

Director of Public Prosecutions Act

2006, c. 9, s. 121

D-2.5

[Assented to December 12th, 2006]

An Act respecting the office of the Director of Public Prosecutions

NOTE

[Enacted by section 121 of chapter 9 of the Statutes of Canada, 2006, in force on assent December 12, 2006.]

SHORT TITLE

Short title

1. This Act may be cited as the *Director of Public Prosecutions Act*.

INTERPRETATION

Definitions

2. The following definitions apply in this Act.

"Attorney General"
«*procureur général*»

"Attorney General" means the Attorney General of Canada.

"prosecution"
«*poursuite*»

"prosecution", except in relation to matters referred to in subsection 3(8), means a prosecution under the jurisdiction of the Attorney General, a proceeding respecting any offence, the prosecution — or prospective prosecution — of which is under the jurisdiction of the Attorney General, and any appeal related to such a prosecution or proceeding.

DIRECTOR OF PUBLIC PROSECUTIONS

Appointment

3. (1) The Governor in Council shall, on the recommendation of the Attorney General, appoint a Director of Public Prosecutions (in this Act referred to as the "Director") in accordance with section 4.

Rank and status

- (2) The Director has the rank and status of a deputy head of a department.

Duties and functions

(3) The Director, under and on behalf of the Attorney General,

(a) initiates and conducts prosecutions on behalf of the Crown, except where the Attorney General has assumed conduct of a prosecution under section 15;

(b) intervenes in any matter that raises a question of public interest that may affect the conduct of prosecutions or related investigations, except in proceedings in which the Attorney General has decided to intervene under section 14;

(c) issues guidelines to persons acting as federal prosecutors respecting the conduct of prosecutions generally;

(d) advises law enforcement agencies or investigative bodies in respect of prosecutions generally or in respect of a particular investigation that may lead to a prosecution;

(e) communicates with the media and the public on all matters respecting the initiation and conduct of prosecutions;

(f) exercises the authority of the Attorney General respecting private prosecutions, including to intervene and assume the conduct of — or direct the stay of — such prosecutions; and

(g) exercises any other power or carries out any other duty or function assigned to the Director by the Attorney General that is compatible with the office of Director.

Deputy Attorney General

(4) For the purpose of exercising the powers and performing the duties and functions referred to in subsection (3), the Director is the Deputy Attorney General of Canada.

Guidelines not statutory instruments

(5) For greater certainty, guidelines referred to in paragraph (3)(c) are not statutory instruments within the meaning of the *Statutory Instruments Act*.

Publication

(6) Any assignment under paragraph (3)(g) must be in writing and be published by the Attorney General in the *Canada Gazette*.

Agreements and arrangements

(7) The Director may, for the purposes of exercising the powers and performing the duties and functions referred to in subsection (3), enter into an agreement or arrangement on behalf of the Attorney General with the government of a province.

Duties — election-related matters

(8) The Director initiates and conducts prosecutions on behalf of the Crown with respect to any offences under the *Canada Elections Act*, as well as any appeal or other proceeding related to such a prosecution.

Other powers, duties and functions

(9) The Director may, under and on behalf of the Attorney General, exercise any powers or perform any duties or functions of the Attorney General under the *Extradition Act* or the *Mutual Legal Assistance in Criminal Matters Act*.

Selection committee

4. (1) The Attorney General shall establish a selection committee consisting of the following members:

- (a) a person named by the Federation of Law Societies of Canada;
- (b) a person named by each recognized political party in the House of Commons;
- (c) the Deputy Minister of Justice;
- (d) the Deputy Minister of the Department of Public Safety and Emergency Preparedness; and
- (e) a person selected by the Attorney General.

List of candidates

(2) The Attorney General shall submit to the selection committee a list of not more than 10 candidates whom he or she considers suitable to be appointed as Director, each of whom must be a member of at least 10 years standing at the bar of any province. The committee shall assess the candidates and recommend three of them to the Attorney General.

Selection

(3) The Attorney General shall, from among those three candidates, select the one whom he or she considers most suitable for the office of Director.

Referral to committee

(4) The question of the appointment of the selected candidate shall be referred for approval to a committee designated or established by Parliament for that purpose.

Recommendation to Governor in Council

(5) The Attorney General shall, if the parliamentary committee gives its approval, recommend to the Governor in Council that the selected candidate be appointed as Director or, if the parliamentary committee does not give its approval, refer to the committee the appointment of another candidate recommended under subsection (2).

Tenure and term

5. (1) The Director holds office, during good behaviour, for a term of seven years, but may be removed by the Governor in Council at any time for cause with the support of a resolution of the House of Commons to that effect. The Director is not eligible to be reappointed for a further term of office.

End of term

(2) At the end of the Director's term, the Director shall continue in office until his or her successor is appointed.

Full-time

(3) The Director shall engage exclusively in the duties and functions of his or her office under this Act or any other Act of Parliament and shall not hold any other office or engage in any other employment for reward.

Incapacity or vacancy

(4) In the event of the incapacity of the Director or a vacancy in that office, the Governor in Council may authorize a Deputy Director of Public Prosecutions to act as Director, but no person may act as Director for a period exceeding 12 months without the approval of the Governor in Council.

Remuneration and expenses

(5) The Director shall be paid the remuneration and expenses that are fixed by the Governor in Council. Once fixed, the remuneration may not be reduced.

DEPUTY DIRECTORS, PROSECUTORS AND OTHER STAFF

Deputy Director

6. (1) The Governor in Council shall, on the recommendation of the Attorney General, appoint one or more members of at least 10 years' standing at the bar of any province to be Deputy Directors of Public Prosecutions.

Selection committee

(2) The Attorney General may only make the recommendation after consultation with a selection committee consisting of the Director, a person representing the Federation of Law Societies of Canada and the Deputy Minister of Justice.

Powers, duties and functions — lawful deputy

(3) Under the supervision of the Director, a Deputy Director may exercise any of the powers and perform any of the duties or functions referred to in subsection 3(3) and, for that purpose, is a lawful deputy of the Attorney General.

Other powers, duties and functions

(4) Under the supervision of the Director, a Deputy Director may also act for or on behalf of the Director in the exercise of any of the other powers or the performance of any of the other duties or functions that the Director is authorized to exercise or perform under this or any other Act of Parliament.

Employed federal prosecutors

7. (1) The federal prosecutors that are necessary to enable the Director to perform any of the duties or functions of his or her office shall be appointed in accordance with the *Public Service Employment Act*.

Non-employed federal prosecutors

(2) The Director may also for that purpose retain, on behalf of Her Majesty, the services of barristers and, in the Province of Quebec, advocates to act as federal prosecutors and, with the approval of the Treasury Board, may fix and pay their fees, expenses and other remuneration.

Qualification

(3) A person appointed under subsection (1) or whose services are retained under subsection (2) must be a member of the bar of a province.

Other staff

8. (1) Any other officers and employees that are necessary to enable the Director to perform any of the duties and functions of his or her office shall be appointed in accordance with the *Public Service Employment Act*.

Technical assistance

(2) The Director may engage the services of persons having technical or specialized knowledge of any matter relating to the Director's work to advise and assist the Director in performing any of the duties and functions of his or her office and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of those persons.

DELEGATION

Delegation

9. (1) The Director may, subject to any restrictions or limitations that the Director specifies, authorize a federal prosecutor, a person acting as a federal prosecutor under subsection 7(2) or any person referred to in subsection 8(1) to act for or on behalf of the Director in the exercise of any of the powers or the performance of any of the duties or functions that the Director is authorized to exercise or perform under this or any other Act of Parliament, except the power to delegate under this subsection.

Agency

(2) Every person who is authorized under subsection (1) acts as an agent of the Director and is not required to prove such authorization.

Designation

(3) The Director, a Deputy Director and any person referred to in subsection 7(3) may be designated as an agent of the Minister of Public Safety and Emergency Preparedness under section 185 of the *Criminal Code*.

DIRECTIVES

Directive from Attorney General — specific prosecution

10. (1) Any directive that the Attorney General issues to the Director with respect to the initiation or conduct of any specific prosecution must be in writing and be published in the *Canada Gazette*.

Directive — generally applicable

(2) The Attorney General may, after consulting the Director, issue directives respecting the initiation or conduct of prosecutions generally. Any such directives must be in writing and be published in the *Canada Gazette*.

Delay in publication — directive

11. (1) The Attorney General or the Director may, if he or she considers it to be in the interests of the administration of justice, direct that the publication in the *Canada Gazette* of a directive referred to in subsection 10(1) be delayed.

Limit on delay

(2) The publication of a directive may not be delayed beyond the completion of the prosecution or any related prosecution.

Directives not statutory instruments

12. For greater certainty, directives issued under section 10 are not statutory instruments within the meaning of the *Statutory Instruments Act*.

ISSUES OF GENERAL OR PUBLIC INTEREST

Duty to inform

13. The Director must inform the Attorney General in a timely manner of any prosecution, or intervention that the Director intends to make, that raises important questions of general interest.

Intervention

14. When, in the opinion of the Attorney General, proceedings raise questions of public interest, the Attorney General may, after notifying the Director, intervene in first instance or on appeal.

ASSUMING CONDUCT OF PROSECUTION

Taking conduct of prosecution

15. (1) The Attorney General may only assume conduct of a prosecution after first consulting the Director. The Attorney General must then give to the Director a notice of intent to assume conduct of the prosecution and publish it in the *Canada Gazette* without delay.

Transfer of file

(2) The Director is required to turn the prosecution file over to the Attorney General and to provide any information that the Attorney General requires within the time specified.

Delay in publication

(3) However, publication may be delayed if the Attorney General or the Director considers it to be in the interests of the administration of justice.

ANNUAL REPORT

Annual report

16. (1) The Director shall, not later than June 30 of each year, report to the Attorney General in respect of the activities of the office of the Director — except in relation to matters referred to in subsection 3(8) — in the immediately preceding fiscal year.

Tabling in Parliament

(2) The Attorney General shall cause a copy of the Director's report to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after he or she receives the report.

RELATED PROVISIONS

-- 2006, c. 9, s. 122:

Definition of "other Act"

122. In sections 123 to 127 of this Act, "other Act" means the *Director of Public Prosecutions Act*, as enacted by section 121 of this Act.

-- 2006, c. 9, s. 123:

Acting Director

123. (1) The person who holds the position of Assistant Deputy Attorney General (Criminal Law) in the Department of Justice immediately before the day on which this section comes into force is authorized to act as the Director of Public Prosecutions under the other Act until the appointment of the Director of Public Prosecutions under subsection 3(1) of the other Act.

Acting Deputy Director

(2) That person may authorize two members of at least 10 years' standing at the bar of any province to act as Deputy Directors of Public Prosecutions under the other Act until the appointment of a Deputy Director of Public Prosecutions under subsection 6(1) of the other Act.

Incapacity or death

(3) In the event of the incapacity or death of the person authorized to act as the Director of Public Prosecutions under subsection (1), the Attorney General of Canada shall designate one of the persons authorized to act as Deputy Director of Public Prosecutions under subsection (2) to act as Director of Public Prosecutions in the interim.

-- 2006, c. 9, s. 124:

Transfer of employees

124. (1) The coming into force of the other Act shall not be construed as affecting the status of an employee who occupied, immediately before the day on which the other Act comes into force, a position in the Department of Justice in the administrative unit known as the Federal Prosecution Service, except that the employee from that day occupies that position in the Office of the Director of Public Prosecutions.

Transfer of other staff

(2) The Governor in Council may, by order made on the recommendation of the Treasury Board, if the Governor in Council is of the opinion that an employee or class of employees in the Department of Justice is carrying out powers, duties or functions that are in whole or in part in support of or related to the powers, duties and functions of employees referred to in subsection (1) and that it is in the best interests of the core public administration to do so, declare that the employee or class of employees shall, on the day on which the order comes into force, occupy their positions in the Office of the Director of Public Prosecutions.

Definition of "employee"

(3) In this section, "employee" has the same meaning as in subsection 2(1) of the *Public Service Employment Act*.

-- 2006, c. 9, s. 125:

Non-employed federal prosecutors

125. Any barrister or, in the Province of Quebec, any advocate whose services were retained, immediately before the day on which the other Act comes into force, to act as a prosecutor for the Crown in connection with any matter is deemed, on that day, to have had his or her services retained under subsection 7(2) of the other Act to act in connection with that matter.

-- 2006, c. 9, s. 126:

Transfer of appropriations

126. Any amount that is appropriated, for the fiscal year in which the other Act comes into force, by an appropriation Act based on the Estimates for that year for defraying the charges and expenses

of the Department of Justice in relation to duties and functions carried out by the administrative unit known as the Federal Prosecution Service and that, on the day on which the other Act comes into force, is unexpended, is deemed to be an amount appropriated for defraying the charges and expenses of the Office of the Director of Public Prosecutions.

-- 2006, c. 9, s. 127:

Continuation of prosecutions

127. (1) Any prosecution to which the Attorney General of Canada is a party and that is ongoing on the day on which the other Act comes into force is continued by the Director of Public Prosecutions without further formality.

Definition of "prosecution"

(2) In subsection (1), "prosecution" has the same meaning as in section 2 of the other Act.

-- 2006, c. 9, s. 128:

Election-related prosecutions

128. Any prosecution for an offence under the *Canada Elections Act* that is pending immediately before the day on which sections 121 and 130 to 136 of this Act come into force may continue to be conducted by the Commissioner of Canada Elections, as well as any appeal or other proceeding related to such a prosecution as if those sections had not come into force.