married Woman's Property
Contributory Negligence	Notaries Public
Criminal Prosecution Expenses	Nova Scotia Grants
Crown Debts	Proceedings Against the Crown
Crown Prosecutors	Property
Defamation	Protection of Persons Acting Under Statute
Demise of the Crown	Public Records
Devolution of Estates	Queen's Counsel and Precedence
Easements	Reciprocal Enforcement of Maintenance Orders 1985
Entry Warrants	Regulations:
Escheats and Forfeitures	Respecting Compliance of the Laws of the
Evidence	Province with the Canadian Charter
Executors and Trustees	of Rights and Freedoms, 1986
Fatal Accidents	Respecting the Removal of Archaic Terminology
Fines and Forfeitures	from the Acts of New Brunswick
Frustrated Contracts	Statute of Frauds
Garnishee	Statute Law Amendments
Great Seal	Summary Convictions
Guardianship of Children	Survival of Actions
Habeas Corpus	Survivorship
Infirm Persons	Testators Family Maintenance
Inquiries	Tortfeasors
International Child Abduction	Trespass
International Commercial Arbitration	Wills
Interpretation	

## LAW ENFORCEMENT DIVISION

Compensation for Victims of Crime
Coroners
Corrections
Custody and Detention of Young Persons
Intoxicated Persons Detention
Liens on Goods and Chattels
Memorials and Executions
Parole
Police (Parts I, II and III)
Private Investigators and Security Services
Sale of Lands Publication
Salvage Dealers Licensing
Sheriffs
Training School
Wage-Earners Protection (Sheriff's Office)
Woodsmen's Lien

**STATUTES OF NEW BRUNSWICK UNDER THE ADMINISTRATION OF  
THE MINISTER OF JUSTICE AND ATTORNEY-GENERAL (continued)**

**JUSTICE SERVICES DIVISION**

Absconding Debtors	Landlord and Tenant
Air Space	Land Titles
Arrest and Examinations	Limited Partnership
Assignment of Book Debts	Marine Insurance
Assignment and Preferences	Mechanics' Lien
Auctioneers Licence	Merger of Supreme and County Courts of New Brunswick
Bills of Sale	Partnership
Bulk Sales	Partnerships and Business Names Registration
Business Corporations	Pension Fund Societies
Collection Agencies	Postal Services Interruption
Commissioners for Taking Affidavits	Pre-arranged Funeral Services
Companies	Premium Tax (Supt. of Insurance)
Conditional Sales	Presumption of Death
Condominium Property	Probate Court
Consumer Bureau	Provincial Court
Consumer Product Warranty and Liability	Quieting of Titles
Controverted Elections (Registrar of Court)	Real Estate Agents
Co-operative Associations	Real Property Transfer Tax
Corporations	Reciprocal Enforcement of Judgments
Corrupt Practices Inquiries	Reciprocal Recognition and Enforcement of Judgements in Civil and Common Matters...An Act Respecting the Convention Between Canada and the United Kingdom of Great Britain and Northern Ireland and Providing for the...
Cost of Credit Disclosure	Recording of Evidence by Sound Recording Machine
Court Reporters	Regional Savings and Loan Societies
Creditors Relief	Regional Savings and Loan Societies Federation
Credit Unions	Registry
Credit Union Federations	Residential Tenancies
Deposit Insurance	Sale of Goods
Direct Sellers	Security Frauds Prevention (upon proclamation of amendments)
Divorce Court	Standard Forms of Conveyances
Expropriation	Surety Bonds
Factors and Agents	Trust, Building and Loan Companies Licensing
Federal Courts Jurisdiction	Trust Companies
Fishermen's Union	Trustees
Foreign Judgements	Unconscionable Transactions Relief
Foreign Resident Corporations	Warehouseman's Lien
Innkeepers	Warehouse Receipts
Insurance	Winding-up
Interprovincial Subpoena	
Judges Disqualification Removal	
Judicature	
Jury	
Juvenile Courts	