ON 'THE ROCK' IN A HARD PLACE: ROLE OVERLOAD, ROLE CONFLICT, AND ROLE STRAIN AMONG CROWN PROSECUTORS IN A CANADIAN PROVINCE

CENTRE FOR NEWFOUNDLAND STUDIES

TOTAL OF 10 PAGES ONLY
MAY BE XEROXED

(Without Author's Permission)

MARY PATRICIA HALL

ON 'THE ROCK' IN A HARD PLACE: ROLE OVERLOAD, ROLE CONFLICT, AND ROLE STRAIN AMONG CROWN PROSECUTORS IN A CANADIAN PROVINCE

BY

Mary Patricia Hall, B.A.

A thesis submitted to the School of Graduate Studies in partial fulfilment of the requirements for the degree of Master of Arts

Department of Sociology
Memorial University of Newfoundland

October 1991

St. John's Newfoundland

National Library of Canada

Bibliothèque nationale du Canada

Acquisitions and Bibliographic Services Branch

Direction des acquisitions et des services bibliographiques

395 Wellington Street
Ottawa, Ontario
K1A 0N4

395, rue Wellington
Ottawa (Ontario)
K1A 0N4

Your file Votre référence

Our file Notre référence

The author has granted an irrevocable non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of his/her thesis by any means and in any form or format, making this thesis available to interested persons.

L'auteur a accordé une licence irrévocable et non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de sa thèse de quelque manière et sous quelque forme que ce soit pour mettre des exemplaires de cette thèse à la disposition des personnes intéressées.

The author retains ownership of the copyright in his/her thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without his/her permission.

L'auteur conserve la propriété du droit d'auteur qui protège sa thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

ISBN 0-315-82606-1

Canada

ABSTRACT

This thesis examines the occupation of Crown prosecutor in one Canadian province during a period of rapid change in both the Criminal Justice System and the society as a whole. It is an exploratory study which provides detailed, contemporary information about the experience of being a Crown attorney. The sociological concept of role is utilized as a mechanism for understanding the position of prosecutor with a particular focus on the extent and nature of experienced role overload, role conflict and role strain. Conclusions drawn from this research suggest that crown attorneys are highly strained as a result of role overload and role conflict. The levels of role overload, especially quantitative role overload, are reported to be extremely high. It is argued that such excessive degrees of overload escalate and intensify the experience of role conflict and make felt role conflict less amenable to solution. The great burden of strain under which crown attorneys work exacts costs from them as individuals and from the criminal justice system as a whole.

ACKNOWLEDGEMENTS

I would like to thank Dr. Ian M. Gomme and Dr. Lawrence F. Felt for their patience and assistance during the research for and the writing of this thesis.

Special thanks are offered to the Crown Prosecutors of Newfoundland and Labrador who gave of their very precious time to answer my many questions, and to the Department of Justice whose nod of approval made this research possible.

This thesis is dedicated to my mother and to my daughter.

TABLE OF CONTENTS

		PAGE
Abstract		(ii)
Acknowledgements		(iii)
Table of Contents		(iv)
Chapter 1	Introduction	1
Chapter 2	Review of Relevant Conceptual Literature	14
	-Status and Role	16
	-Role of a Crown Prosecutor	19
	-Role Overload, Role Conflict, and Role Ambiguity	26
	-Chapter Summary	34
Chapter 3	Methodology	37
	-Preliminary Stages	39
	-Strategies for Data Collection	40
	-Chronology of Research	42
	-Problems with Data Collection	51
	-Description of the Study Population	55
	-Chapter Summary	56
Chapter 4	Research Findings	58
	-Quantitative Role Overload	59
	-Qualitative Role Overload	71
	-Role Conflict	79
	-Inter-sender Role Conflict	79
	-Intra-sender Role Conflict	90
	-Inter-role Role Conflict	96
	-Person-role Role Conflict	99
	-Chapter Summary	105
Chapter 5	Role Strain	109
	-The Experience of Role Strain	110
	-Systemic Impacts of Role Strain	117
	-Adaptive Responses to Role Strain	127
	-Remedying the Problems	130
	-Chapter Summary	134
	-Contributions of the Thesis Research	135
Bibliography		139
Appendix		146

Chapter One
Introduction

> It really wears you down. It wears you down physically because sometimes you're on your feet, you're going the whole day. It wears you down mentally - in court all the time - you're dealing with so many people, dealing with witnesses, dealing with defense lawyers, dealing with the judge. It's exhausting, it really is.

Introduction

This thesis examines the extent and nature of role overload, role conflict, and role strain as they affect Crown prosecutors working in a government bureaucracy at a time when their roles in the administration of justice in Canadian society are undergoing rapid change.

Chapter 1 begins by highlighting the critical need for and importance of research on this particular occupational group. The utility of beginning exploratory research by invoking the career model is discussed and the emergence of role overload, conflict, and strain as major concepts through which the work world of Crown prosecutors can be better understood is described. The introductory chapter concludes by outlining the scope and objectives of the exploratory investigation out of which the thesis itself developed and by outlining the contents of remaining chapters.

The Rationale for Studying Crown Prosecutors

The scope of prosecutorial responsibilities is extremely broad and the range of the tasks that they perform is much more diverse than commonly perceived (Cox and Wade, 1989; Kratcoski and Walker, 1984; Neubauer, 1988). Their work roles

span the entire criminal justice process from investigation, arrest, and bail through trial and sentencing, to appeal. In some cases, prosecutors also figure prominently in decisions about community based sanctions including diversion, probation, and parole. Moreover, prosecutors perfc many other tasks crucial to the functioning of the criminal justice system including providing legal advice to law enforcement agencies, training police regarding law and legal process, drafting search warrants and wiretap applications, administering courts, disseminating information to the public, maintaining community relations, and managing their own offices. In addition, many prosecutors serve as Crown counsel in juvenile courts and many handle civil cases for various branches of government.

Since prosecutors are involved in every stage of the criminal justice process, they are the only system functionaries whose jurisdiction routinely causes them to interact with virtually all other actors in the system including police, defense attorneys, judges, probation workers, and parole officers as well as with accused persons, victims, and witnesses. From the time of arrest to the final disposition of a case, the way in which prosecutors choose to exercise discretion determines to a large extent which defendants are prosecuted, what type of arrangements are arrived at, what type of sanction will be applied and how severe the sentence will be (Neubauer, 1988). It is worth

noting, as well, that prosecutors also exercise a great deal of influence in law enforcement policy through choosing to strictly enforce some laws while choosing not to press for the enforcement of others.

Not only do prosecutors occupy the central role in the administration of justice but the power that they wield in the performance of their duties is enormous (Inciardi, 1987; Waldron, 1989). The prosecutor is arguably the most powerful official in the criminal court - even more powerful than the court judge for the discretionary powers of the prosecution, unlike those of the judiciary, are at present much less subject to formal review.

The formal powers of the prosecution include invoking pre-trial diversion, laying or withdrawing a criminal charge, deciding the type of charge to be laid, determining the extent of disclosure to the defense (Crown evidence, witnesses, etc.), and staying proceedings (Griffiths and Verdun Jones, 1989). In addition to these formal powers, it is the responsibility of Crown attorneys to negotiate guilty pleas (Griffiths and Verdun-Jones, 1989; Hartnagel and Wynne, 1975). Plea negotiation is perhaps the most important and by all accounts the most controversial power of the prosecution. While informal in nature, plea negotiation is exercised as a matter of routine. While judges are not legally bound by prosecutors' arrangements with respect to negotiated pleas or by their recommendations regarding bail and sentencing, Crown

attorneys' views nonetheless are routinely accorded considerable weight (Ruby, 1987).

The considerable powers of Crown attorneys are not constrained in any real sense. While prosecutors are officially accountable to the Minister of Justice who is responsible to the legislature which is in turn responsible to the populace, in reality the Minister usually 'leaves them to it' trusting them to make sound judgments in the decisions that they routinely make in the course of any given case (Griffiths and Verdun-Jones, 1989).

In Newfoundland in recent years, the Ministry of Justice has experienced problems filling vacancies in prosecutorial positions. Such difficulties affect the ability of the department to meet the needs for criminal justice across the province. Justice officials have expressed considerable interest in determining what issues are considered most pressing by the Crown prosecutors of Newfoundland and Labrador and in developing an accurate understanding of why positions remain so hard to fill.

The quality of life enjoyed by an individual prosecutor is affected by the conditions of his or her work. By most accounts, the work of the prosecuting attorney is highly stressful (Newman, 1986; Neubauer, 1988). Role conflicts suffered by prosecutors can affect the functioning of the justice system in several ways. Stress fuels burnout. The resultant high turnover rates and the inability of the

Ministry of Justice to fill vacant positions produces labour shortages. As a result, relatively inexperienced prosecutors often find themselves handling too many cases at least some of which are both very complex and precedent setting. In addition there are times when the Crown attorneys' office is compelled to use agents (private lawyers who act for the Crown on a contractual basis) when a local office simply does not have the labour power to cope with the current demands of the court. These circumstances may well decrease the efficiency and quality of justice while concomitantly increasing its cost (Grosman, 1969).

In the arena of criminal justice, prosecutors are both powerful and omnipresent. Given their centrality and their immense influence, it is perhaps surprising that the work roles of prosecutors have received relatively little attention from social scientists interested in the operation of criminal justice systems. In comparison with other less influential actors in the justice arena (police, correctional officers, etc.[1]), few investigations of the occupational roles of prosecuting attorneys have been undertaken. Occupational studies of this nature in the United States are rare, and in Canada, virtually non-existent. The most recent detailed Canadian work focusing exclusively on prosecutors dates from the late 1960's and was limited to practitioners in a single

---

[1] For example, see (Ericson and Baranak, 1982; Koenig, 1975; Menzies, 1986).

Ontario city (Grosman, 1969). There have been very few investigations of the delivery of justice services in rural areas and there have been no such studies that have focused on the work of prosecutors.

More recent investigations that have touched on the roles of Crown prosecutions in Canadian criminal justice have focused in the main upon legal issues (plea negotiation, processing of accused persons)(Ericson and Baranak, 1982; Hartnagel and Wynne, 1975) rather than upon the social organization of prosecutorial work more generally or upon the meanings which that work entails for the prosecutors themselves.

To date in Newfoundland and Labrador, there has been very little in the way of social science research directed toward understanding the administration of justice. Most attention, as with other jurisdictions, has been directed at policing.[2] Only one investigation, a time management study (Hickey, 1988) has focused upon the office of Crown prosecutor.

The existing literature on prosecutors is concerned mainly with legal issues (Eagleton, 1979; MacDonald 1979) such as charging and plea bargaining. Moreover, most of these studies have been American (Benson, Maakestad, Cullen, and Geis, 1988; Champion, 1989; Gilsinan, 1982; Neumann, 1978; Jacoby, 1979,1980; MacDonald, 1979; Wice, 1982; Winfree, Kielich, and Clark, 1982). Since the role of the prosecutor in

---

[2] See (Flynn, 1975 [unpublished M.A. thesis]; McGahan, 1984).

the U.S. differs in significant ways from the role of the prosecutor in Canada (in the U.S. they are elected, for instance), additional Canadian research is called for.

The paucity of data on prosecutors coupled with the many changes that have taken place, in recent years, in Canadian society, in Canadian criminal law, and in the Canadian constitution warrants renewed research initiatives directed toward increasing the understanding of Crown attorneys and their work in the dispensation of criminal justice. An understanding of prosecutors' responses to their work is of considerable importance given the powerful impacts that their decisions and actions exert upon the fates of accused persons, upon the efficiency of the criminal court, and upon the public image of justice.

The career model is a very useful conceptual framework frequently employed in exploratory studies of under-investigated occupational groups. It is to a discussion of this conceptual structure that we now turn.

The Career Model

Emerging from the tradition of symbolic interactionism, the career model is very useful in the beginning stages of exploratory research because of its 'umbrella-like' nature. Career is defined as the moving perspective in which people see their lives as a whole and interpret the meaning of their attributes, of their actions, and of the things that happen to them (Hughes, 1958; VanMaanen, 1977). With respect to work, a

career pattern is normally conceived of as a series of sequential stages associated with a given occupation (Stebbins 1970, 1971).

An examination of career pattern is a worthwhile strategy for an exploratory study because the career contingencies experienced by individuals in their work roles provide a great deal of insight into the structure both of the occupation and of the employing organization (Ritzer, 1986). For most people, there are significant differences between ideal career paths and those that are actually followed. The notions of 'individual objective career' and of 'subjective career' allow exploration of these differences. Individual objective career refers to the actual periods of work and transition in an individual's occupational life. Subjective career refers to people's perceptions of their work lives and career progress in relation to the perceived accepted norms of their occupation, to their own ambitions, and to the evaluations of the performances of their similarly circumstanced peers (Faulkner, 1974; VanMaanen, 1977; Ritzer, 1986).

In the modern world of work, most careers are situated within organizations. The lone professional in private practice is becoming an increasingly rare breed. Even the traditional professional groups such as lawyers now operate within the structure either of private work organizations (the law firm) or of government bureaucracies (the criminal justice system). Even for professionals, the career patterns and role

definitions associated with a job are routinely determined as much or more by organizations as by the individual professionals themselves. In these organizational settings, responsibilities include substantive tasks related to the functioning of the organization. Relationships include associations, both formal and informal, with peers, with superiors, and with subordinates. Moreover, both responsibilities and relationships may extend across organizational boundaries to include external individuals and groups (Rothman, 1987).

A number of associated concepts fall under the inclusive umbrella construct of career. Among the more important of these are 1) occupational socialization, 2) identification with the work role, 3) the social organization and meaning of work, 4) work role, overload, conflict, and strain, 5) the development of occupational identity, and 6) disengagement from the work role. Precisely because of its encompassing virtually all aspects of the work experience, data collection for this exploratory investigation was oriented by the notion of career and guided by its central sub-concepts. Valuable preliminary data were gathered 1) on how Crown prosecutors perceive and respond to the job with which they are faced, 2) on what they think of the system in which they work, and 3) on how their response to that system affects both the way they do their jobs and, as a consequence, the way in which the justice system functions in Canadian society.

Research Scope and Objectives

The research, which generated the qualitative data from which this thesis is written, comprised an exploratory case study of a professional group, Crown prosecutors, working in a bureaucratic organizational setting, during a period fraught with considerable social and legal change. Data were collected through a series of in-depth semi-structured interviews with each Crown attorney working full time with the Ministry of Justice in Newfoundland and Labrador. The qualitative data base is comprised of the verbatim transcripts generated from audio tapes of the semi-structured interviews. Interviews lasting between one and two and a half hours were conducted during the spring and fall semesters of 1990.

The initial project was designed with three central goals in mind. The first aim was to produce much needed contemporary data on prosecutors and their work in a Canadian context - the province of Newfoundland and Labrador. To this end, the principal objective of the exploration was to document the career contingencies and patterns for Crown prosecutors in Newfoundland and Labrador. In pursuit of this general aim, the investigation sought 1) to delve into the nature of the work involved in 'doing justice' across this province on a day to day basis, 2) to examine job satisfaction, professional commitment, and work identity among Crown prosecutors, 3) to investigate role overload and conflict, stress, burnout, and disengagement from the occupation while at the same time

exploring the problems posed for the administration of justice by the resultant high rate of turnover characteristic of this occupational group, and 4) to probe prosecutors' perceptions of their changing role in the justice system.

The second principal goal was to provide the groundwork for the design and instrumentation of a larger study focusing on the social organization of work in the context of Canadian criminal courts. On the basis of this exploratory investigation, preparatory data collection, and preliminary data analysis, a proposal and request for funding for future research was approved by the Social Sciences and Humanities Research Council of Canada. The final objective was to determine the feasibility of conducting research of this nature. Neither cooperation of informants and respondents nor access to information proved to represent serious obstacles.

Chapter Summary

Chapter 1 began by providing a rationale for the study of Crown prosecutors. Crown prosecutors are the key figures in the administration of justice. Their work spans the entire system on two dimensions - the tasks that they perform and the other criminal justice functionaries with whom they must interact. Crown prosecutors have considerable power, both formal and informal. Overload, conflict, stress, burnout, and turnover appear to be characteristic of this line of work. The extent to which these conditions of work have been exacerbated by recent social and legal developments and the

degree to which they affect the conduct and quality of justice in this country are extremely important questions. Research on prosecutors is scant, particularly in Canada, and is virtually non-existent in the province of Newfoundland and Labrador. Most of the research reported focuses on legal as opposed to occupational issues and, for Canada, is dated. Increases in the volume of prosecutions, changes in the nature of cases being processed, expansion of the range of prosecutorial duties, and development and implementation of new legislative initiatives provide a strong rationale for undertaking research on this pivotal justice occupation.

Chapter 1 also explains the utility of invoking the career model as a fruitful conceptual framework in exploratory research. Conceived of as a series of stages ranging from selection and recruitment on one end of the continuum to disengagement and retirement at the other, career is a construct that encompasses a broad range of processes, contingencies, and issues the exploration of which can provide insights into the organization, content, and meaning of work and into the structure of organizations as well.

As preliminary data on the careers of prosecutors were being collected and analyzed, it became increasingly evident that the impacts of problems associated with role performance, both upon prosecutors themselves and upon their 'doing justice', were central to the understanding of their work in the criminal justice system. The sociological constructs role

overload and role conflict proved to be very useful in better comprehending the dilemmas confronting prosecutors in a rapidly changing system of justice. Research has repeatedly demonstrated direct and indirect connections between role overload and conflict on one hand and various elements of role strain (job dissatisfaction, work related tension, burnout, and voluntary withdrawal) on the other (Kemery et al., 1985, 1987; Van Sell et al., 1981; Bedeian and Armenakis, 1981; Breaugh, 1980; Gupta and Beehr, 1979; Churchill, Ford and Walker, 1976).

Chapter two is comprised of a selective review of the literature on integral concepts such as work role, various types and dimensions of role overload and conflict, role ambiguity, boundary role, and role strain. Chapter three details the research methodology used in this project (access and entry strategies, the data collection process, the population studied, and the particular problems associated with this undertaking). Chapter four reports the findings that pertain to two types of overload (quantitative and qualitative) and four types of role conflict (inter-sender, intra-sender, inter-role, person role). Chapter five assesses prosecutors' experiences of role strain and their perceptions of its impacts upon the delivery of justice services. Chapter five also presents suggestions for the amelioration of Crown attorneys' feelings of strain.

Chapter Two

Review of Relevant Conceptual Literature

Introduction

This chapter presents the major sociological concepts that are utilized in this thesis to develop a better understanding of prosecutorial work on both the personal and the organizational dimensions. These core concepts have their origins in two sociological traditions. The first of these traditions is the structural approach to institutional and organizational analysis pioneered by Talcott Parsons (1951) and by Robert Merton (1967) and later adapted by sociologists interested in the area of work, occupations, and especially professions (Hall, 1975). The conceptual framework of the structuralist orientation includes social status and social role and the related concepts of role expectations, role enactments, multiple roles, sent roles, and role ambiguity. Along with role overload, role conflict, and role strain, these concepts have proved useful in improving the understanding of the connections between organizational involvement on one hand and the actions and experiences of individuals on the other.

Symbolic interactionist approaches were originally set out in the works of George Herbert Mead (1934) and Herbert Blumer (1969). The interactionist perspective emphasizes the meanings inherent in status and role for the occupants of various statuses, for the actors performing various social

roles, and for those 'others' who are engaged with them in interaction in specific contexts. According to symbolic interactionism, the meanings that are attached to status and role affect identity and self concept and, through identity and self concept, influence future action.

A fundamental link between the structuralist and interactionist approaches in the study of work, occupations, and professions is the career model outlined in Chapter 1. According to the structuralist approach, careers represent series of work statuses. Formal and informal career progressions and experiences offer important insights into the operations of work organizations. Interactionism emphasizes both the meanings attached to career stages and contingencies, and the implications of those sequences and critical events for worker identity, self concept, satisfaction, and stress on one hand and for the conduct of work on the other.

The work of Crown prosecutors incorporates a variety of roles - litigator, case preparer, pre-trial adjudicator, administrator, court liaison officer, and social counsellor. Chapter Two begins by examining each of these roles in order to provide a representation of the range of prosecutorial work. Together, these roles demonstrate the vast areas of responsibility attached to the position of public prosecutor and in so doing provide a hint of some of the problems that Crown attorneys encounter in the course of their jobs. On the latter dimension, this chapter provides a detailed discussion

of both quantitative and qualitative role overload, of four types of role conflict (inter-sender, intra-sender, inter-role, person-role), of role strain, and finally of three responses to role strain (redefinition, avoidance, selective conformity).

Status and Role

Social status is a position that people occupy whether in an informal social group or in a formal organization. One may, for example, occupy a position in a family, in a friendship network, in a voluntary organization, and in a work-place. Statuses are frequently organized hierarchically and have attached to them varying degrees of economic and social rewards. Work statuses, for example, differ from one another in terms of income, of prestige, and most importantly, of the power that is accorded to or invested in them.

Connected to the notion of status is the idea of social role. A social role can be thought of as a set of conduct rules governing the proper behaviour of people occupying different social statuses. In a very real way, the roles that people perform in the course of everyday living are not unlike the scripts followed by actors upon the stage. As scripts, social roles facilitate the orderly interaction of social actors occupying the same or different statuses because they provide social actors with knowledge of what to expect from one another in specific situations. Social roles define the rights and obligations that govern the behaviours of persons

occupying particular statuses. Roles are therefore, to a very large extent, independent of the personal characteristics of the actors performing them. Moreover, the rules of conduct that make up a social role can be both informal and formal. Playing the roles of parent or sibling is governed by rules and expectations that are almost totally informal. Many but by no means all of the roles performed in the status of lawyer are governed by expectations formally set out in legal training, in legal codes of ethics, and in procedural law.

Social roles are comprised of two fundamental parts, role expectations and role enactments. Expectations attached to particular roles are held both by the person in the role, the role incumbent, and by those who share the same social environment. Those actors who routinely interact with the focal role form a role set. Role sets, especially those in the work place, are made up of persons who occupy statuses possessing greater, equal, or lesser power and prestige than the focal status. In the context of the courts, judges usually, although not always, wield greater power and enjoy more prestige than do prosecutors. Court bailiffs and police officers, however, rank lower than Crown attorneys on both dimensions.

Attached to any given position is an array of duties and responsibilities. Prosecutors, for example, act as litigators, case preparers, pre-trial adjudicators, administrators, court liaison officers, and social counsellors. Through the

remainder of this paper each of these will be referred to as prosecutorial roles.

A status set is an attribute of the individual rather than of any particular position and is comprised of the various statuses an individual may hold concurrently. People routinely occupy a number of different statuses simultaneously. Attached to these multiple statuses are multiple roles. Typical multiple statuses and their attached roles include being a spouse, a parent, a church member, and a worker. Normally, as people occupy more than one status, these positions of necessity must be ranked in order of their importance. People must give certain statuses and roles priority over others. This role primacy is largely determined by the intersection of social structure, cultural values and norms, and particular historical developments integral to the milieux in which people live. In modern post-industrial societies, one or the other of work and family roles most often assume role primacy. Occupational roles, especially where professional work is involved, are especially important to the conferring and to the confirmation of self-image. Given the primacy of work in their lives, professionals must decide the degree of centrality to be accorded to their work over their other social roles, family roles in particular.

Occupying a particular status and performing in a particular social role, social actors expect certain things of themselves. Left entirely to their own devices, they usually

act in a manner that is congruent with their expectations. In addition to expectancies emanating from themselves, however, expectations are also sent from members of their status sets. When they transmit their expectations to the occupant of a focal status, superiors, peers, and subordinates act as 'role senders' Sociologists refer to expectations of this sort as 'sent roles'. Sent roles, the anticipations emanating from members of a role set, vary on a number of dimensions the most important of which are their strength and their specificity.

Roles of a Crown Prosecutor

The work of Crown prosecutors is multi-dimensional with each facet having attached to it certain clearly defined rights and obligations. Crown prosecutors act as litigators, case preparers, pre-trial adjudicators, administrators, court liaison officers, and social counsellors. Moreover, they perform these roles as professionals working in a highly bureaucratized environment.

1) Litigator The role of litigator is the 'public persona' of the prosecutor. It is in this prosecutorial role standing before the court and presenting the facts of the case as they are known to the Crown that Canadian Crown attorneys are most familiar to the public. Litigation is the most publicized and visible part of prosecutorial work. As litigator, the prosecutor is the 'on site director' of the events that unfold in the courtroom drama. In addition to questioning sworn witnesses on the stand, the litigator role

involves making recommendations to the judge both on bail for the accused and on sentence for the convicted. The Crown prosecutor as litigator serves, before any other consideration, as an advocate for truth and justice.

2) Case preparation If one pictures a criminal lawyer preparing for court, one imagines Perry Mason in a leisurely fashion reading the police reports, discussing the case with the accused and then sending Paul Drake out to bring in that one all-important piece of missing evidence - which, of course, he does. When thinking about a prosecutor preparing a case, one pictures Hamilton Burger or his 90's equivalent, questioning witnesses and sending one of the many police officers there to do his bidding (usually Detective Tragg) on an evidence gathering mission. Investigations are straightforward and resources are no problem. The reality of case preparation is rather different, however.

There are two principal components to the preparatory role - file review and legal research. Crown prosecutors begin their case preparation by thoroughly reviewing the file. The review process is not confined to reading the documents and sending a waiting assistant out to collect any missing pieces of information. Prosecutors are responsible for an analysis and an assessment designed to accomplish several ends. Crowns must first determine if an offense is disclosed and if identified persons are legally liable. They must determine if reported evidence is both admissible and sufficient to prove

the charge beyond reasonable doubt. They must review files to see if formal prosecution, as opposed to an alternative such as diversion or a cautionary letter, is both necessary and in the public interest. File review involves choosing the appropriate charge(s) and reviewing instructions concerning the drafting and approval of the charge in its final form. At this stage, Crowns must ensure that all necessary supporting statements, certificates and other evidentiary documents are on hand and suitable. They must ensure that compensation, victim impact statements, and other interests of the complainants are properly attended to. They must make decisions regarding positions that they will take on the interim release of an accused in custody and on the process of compelling the attendance in court of those who have not been held in jail. Prosecutors must assess the need and basis for pre-trial psychiatric assessments of accused persons and, if such evaluations are needed, make the necessary arrangements. Finally, file review involves selecting necessary witnesses, preparing subpoenas, making appropriate disclosure/discovery to defense counsel, and requesting any additional required information from an investigator or a complainant (Ross, 1989).

The prosecutor must execute these preparatory tasks in the context of applicable case law. The law is not cast in stone. It is constantly being modified or changed altogether either through court rulings or by parliamentary decree.

Prosecutors must keep abreast of recent changes and take them into account when they prepare cases for court. Adequate preparation requires sufficient time both for the careful study of appeal court rulings and for the meticulous assessment of the implications of these adjudications for future cases of a similar nature.

In recent years, the creation of new legislation as well as changes to the existing laws have further expanded the legal complexities that prosecutors must confront. New or expanding legal areas requiring special expertise include consumer and environmental protection, evidentiary rules covering both the acquisition of evidence and its presentation in court, innovative utilization of video and closed circuit television, courtroom shields for the presentation of special, highly sensitive evidence, and the rules related to new policing techniques such as DNA identification and video surveillance. Crowns must also provide support to crime victims by preparing victim impact statements and victim compensation requests and by presenting these declarations in court. Last but by no means least, and encompassing all these new complexities, is the relatively uncharted ground created by the implementation of the new Canadian constitution with its Charter of Rights and Freedoms (Mulligan, 1989).

3) Pre-trial adjudication Pre-trial adjudication involves making judgments on cases before they go to court. For example, prosecutors are responsible for determining the

nature of charges in a particular case and for deciding whether to proceed with summary or indictable proceedings where hybrid offenses are concerned. They also must recommend some form of pre-trial diversion where such action is warranted and they must make recommendations on bail if necessary.

An extremely important aspect of the role of the Crown attorney involves the pre-trial negotiation of guilty pleas. While accused persons have the right to a trial, defense lawyers routinely negotiate arrangements with prosecutors on behalf of their clients. Defendants who are new to the system and who lack legal training will more often than not, as dependents, accept their lawyer's recommendation because they genuinely believe that it is in their best interests to do so (Ericson, 1989). Accused persons who plead guilty forgo their statutory due process rights in exchange for considerations on charges or sentences.

In negotiating guilty pleas, the Crown functions in a quasi-judicial capacity. As a consequence of their enactment of this role, some observers suggest that pre-trial adjudication responsibilities are of sufficient importance that prosecutors require 'legal competence and judicial ability ... similar to that of a provincial court judge' (Mulligan, 1989).

4) Administrator Crown prosecutors also serve as court administrators. They are charged with the responsibility of

ensuring that the court makes efficient use of its time and material resources. To accomplish these aims, Crowns must prepare subpoenas so that all the required people are appropriately summoned to the right place and the right time. In court, prosecutors negotiate with various defense attorneys and with accused persons not represented by counsel in order to decide upon the sequence of cases for a particular session. It is not unheard of for defense attorneys to have two cases scheduled for the same session, particularly if the defense counsel is working for an over-extended legal aid office. Such complications may mean rescheduling a case or delaying the court while everyone waits for defense counsel to arrive. Once a case has been completed, it is the responsibility of the Crown to file any appeals that are deemed to be necessary or appropriate. This process involves completing paperwork detailing the reason for appeal and forwarding the necessary documents on to the appellate court. Prosecutors must also complete files once a verdict has been registered provided that no appeal is pending. The prosecuting attorney must write a case summary before the case can be considered closed from the point of view of the Crown attorney's office.

5) Liaison The work of a prosecutor spans the entire criminal justice system and extends beyond its boundaries. In their liaison role, Crown attorneys are the linchpins of the criminal justice network. More so than for other justice system functionaries whose responsibilities are more

circumscribed, the range of duties performed by Crowns is considerably more expansive. Prosecutors are continually called upon to interact both with all other criminal justice actors and with those who are not formal members of the system but who have been caught up in its net for a limited period of time. These 'temporaries' include victims, witnesses, and accused persons. In this sense, their work roles are more all-encompassing than those of any other actors in the system.

In their liaison role, Crowns are frequently called upon to represent the needs of their office to senior officials in the Ministry of Justice. Such representations usually involve making requests for extra funds to finance especially complex investigations or for additional support staff. Crowns must also deal with requests for information and for assistance from citizens' groups, other government departments, the press, and members of the general public.

6) Counselling Prosecutors must prepare victims and witnesses for their appearances in court. Those who must testify are summoned by a system that commands their presence but provides them with neither informational nor emotional support on their arrival at court. Requests for postponements and last minute registrations of guilty pleas are disruptive and can leave the uninitiated feeling both intimidated and abandoned. Prosecutors are now being called upon to address the needs of victims and witnesses in highly sensitive and emotionally charged areas. In this endeavour, Crowns must

minister to the privations of new 'special needs' witnesses, a category that routinely includes the victims of family or sexual violence.

The Justice Reform Commission of 1988 found that while witnesses, many of whom are also victims, are necessary for the system to function, they are often neglected by Crown attorneys. Increasingly, prosecutors are obliged to serve as counsellors and resource persons who provide critical and necessary advice, treatment, and support for those in need of such assistance. Especially difficult when resources are scarce, prosecutors find themselves charged with providing the counselling and support necessary to shepherd victims and witnesses through the ordeals of a trial experience.

Having examined the nature and diversity of the prosecutor's role set, attention is directed in the next section to the conceptual framework that orients the analysis of prosecutorial work contained in the thesis. The constructs of central interest are role overload, role conflict, and role strain.

Role Overload, Role Conflict, Role Ambiguity, and Role Strain

Roles are enacted or translated into behaviour on the basis of actors' expectations for their own behaviour and on the basis of the expectations sent to actors by members of their status sets. Where a person's role expectations are congruent with the roles being sent by each and every member of the status set, expectations and enactments are harmonious

and clear and cause the actor neither anxiety nor confusion. Actors' expectations of self and the sent roles emanating from all members of the status set are by no means always congruent, however. They often operate at cross purposes and the result is role conflict. Where roles are ambiguous because they are new, because they are unclear, or because they are in flux in the shifting contexts of social and organizational change, the potential for conflict is increased. Conflicting and uncertain expectations frequently, but not always, stir feelings of distress in actors. Feelings of stress are especially the case where conflicting sent roles emanate from one or more powerful role senders and where they lack specificity. Such feelings of upset, ill ease, and distress are defined by sociologists as role strain.

Work places and the occupants of the status sets contained within them rarely transmit sent roles that are harmonious and clear. In the majority of circumstances, superiors, peers, and subordinates possess expectations for role enactment that are fraught with ambiguity and conflict. Moreover, when the volume of such expectations is very high, actors become subject to role overload. In reality, what varies from one work-place and one occupation to the next is not the presence or absence of ambiguity, overload, and conflict. Rather, what varies is the extent to which overload, conflict, and ambiguity, singly or in concert, increase the

probabilities of strain for persons enacting the roles within their role set.

Role Overload

Role overload occurs under conditions where insufficient time exists in which to properly execute all necessary work related tasks. Overload can be of two types: quantitative and qualitative. Quantitative overload occurs when there is insufficient time to complete assigned tasks because of the sheer volume of work that must be completed within a given time. Qualitative overload, on the other hand, refers to a situation in which at least some of the number of assigned tasks are too complex to be executed properly within the time allocated. Quantitative and qualitative role overload are linked through the interplay of workers' abilities on one hand and their working conditions and material and temporal resources on the other.

In a minor adaptation of the qualitative role overload construct, Bacharach et al. (1990) characterize 'professional overload' as the professional's perception that intellectually challenging tasks can neither be properly executed nor completed because of some combination of time constraints and resource scarcity. For the most part, professional overload emerges where time limitations and resource constraints are incompatible with employer or organizational demands concerning both the volume and quality of product to be produced or service to be rendered.

Role Conflict

Role conflict develops where an individual actor must deal with the occurrence of two or more different and conflicting expectations (Katz and Kahn, 1978). Role conflict is more likely to occur in hierarchical organizations because in these environments actors are inevitably required to interact with a variety of others (and with a variety of expectations) who are located above, beside and below (Kahn et al., 1964). Katz and Kahn (1978) identify several types of role conflict - inter-sender role conflict, intra-sender role conflict, inter-role role conflict and person-role role conflict, all of which are particularly pertinent to understanding prosecutorial work.

1) Inter-sender role conflict Inter-sender role conflict occurs where one actor is confronted with conflicting expectations emanating from two or more significant others located within his/her status set. In a case involving child abuse, for example, the police press the prosecutor to pursue vigorously both a conviction and a severe sentence. The prosecutor's superiors, however, cognizant of court backlogs and uncertain of the strength of the case, strongly advocate a negotiated plea and a less severe sentence.

A special case of inter-sender role conflict involves people enacting roles that take them to the borders separating their work organization from its environment. Boundary roles are particularly common in organizations providing services to

the public (Parkington and Schneider, 1979). The enactment of boundary roles occurs at points separating occupational and organizational insiders from outsider individuals, groups, and organizations. Some of these outsiders are clients of the organization and some are merely observers and monitors.

Incumbents in boundary roles often share the outlooks of the organization's clientele and monitors as much or more so than they do the official perspective adopted by the organization and its management. Workers in boundary roles function as information funnels as they sift and re-phrase information and transmit it back and forth between administrators and managers on one hand and clients and onlookers on the other. In so doing, actors in boundary roles act both officially and unofficially as representatives of the employing organization (Miles, 1976; Aldrich & Herker, 1977).

Boundary role incumbents act both inter- and intra-organizationally in that they are expected to represent the views of management to outsiders and the views of outsiders to management. The dual and sometimes conflicting demands on these social actors in boundary positions place them in the position of experiencing potentially high levels of role conflict (Miles, 1976). As quasi-public figures, prosecutors must act as spokes-persons and representatives of the court system. In so doing, they also come in line for the critical assessments levelled by various activist and civil rights groups.

2) Intra-sender role conflict Intra-sender role conflict results from conflicting expectations emanating from one other member of the individual's status set. In such circumstances, the person in the focal status finds it difficult if not impossible to satisfy both sets of expectations. Ministry of Justice officials expect prosecutors to try complex and potentially precedent setting cases properly, to ensure that justice is done and appears to be done, and at the same time to keep case backlogs manageable by efficiently processing large numbers of offenses. Meeting one of these objectives often interfere with the accomplishment of another.

3) Inter-role role conflict At particular times in people's lives they must wear the 'different hats' associated with multiple roles. Not infrequently, occupying multiple roles breeds its own particular brand of role conflict. When individuals in the role of 'parent' experience expectations at cross purposes with the expectations inherent in the role of 'prosecutor', the person who is both parent and prosecutor must decide which of the competing sets of expectations will be met, to what degree, and in what fashion. This type of conflict can become very stressful when the parent-prosecutors are expected to meet the needs of spouses and children while at the same time attending to their professional obligations.

4) Person-role role conflict A final form of work related conflict is that which is associated with being asked to do something that violates one's own values, needs, or

aspirations. Katz and Kahn (1978) refer to this dilemma as person-role role conflict. A classic case for prosecutors might involve trying cases where they believe that the criminal law is unjust or discriminatory or where they believe that the penalties attached to convictions are too severe. Such instances often involve the so called 'morality offenses' of abortion, drugs, prostitution, gambling, and the like.

Role Ambiguity

Role ambiguity occurs when role incumbents lack sufficient information concerning what is expected of them in a particular role. Levels of ambiguity are highest for novices recently recruited to a position and for veterans during periods of transition and change. Inexperienced professionals often lack adequate information regarding the precise manner in which certain of their roles should be enacted. They may be uncertain of exactly what is expected of them. Even veteran professionals, in the face of changing occupational mandates and practices, may be uncertain of precisely how to perform their roles. Ministering to the needs of distraught victims of family violence and sexual assault, given the spate of such cases in recent years, has added a new dimension to prosecutorial work.

Role Strain

Role strain refers to the physical and psychological distress that frequently develops as a consequence of role overload and role conflict. Symptoms range from insomnia, high

blood pressure, and heart palpitations on the physical dimension to anxiety, frustration, irritability, and burnout on the mental dimension. The same conditions of overload and conflict can affect some persons more than others depending on certain variable factors including personality make up and the presence or absence of networks of social support.

When people suffer from role strain they may respond in any of several different ways. Gross, Mason and McEachern (1958) identify three fundamental responses - 1) redefinition, 2) avoidance, and 3) selective conformity. Redefinition involves attempts to negotiate a new set of expectations. This can be done by trying, among other things, to eliminate some demands, to redefine the way in which demands are met, and to make contradictory demands more congruent. Redefinition is more likely to occur in instances where the worker wields some degree of power which in turn creates latitude for negotiation.

Avoidance takes two forms - physical and psychological. Physical avoidance involves literally staying away from the source(s) of contradictory demands. Psychological avoidance comprises a mental withdrawal from the source(s) of those demands. This latter adaptation to role strain most often occurs where employers making demands on workers possess a great deal of power in relation to the worker who is relatively powerless.

The final role strain response category is selective

conformity. Workers can conform selectively in one of two ways. First, they can conform to the demands of one or a small number of individuals or groups at the expense of others. Secondly, they can partially conform to the demands emanating from surrounding individuals or groups in their work environment. Partial conformity means either 'half-doing' all the things demanded or doing something for everyone but not everything for anyone.

The three variables that influence the selection of conformity type include the power of a demander to sanction the worker, the legitimacy of the demands made, and the worker's individual orientation. Individual orientation, which influences the choices made by actors, is itself of three types - moral, expedient, and moral-expedient. The moral orientation involves giving precedence to the true legitimacy of the demands. The expedient orientation causes one to give primacy to the demander's ability to exert power over and to sanction the worker. The moral-expedient orientation balances the legitimacy of the demands with the ability of the demander to sanction.

Chapter Summary

In this chapter the concepts of status, role, role expectations and enactments, multiple roles, sent roles and role ambiguity have been discussed. The multidimensional work roles of Crown prosecutors were discussed at some length. Their roles include the public roles of litigator and court

liaison officer and the lesser known roles of case preparer, pre-trial adjudicator, administrator, and social counsellor. Knowledge of the nature of the Crown attorney's fundamental work roles is essential to an understanding of overload, conflict, and the consequent experience of strain.

Chapter Two also contained a detailed discussion of the concepts role overload and role conflict. Quantitative role overload occurs when more work is allocated than can be completed. Qualitative overload refers to a situation in which the designated tasks are sufficiently intellectually complex that workers find them difficult to complete successfully within a given time frame with the resources allocated. Professional overload is a special form of qualitative overload that represents a worker's judgement that the proper provision of professional services is impossible under existing temporal and material conditions.

Role conflict develops when an individual is faced with two or more conflicting expectations or sets of expectations. Four analytically distinct types of role conflict were identified. Inter-sender role conflict occurs when the worker is confronted with conflicting demands from two or more role senders. Individuals whose positions are situated on the boundary separating their employing organization from its milieu are subject to expectations both from inside and from outside the organization and therefore are more likely to be subject to inter-sender role conflict. Intra-sender role

conflict develops when contradictory demands emanate from the same role sender. Inter-role role conflict results when the demands of an individual's different statuses and their attached roles compete with one another. Person-role role conflict refers to a work related moral/ethical dilemma.

Role strain often results when persons are subject to role overload and role conflict. Symptoms may be exhibited which are either physical or psychological, or both. Individuals who suffer the pains of role strain may respond in several basic ways. Redefinition refers to negotiating a 'new deal' and is most likely to occur when the worker occupies a bargaining position of some strength. Avoidance can be either physical or psychological and involves withdrawing from the situation on either of those dimensions. When a worker attempts to compromise among contradictory expectations by either 'half-doing' everything or selectively choosing to complete some tasks while avoiding others, she/he is adopting the strain response of selective conformity. If he/she opts for the latter course, the decision as to which tasks to complete and which tasks to avoid can be made on the basis of morality, expediency or both.

Chapter 3,

Methodology

Introduction

The data analyzed in this thesis were generated in an exploratory case study of Crown prosecutors in Newfoundland and Labrador. The study is exploratory because there are no contemporary sociological studies of prosecutors in Canada that are written from the perspective of work and occupations. Indeed, there are very few such studies in existence anywhere.

The research began with few preconceptions. Rather, the general aim of the project was to map the terrain of central processes and key issues impacting upon prosecutors and their work. On the basis of a review of existing literature on various criminal justice and professional occupations, a flexible interview schedule was developed (see appendix). This instrument comprised a set of general questions designed to tap into processes and contingencies common to the careers of Crown attorneys and to identify issues of salience to members of this professional group. Its intent was to sharpen the focus and orient the direction of future research on what is arguably the most important and least researched occupation in the criminal justice field.

There were three fundamental specific purposes underlying the research reported upon herein. The first aim of the project was to provide data for the thesis. The second objective was to inform the design of a more detailed and

comprehensive examination of the work of prosecutors, defense lawyers, and judges in Canadian jurisdictions. In line with this second purpose, the exploratory investigation was intended to assist with the development of appropriate instrumentation and with the identification, description, and analysis of processes and issues integral to and impacting upon the work of prosecutor in a period of social and legal change. The third goal was to assess the feasibility of studying Crown prosecutors and criminal prosecutions given potential problems of access to informants pressed for time and to information sensitive by nature.

Because of the exploratory nature of the study, it is particularly important that the project's 'history' be outlined and that any substantive or technical problems encountered be noted in detail. The first section of the chapter describes the preliminary stages in the research process that centred around 'discussions' with a key informant. The next section outlines the decision making process with respect to the selection of an appropriate data collection technique. In the third part of the chapter, the chronology of the research is described in detail in an effort to illustrate both the prospects and the problems encountered in conducting the research on prosecutors and their work. Described and discussed in this segment are how access was gained, how permission was obtained, and how contacts with respondents were initiated. The chapter contains a detailed

description of the structure and settings in which interviews were conducted and includes a description of adaptations to the instrument made as the research progressed. The chapter includes a discussion of the problems encountered while collecting the data and a comment on the limitations of the principal data collection strategy. The concluding segment describes the characteristics of the study population.

Preliminary Stages

The preliminary stages of investigation involved 'testing the waters' to ascertain if such a pilot study would be possible and to determine the kinds of responses that might be elicited. In August of 1989, the researcher spoke to a prosecutor with whom she was acquainted. In the discussion, the interest in conducting research on prosecutors from the standpoint of the sociology of work and occupations was described and explained. The key informant was asked two general questions. The first concerned what was it like working as a prosecutor and the other concerned what he/she thought of the job. The informant was also asked whether or not he/she thought that his/her colleagues would agree to be interviewed and if it was conceivable that official approval would be granted for such an undertaking.

In response to these queries, he/she made several statements that were both very informative and of considerable substantive interest. Topics discussed in the ensuing conversation included the degree of autonomy in prosecutorial

work, the levels of job security, the extent of the workload, and problems associated with trying cases where either controversial or prominent people were involved. The key informant also alluded to changes in his/her work brought about by recent Supreme Court decisions (the Nelles case) and by the implementation of the new Canadian Constitution and Charter of Rights and Freedoms. Reference was also made to turnover rates among Crowns. With regard to access to informants through the Ministry of Justice, it was indicated that gaining permission would in all likelihood not represent a major problem. The informant did, however, caution that even with permission from the Ministry of Justice, there would probably be some Crowns who would decline to be interviewed.

For the purposes of the intended study, the comments of the key informant raised some interesting questions and issues concerning job content, job satisfaction, role overload, conflict, and strain, and 'retirement'. Other potentially fruitful lines of questioning presented themselves including reasons for leaving the occupation, the nature of new positions for 'retiring' Crowns, and the impacts on job satisfaction of a change in employer. Importantly, approval by the Ministry of Justice appeared promising as did the participation of at least some of the Crown attorneys.

Strategies for Data Collection

The methodological approaches potentially available to conduct a study of this kind include a survey questionnaire,

direct interviewing, and participant observation. It was decided to interview using a semi-structured interview format for several reasons. First, this study represents a preliminary investigation of Crown attorneys' work and as such is an exploratory study. Its primary purpose was to elicit information relating to a broad range of processes and issues and their impacts on the execution of prosecutorial work. To tap this diversity, it was felt that the data collection method should allow for reasonably wide variation in individual responses and should permit the incorporation of at least modest changes in direction that might be called for by respondents' answers. The semi-structured interview with open ended questions is ideal for gathering large amounts of qualitative data on varied topics. Secondly, the population is small. Consequently a response rate of one hundred percent was considered not only highly desirable but also possible. To ensure both flexibility and the largest possible response rate from a group of very busy professionals, personal contact and face to face interviews with scheduled appointments seemed the most effective strategy. A questionnaire survey was ruled out because of its inflexibility, because the population was too small to permit the meaningful use of statistics, and because the response rate might be very low indeed. Alternatively, while participant observation was considered the ideal exploratory approach in that it ensures maximum contact, maximum flexibility, and maximum depth of information,

constraints with regard to access, material resources, and time precluded this option.

Far more data were collected than are actually analyzed in this thesis. These unanalyzed data informed the development of a research initiative designed to provide a more detailed exploration. The design for such a follow up study would involve data collection through interviewing, observation, archival research, and historiography.

Over the course of the interviews particular aspects of Crown attorneys' work experience rose to the fore. Two of these emergent issues, role overload and role conflict, and their impacts, form the core constructs central to the analysis contained in this thesis.

Chronology of Research

1) Access and Permission In October of 1989, the Ministry of Justice was approached with a request for permission to interview all Crown attorneys in Newfoundland and Labrador. It was important for two reasons to secure permission and cooperation from the Justice Ministry before approaching individual Crowns. First, it was assumed that written departmental permission would be viewed by Crowns as encouragement to participate in the study. Second, because of the post-Nelles and post-Marshall climate, it seemed unlikely that Crowns would consent to be interviewed without some assurance that the research was legitimate and that the promise of confidentiality was meaningful. It was felt that

Ministry approval would provide that assurance. However, because the research involved professionals who were expected to subscribe to a professional norm of autonomy, it was important to stress that departmental permission was not to be considered a directive in any way requiring their participation. Pains were taken to assure respondents that their participation was a matter of their own consent and free choice.

An appointment was scheduled with the Director of Public Prosecutions (DPP) in his office at the Ministry of Justice, Confederation Building, for Friday, October 27, 1989, at 15:30. The request was put forth for permission to conduct exploratory research on the careers of Crown prosecutors. It was indicated that some or all of the findings would be reported in an M.A. thesis. The Director was informed that data would be collected on the educational and experiential preparation of Crown attorneys, on the reasons why individuals might choose to become Crown prosecutors, and on how the Ministry of Justice carries out recruitment and selection. In this initial meeting, other topics of interest to the research were also discussed. These topics, including sponsorship, formal and informal socialization, mobility, job content, career duration, and the destinations of those who leave the occupation early, would also be included in the research. The Director was informed data collection would, in the main, involve semi-structured interviewing and that the analysis

would invoke theoretical constructs and conceptualizations reflecting a sociology of work rather than a legalistic emphasis.

On being asked about the size of the study population, the Director reported that there are 26 Crown prosecutor positions in the province but that only 19 were filled at that time. He further indicated that the Ministry of Justice was actively seeking to fill the vacant positions and that he hoped they would be staffed by the time the interviews began. He reported that he thought that there would be no problem obtaining the necessary permission and that the Ministry of Justice would be interested in the findings. He indicated in this regard that it would be useful to know if there were some additional initiatives that could be undertaken to make the Crown attorney position more attractive thereby facilitating both the recruitment and the retention of qualified personnel.

The Director pointed out that there were a large number of lawyers in town who had formerly worked as Crowns and he asked if the present project would include interviewing any of them. He was told that this would not be the case at present but that such an undertaking was a possibility in future research. The discussion was concluded with the Director's suggestion that the request for permission be formalized in a letter conveyed to him as soon as possible (see appendix). He indicated that he would bring the request to the attention of the deputy minister in charge as soon as it was received.

The letter of request was completed (October 28) and hand delivered to the Director's office on Monday, October 30, 1989 (see appendix). The letter was written on University letterhead to assure officials in the Ministry of Justice that the request was indeed valid and that they could therefore be assured that the study would conform to the university's ethical standards for social science research.

While a significant period of delay was anticipated at this stage, none was encountered. The Ministry of Justice responded to the initial request to conduct the study with a promptness that was as totally unexpected as it was appreciated. In a letter dated 89.11.02, the Ministry of Justice granted permission for the initiation of the research under two conditions. It was stipulated first that Crown attorneys' confidentiality be maintained and second that the Ministry of Justice receive a copy of the report upon its completion. Both requirements were agreed to.

In January of 1990, the office of the Director of Public Prosecutions provided a list of the names of Crown attorneys in Newfoundland and Labrador along with their mailing addresses and telephone numbers. It is of interest to note that the Ministry of Justice had been unable, as of January 1990, to recruit any lawyers in Newfoundland and Labrador to occupy the vacancies referred to by the Director in October of 1989. The news media reported that at that time there were a total of eight positions vacant, the majority of them in

centres outside the capital city. Media reports also stated that the Ministry of Justice had begun recruiting outside of the province in its efforts to fill these vacancies.

2) Contacting Respondents In the first week of May 1990 the DPP's office was asked for an updated list of Crown prosecutors. There were some changes - two promotions, two transfers, two resignations, two Crowns hired in St. John's, a new office (with one Crown) opened in Marystown, and one Crown recruited to begin work with the St. John's office in June. Letters, again on university letterhead, were sent to all prosecutors informing them in some detail about the research and requesting their assistance and co-operation with its completion (see appendix). Potential respondents were informed that they would be contacted through their offices sometime in the subsequent ten day period.

Attempts, by telephone, to arrange appointments began on Monday May 14. One secretary in the St. John's Crown attorneys' office advised that the times one is most likely to find a prosecutor at the office are between 9 and 9:30 a.m. or between 3:30 and 5 p.m. but that, because court is so busy, even at these times there were no guarantees. The secretary was correct. Tracking down some of the prosecutors proved challenging.

3) Interviewing At the time of this study, there were twenty-two Crowns attorneys working in Newfoundland and Labrador. All eventually consented to be interviewed and all

agreed to have the interview taped for the sake of accuracy. Interviews were executed between mid May and early November of 1990 with three interviews being conducted in May, eight in July, six in August, three in September, one in October, and one in November. Fourteen of the twenty two Crowns were interviewed in their own offices. The remaining eight were interviewed as follows: two in restaurants during lunch, two in other Crown offices, two in an office at the university, one in an interview room at the provincial court, and one in the restaurant area of the St. John's Airport. Of the twenty-two, seventeen were interviewed in St. John's either because they were stationed in that city or because they agreed to be contacted while in town. The remaining five were met in their offices at Marystown, Clarenville, Gander, and Corner Brook. Of those who were interviewed in their own offices, two left the immediate desk area and sat more informally in another part of the room. The others were more formal remaining behind their desks with the interviewer sitting in front and the tape recorder placed on the desk in between.

Each interview began with a statement of the purpose of the research and with an assurance of confidentiality. Consent was obtained to tape the interview for purposes of accuracy. Each prosecutor was told that she/he could turn off the tape machine at any point or could decline to answer any question to which she/he did not wish to respond. Several agreed readily to be recorded but indicated that they would have to

be extremely careful about what they said since they could be quoted with such accuracy. Two Crowns were very reluctant to record the interview. Both did agree to be recorded after they were reassured that they could turn off the tape at any point or that they could decline to answer any question. On only one occasion did a prosecutor exercise either option. On rare occasions, a prosecutor would halt the tape in order to think about her/his response to a question before answering.

It was anticipated that with such a small population some of the information generated by the interviews might be specific enough to identify individual Crowns. In this regard, several respondents expressed doubt that a study of this nature could be done in a province of such a small size without compromising confidentiality. Crowns were reassured that every effort would be made to ensure confidentiality and they were informed that, if it was felt that information would identify a particular person, it would not be included in the report. Some respondents asked about the disposition of the tapes once the thesis was completed. They were assured the tapes would be kept secure until the report was written and that they would be erased upon its completion.

During one interview there was an observer present. The observer was a young lawyer who was then articling with the Ministry of Justice. She had expressed interest in the research and had been invited by the respondent to sit in. She

joined only in the conversation that took place after the interview was concluded.

Before and after almost all interviews, respondents spoke with me informally, sometimes at length. The subjects discussed in these conversations ranged over a variety of topics including work related issues and particular cases with which we were both familiar. Other matters of discussion included questions about the project and its progress, suggestions for readings that various respondents thought might be pertinent to the research, and a variety of non-work topics.

In addition to the semi-structured interviews, two periods of observation were conducted. One was in a provincial courtroom prior to conducting an interview and the other was a brief period in first appearance court.

It was anticipated that respondents would discuss the research among themselves. This did occur and so raised the possibility of response contamination. While deleterious impacts on the quality of data are considered minimal, the knowledge that specialist lawyers in a small professional community would inevitably discuss the research and the content of interviews contributed to the decision not to conduct pilot interviews in an attempt to refine the interview schedule. Instead, the instrument was developed from a knowledge of relevant issues as they appear in the extant literature about the work and working conditions of Crown

attorneys and from information provided by the initial 'guided' conversation with the key informant in August of 1989.

While not pre-tested, the interview schedule was adapted somewhat over the course of the interview process. The major changes involved the addition of two questions. The first item was added because the Crown attorney's office in St. John's assigned one Crown to conduct all prosecutions in Youth Court. This assignment made it necessary to ask other Crowns specifically about their experiences in Youth Court in order that confidentiality could be preserved for the Youth Court Crown and in order that the information generated from that interview could be used.

The second question was added to determine if there were gender differences in the subjective experiences of working as a Crown attorney. This issue was deliberately excluded in the initial interviews as a means of preserving anonymity for such a small population of Crowns (22 total, 6 females). Gender issues surfaced in the course of one interview, however, and thereafter the question was included. In retrospect, gender issues were still inadequately dealt with since only women were asked if gender made a difference to job experiences and prospects. The perceptions of male Crowns on this issue would have added a dimension to the data that is now missing.

At various stages in the data collection process, letters were sent to all Crowns (see appendix). In addition to those

already mentioned, a letter of thanks was sent to each Crown attorney following the completion of each interview. A letter of appreciation was mailed to several of the prosecutors who provided extra assistance. Examples of aid above and beyond the agreed upon call included the speedy granting of permission for the research to be done, the provision of approval to attend the annual meeting, the provision both of a copy of the department's own 'time study' completed in 1988 and of a copy of a similar report produced in another province. One Crown who initially refused to participate in the study was also sent a letter, extending thanks for the prompt reply and regret for the non-participation. This person later volunteered to be interviewed.

Problems with Data Collection

Data collection for this project began in May. While Crowns were for the most part very obliging in sparing some of their time to grant me an interview, some were infinitely more difficult to track down than others. Some of the more senior Crowns were especially busy and pressured by their efforts to complete major trial work. Several of these individuals proved very difficult to reach for an appointment. With persistence, however, all were eventually contacted and interviews with them were arranged.

One Crown scheduled an appointment without writing it on the office appointment calendar. The interview was subsequently missed as the Crown attorney had gone to court.

The appointment was rescheduled for the next morning. Other than this single scheduling problem, there were only brief delays at a small number of the other appointments. These minor holdups ranged to a maximum of 25 minutes and usually occurred where there were unexpected changes in the scheduling of court business. Where delays were experienced, they were inevitably due to work related circumstances beyond the control of respondents.

In one town outside St. John's, the researcher went to meet the Crown at the address provided by the Ministry of Justice. The address, however, was for the future rather than for the current location of the Crown's office. A modest amount of detective work including a delightful although brief interrogation of a local 'interior decorator' and a telephone call to the Crown's office facilitated unearthing the whereabouts of the prosecutor's existing office (behind a weight room in an old building across town from the new office).

During many of the interviews, there were several interruptions. Distractions were caused by such occurrences as telephone calls, people coming to the door, and outside noises. These did not in general destroy the tenor of the interviews though on some occasions the last minute or so of recording had to be played back after an interruption in order that both the respondent and the interviewer might be reoriented to the task at hand. On some occasions Crowns asked

not to be interrupted except in an extreme emergency. On only one such occasion did such a crisis materialize. Some Crowns were alone in their offices without a vacation replacement for their secretaries and as a consequence had themselves to answer all incoming telephone calls.

Interviews were recorded with a new tape recorder. For the first interview, the voice activation system (VAS), a mechanism designed to ensure that all conversation is recorded without wasting tape, was turned on. Because the VAS required a decibel level higher than that emitted in much ordinary conversation, gaps occurred in the recording of the first interview. The missing bits were filled in as completely as possible from memory. Background noise coupled with the failure to use an external microphone made several of the tapes extremely difficult to transcribe.

The interviews were semi-structured. While for the most part the same questions were asked of all respondents, the degree of emphasis placed on one item over another varied according to the answers given by the respondent. Moreover, when unexpected turns in responses occurred, they were pursued. Consequently, there was a considerable degree of flexibility in the precise direction of the line of questioning according to the 'focal priorities' and 'critical concerns' that varied from one prosecutor to another. Nonetheless, as the findings chapter demonstrates, there were

many areas in which respondents' answers reflected considerable consensus.

An inescapable limitation of the interview approach is its necessary reliance upon what people report about their attitudes, perceptions, and behaviours. What people recount about events, their own actions and reactions, and the actions and reactions of others inevitably fuse recollection and reconstruction with reality. Interview techniques, especially the more standardized approaches, with the limited contact with respondents which they necessarily occasion, produce more superficial assessments of the contexts of process, action, and meaning than do field research methods like participant observation.

While the semi-structured interview technique produces less valid data on social phenomena than does a strategy involving prolonged periods of direct observation, it does have several distinct strengths. First, the flexibility of questioning ensures validity in that various aspects of responses can be probed and pursued independently of the set script that characterizes standardized interviews and questionnaire surveys. Verification of information is facilitated both by flexible extended questioning and probing and by using items in such a way as to 'test reality' from one respondent to another. Semi-structured interviewing allows researchers, at least in part, to bridge the gap between merely 'knowing about' a set of phenomena from a distance and

intimately 'knowing' a set of phenomena in the way they are experienced by those who live them. Second, detailed data can be collected in a reasonably short period of time. Third, this strategy produces high response rates among respondents. Fourth, interviewing in person increases the possibilities of collecting supplementary contextual information and secondary data, of getting a feel for the respondents' work environments, and of building rapport with the respondent group.

Description of the Study Population

At the time of the study, there were twenty-two practising Crown attorneys - six women and sixteen men. These include the Director of Public Prosecutions, (DPP), the Assistant Director of Public Prosecutions (ADPP), the Director of Special Prosecutions (DSP), two Senior Crowns, the special prosecutions unit, the youth court prosecutor, and those who conduct general prosecutions. Some general prosecutors had developed specialties that tipped the balance of their caseloads in the direction of particular kinds of cases (e.g. sexual assault). Prosecutors ranged in age from their mid-twenties to mid-forties. Twelve (more than half) articled with the Ministry of Justice in Newfoundland and Labrador immediately prior to joining the staff full time. Seven prosecutors had worked exclusively in private practice and the remainder had worked either with legal aid or in private practice for some months to several years before beginning

their stint with the Ministry of Justice. Two prosecutors worked as prosecutors, then worked in other areas of law, then returned again to the prosecutors' office. Tenure with the Ministry of Justice ranged from less than a month to more than eighteen years.

Fourteen prosecutors are married, six are single, and two are divorced. Nine have children. Interestingly, whether by coincidence or by choice, none of the female Crowns has children. One of the women reported that there had once been a female prosecutor with children but that she had resigned because she had found too great the strains accruing from balancing the demands of motherhood on one hand with the demands of prosecutorial work on the other.

Salaries ranged from $25,813.00 per year at entry level to $77,439.00 for expert counsel or administrator. The salary range considered to be 'working level' ranges from $51,039.00 to $69,226.00 (Mulligan, 1989). Since there is no law school in Newfoundland and Labrador, all Crowns received legal training outside the province (Dalhousie University, University of New Brunswick, Osgoode Hall, University of Saskatchewan, Queen's University, and the University of Western Ontario).

<u>Chapter Summary</u>

This chapter began with a description of the preliminary stages in the research process. At this stage a key informant was involved in a detailed unstructured interview in which a

variety of interesting lines of questioning presented themselves and in which the potential problem of access was explored. The next section outlined the decision making process with respect to the selection of an appropriate data collection technique - semi-structured interviewing. In the third part of the chapter, the chronology of the research was reported in detail to illustrate the prospects and problems of researching this particular occupational group. Section 3 of the chapter described the means by which access was gained, permission obtained, and contacts with respondents initiated. The chapter also provided a description of the structure of the interviews, of the settings in which they were conducted, of adaptations made to the instrument as the research progressed, of problems encountered while collecting the data, and of the strengths and limitations of the principal data collection strategy. The concluding segment briefly described the characteristics of the study population.

Chapter Four

Research Findings on Role Overload and Role Conflict

Introduction

This chapter examines the extent and nature of quantitative and qualitative role overload and of four types of role conflict as they are experienced by Crown attorneys in the course of their daily round of work activities.

Quantitative role overload is produced by the vast number of tasks for which prosecutors are responsible, by the pressure imposed by immense backlogs in the court system, and by a scarcity of temporal and material resources. Qualitative role overload is occasioned by the high level of skill required to prosecute cases, especially complex jury trials, in court. The experience of qualitative overload is exacerbated by serious deficiencies in the availability of time and resources necessary to complete the associated tasks properly, by the increasingly complicated and sensitive nature of offenses coming before the courts, and by the many intricate changes of late in substantive and procedural law.

Chapter Four also examines four types of role conflict (inter-sender, intra-sender, inter-role, and person-role) and demonstrates how each form of conflict affects prosecutors in Newfoundland and Labrador. It is argued that quantitative role overload is the most severe difficulty experienced by prosecutors in that it amplifies prosecutorial experience of qualitative overload and of all four types of role conflict.

Role Overload

Role overload occurs where a large number of expectations impinge on a particular status in such a way that it is difficult if not impossible for the actor to meet all demands within a specified period of time. Quantitative overload refers to the volume of work while qualitative overload adds to volume the dimension of complexity. Workers experiencing qualitative overload must perform intellectual and creative tasks which, in the time allotted, exceed their human capacities. Quantitative and qualitative role overload are frequently linked in that having too many tasks to perform, even routine ones, renders complex and time consuming assignments extremely difficult to execute properly.

1) Quantitative role overload Prosecutors' experiences of quantitative role overload are often a reflection of three basic factors. First and foremost, the range of the duties and responsibilities attached to the position is very broad. Secondly, the list of cases awaiting adjudication is quite lengthy. The extent of criminal court backlogs in Canada is well known, highly publicized, and much decried. Recent court decisions in Ontario have resulted in the dismissal of charges, some of them quite serious, against very large numbers of accused persons whose cases had been delayed by congestion beyond limits permissable under the constitution. In August of 1991, a study of court processing was commissioned to examine problems associated with the high

volume and glacial speed of cases flowing through Canadian courts. Finally, the resources allocated to prosecutors' offices, in terms of professional personnel especially, are often insufficient to support the proper execution of the wide range of assigned tasks across the voluminous caseload awaiting processing.

An enumeration of the full range of performance expectations attached to the position of Crown prosecutor provides indication of the degree to which role incumbents are subject to quantitative overload. In a criminal case, the burden of proof rests with the Crown. By law, she/he must prove an accused's guilt beyond a reasonable doubt. This requirement necessitates very meticulous preparation for each case that might proceed to trial (Mulligan, 1989; Marcus, 1987).

Crown prosecutors begin case preparation by thoroughly reviewing a file. This exercise is not simply a matter of reading the documents and dispatching an assistant to collect any missing information. Instead, file review requires a comprehensive assessment and analysis of the case as it is presented in the file. Prosecutors must determine that the stated crime did in fact occur, that the accused was arrested following proper procedure, and that sufficient admissible evidence is available to successfully prosecute the case in court. Crown attorneys must ascertain that formal prosecution, as opposed to any of the available alternatives (i.e.

diversion or a caution letter), is warranted and in the best interests both of the criminal justice system and of the community at large. It is prosecutors who select and draft the final charge which will be laid against the accused in court and it is they who decide whether a hybrid charge will be dealt with as a summary or an indictable offense. Prior to appearing in court, prosecuting attorneys must ensure that all evidentiary documents are on hand and in the correct form for submission. They have to appear to make recommendation to the court on behalf of the Crown for the interim release of an accused who is being held in custody. Prosecutors not only recommend but also arrange for any necessary pre-trial psychiatric assessment of accused persons. They decide how much of the Crown case to disclose to the defense and they must make appropriate arrangements for such disclosure. Prosecutors must determine if the file is complete as it stands or whether additional investigation and evidentiary material are required. Prosecutors must conduct negotiations with defence attorneys regarding pleas and they must litigate cases that go to trial or to appeal. Finally, prosecutorial work is replete with the extensive paperwork that must be done to close a case and with the detailed research and documentation that form the basis of an appeal.

In addition to these traditional role requirements, attorneys for the Crown, because of recent changes in substantive and procedural law, now find their

responsibilities expanded. Increasingly, Crown prosecutors are expected to ensure that the unique needs and special interests of victims and complainants are represented to the court in the form of victim impact statements and requests for compensation (Ross, 1989). Moreover, prosecutors must now deal with the necessity of providing information and support to witnesses and victims after the trial is over. This latter responsibility stems in large part from the ever increasing numbers of highly sensitive sexual assault cases coming before the courts in this and in other provinces.

There is evidence that workloads for prosecutors in Newfoundland and Labrador are increasing. Major criminal trials, for example, have doubled in length during the decade between 1978 and 1988. Even if the actual number of trials and appeals had remained the same, the increased length of court time required to conclude each case represents a significant expansion of workload. There has also been an increase in the number of highly sensitive sexual assault cases and highly complex commercial crime cases being prosecuted in Newfoundland courts. Commercial crime cases inevitably generate a great deal of work for Crowns because these offenses are by their very nature extraordinarily complex and time consuming (Hickey, 1988). Sensitive and complicated cases, lengthier trials, and a growth in the volume of offenses coming before the courts are problems routinely exacerbated by ongoing shortages of professional personnel.

Six months prior to data collection, 8 of 26 positions were vacant. By the time interviews began, 4 Crown prosecutor positions remained unstaffed.

According to one respondent, in one not atypical month each Crown in the St. John's office had more than one hundred new files attached to his and her caseload.

> At a recent meeting the figures for one month were spoken of I don't recall which month it was but the number of new files in the month was 700. That would probably work out to over 100 new files per month for each prosecutor with only 6 here in the office.

This additional work represents quite a large total caseload since no prosecutor is ever able to clear entirely the previous month's files. Some cases are held over due to postponements or delays while others await documentation (summaries). A few cases are appealed and therefore require a factum to be readied and sent on to the special unit in charge of appellate work.

Most prosecutors appear in court five days each week. Each day in provincial court, they routinely prosecute between six and ten trials (in comparison with a defense attorney's one or two) (Mulligan, 1989; Marcus, 1987). Maintaining a schedule necessitating daily court work severely constrains the time available to undertake the careful preparation required to ensure that the quality of legal work meets prosecutors' personal and professional standards. This response to a question regarding case preparation was typical.

> I have to say no to adequately prepare. A lot of the things we get is just a rush job. And it doesn't do justice for the file itself.

The assembly line nature of criminal justice processing was emphasized with prosecutors confessing the necessity of impromptu performances in which they read files for the first time on the spot in court. As one Crown confessed:

> You know I've winged many cases. I've seen me do trials when the first time I ever read the file was when I was calling my first witness - 'cause I never had time. Just didn't have time to prepare for it, and after a while it got to be a little bit of a rush. I'd say now what if I can do this - I'll call my witness, and while he's walking up to the stand I'll read his statement, and then I'll find out what he's got to say and then I'll question him. I did that many times. That's the first time that I even looked at that file.

Especially irksome is the inability to interview thoroughly all or even most witnesses before court is in session except in the case of major higher profile trials. One prosecutor summed up the perspective on this situation and hinted at one of its consequences.

> We just don't have the time. You see your witness ten minutes before the trials, it is hard to do a good job.

Conducting pre-trial interviews is particularly problematic in rural areas where the distances separating prosecutors from crime victims and witnesses is often considerable.

> They need someone there to be able to support them especially when they are preparing to go for trial. The unfortunate thing is I get to see a person [witness] twice if I am lucky. I don't have the time because the witnesses are coming from all over the place and I don't have the time to drive out there. Or it is impossible to get them in here to do an interview before the preliminary enquiry.

In cases where the witnesses were children, Crown attorneys report making special efforts to make contact. They also report feelings of distress at being unable to accomplish their objectives in this regard. One Crown attorney expressed his/her concerns with these words.

> I see witnesses once before the preliminary enquiry and the only exception I make is if it is a young child. A few cases I have felt really bad because they have had young people on the stand and I haven't even had a chance to ask them their name. They are put straight on the stand and their closest connection is the [police].

Virtually all Crown attorneys in the province made reference to the quantity of work with which they must contend. References to the inordinately high number of tasks, to the responsibility of their position, and to the feelings of exasperation at not being able to perform up to their own expectations were made frequently in the interviews. The following were typical responses.

> All of these things I think just kind of just kind of add up and put a real weight on your shoulders, and it's not just a matter of coming in and picking up the files and talking to witnesses and going to court. It's a whole bunch of other things now that we do.

> I get frustrated because there's so much to do and so little time to do it all in.

> The number of things - the number. The quantity of work. It's just too much, and it's - ... we don't go down to court with one file, often we go down with ten files. And you're sitting there and the defense lawyer walks in and he's got one slim file.

One forthright indicator of quantitative role overload is the amount of time devoted to work above and beyond the standard forty hour work week. When asked about their time

schedules, prosecutors made frequent reference to the amount of 'overtime' that they work. In this context, they also offered comments about specific working conditions that reduced their productivity on the job thereby necessitating compensatory after hours work.

Neither the actual numbers of active files nor the precise number of overtime hours worked were on the tips of most Crowns' tongues. They did, however, report with certainty that they routinely worked nights and weekends above and beyond the regular work week. Half indicated that they worked two or three nights per week. A quarter said that they took work home or came to the office not only nightly but on weekends as well. The following responses to questions regarding time invested in work beyond the forty hour week were typical.

> Sometimes it is not too bad but for the most part I usually work every night. I try not to work weekends but I sometimes do and there were some weekends I worked for one period of time I worked three weekends straight in a row and every night and every weekend.

> Yeah it's quite busy so I do normally take all these files home with me. I read them once while I'm doing up the subpoena requests and try to find out if I'm going to need further information, and then they go in the filing cabinet. And the day before the trial they all come out and I throw them in the briefcase and I go home with them and then read them again. So I read them twice before they are prosecuted.

The amount of overtime varies depending upon the weight of prosecutors caseloads and upon their levels of seniority. More senior Crowns usually assume responsibility for the more complicated cases and they report significantly higher

overtime hours on average than do more junior Crowns. Overtime averages ranged from a low of six to eight hours per week for a junior Crown doing more routine work to a high of forty to fifty hours per week for senior Crowns during the busy trial season. This variation was highlighted in the words of one prosecutor who said:

> There'll be weeks when you're doing your standard forty hour week. There'll be weeks when you're doing up to ninety hours. Once you get - we get back into the trial system in the fall, there'll be many people in the office who'll be putting in eighty to ninety hours a week.

One Crown confessed his/her initial mistaken belief that one of the benefits associated with being a prosecutor would be more regular hours and less overtime than was the norm for lawyers in private practice.

> When I joined the Crown the impression I had was that very few of them actually did that type of work. You know, it was one of the plus sides of becoming a Crown. As insulting as this may be, it was more nine to five than private practice, right? ... When I first joined them it did seem much like that. That's changed. Now I actually work at night.

Half of those who had worked with the private bar prior to coming on staff with the Crown did not envision private practice as an easier way to make a living as a lawyer. They spoke of the high levels of competition among young lawyers, of the difficulty of getting 'billable hours', and of the consequent high rates of overtime.

> When I worked in private practice I worked at least two nights a week and I often worked Saturdays. And it was expected of young lawyers or young members of the bar to punch in 50 or 60 hours a week. Now when I went to the Crown even though they were slinging you know 8, 10, 12 cases a day at you, well when the court closed down at

5:00 that was it. So okay you had an hour or two work in the evening to look at your cases for the next day, but that was all. And you didn't have the headaches like trying to get paid for your work, or trying to get this done - that done and everything else. In terms of information gathering, the police do all that for us. So, because of my background, I suppose, my previous work experience, I came into prosecutions in St. John's and found yes it was busy but it was not hellish.

I am probably one of the few that has kept track of my overtime. I started in [month 'a'] and for the month of ['a'] I had 53 hours of overtime for the entire month. Now that was unusual because I had a lot of travel, 22 hou: of that was travel, so about 25 hours of overtime, which if you break it down to four weeks is about 7 or 8 hours of overtime per week. For ['b'] I had 21 hours of overtime over a four week period so that is about 6 hours. So you are looking about 45 - less than 50 hours a week. For ['d'] I had 36 hours of overtime, a little bit more, so you are looking at under 50. That was for the month of ['c']. I haven't done my memo for ['d'] or ['e']. So I am keeping shorter hours than I did in private practice where I was easily doing 50 - 60 hours a week.

It is worth noting that neither of the prosecutors quoted above were charged, at the time of their interviews, with conducting more complicated trials.

Geographical location and the allocation of personnel significantly impact on the amount of overtime prosecutors must invest in order to complete their assignments. Where a Crown is the only prosecutor practising in a busy jurisdiction, the routine work alone is sufficient to guarantee that extra hours must be worked as a matter of routine. When minimum experience, more complex trials, and 'circuit riding' are added to the equation, the number of overtime hours can be excessive and very tiring.

When we were at our peak season I was bringing stuff home and probably working till 10:30 or 11:00 and just having

> my hour or hour and a half for supper. It can't be sustained for a very long time and that is the unfortunate thing and hopefully it will be realized before I quit.

Crown attorneys who work in courts distant from their home bases must spend at least some of their time 'on circuit' travelling to smaller outlying towns primarily to prosecute indictable offenses. The Crown attorney in Gander, for example, is responsible for courts in the towns of Fogo, Twillingate, Wesleyville, Lewisporte and Glovertown. Every Crown attorneys' office in the province has external courts for which it is responsible and to which someone must travel on a regular basis. The grinding nature of such assignments is captured in the words of two itinerants.

> You just can't fit it all in one day. The time on the road takes away so much. If you only had to go across the street you would have more time than enough. But if you go to ['a' town], I try to leave on a Sunday in case there are interviews that I may want to conduct the day before the trial. If it is ['b' town] you are talking an hour and a half, or if it is ['c' town] you are talking an hour and forty five minutes.

> I prosecuted what we call the circuit which was, let's see I used to do Ferryland every Monday, Placentia every Tuesday, Whitburn every Wednesday, Whitburn the first two Thursdays of the month, St. Mary's the third Thursday of the month, and Trepassey the fourth Thursday of the month. Friday was the only day that I wasn't supposed to be on the road, and sometimes I was on the road - just if I had to interview a sexual assault victim or something I'd go out on Friday. It was really really exhausting. It was really hard.

Because a new office opened in Marystown recently, the travel hours from Clarenville and Marystown have been significantly lessened, but from Gander and Grand Falls they remain

extremely high, and from Corner Brook they are less onerous but significant nonetheless.

At the time when data were being collected, the St. John's Crown attorneys' office was located some distance away from the court. At the time, Crowns lost a great deal of time travelling between their offices and the courts. A respondent summarized Crowns' aggravations regarding this state of affairs making reference to the findings of a government sponsored study to address this and other problems.

> The department a couple of years ago had this time management study done on this office and we all kept track over a one month period of what we spent our time on, and it was broken down. I think that pointed out or actually documented some of those frustrations and I think it showed that because of this office location there was a loss of 1.5 man years or person years whatever from either dead time waiting around Atlantic Place 'cause we couldn't come back here or just driving back and forth.

In many cases, time lost as a consequence of this arrangement had to be made up outside of the normal working day.

> For the most part the preparation that is done is done after hours. Most days we spend time in court and it takes 20 min to drive back to my office, so when there's half an hour free from court its not a situation where I can run up the stairs to my office and work. It means I'm stuck in Atlantic Place with a lot of free time on my hands and I bring home work nearly every night.

In reference to the possibility of occupying offices adjacent to the courts, one respondent offered the following observation.

> If I could get all my work done in the day it would be wonderful then I wouldn't have to come in on the weekend. I wouldn't have to work at nights. There's no pleasure in being down there going down for a cup of coffee and

> sipping on your coffee and sort of looking at your watch thinking about what else you have to do.

The response of the Treasury Board and the Department of Public Works was described as rather frustrating. One Crown described the situation at the time.

> We've been attempting for three or four years to move our St. John's office to downtown because we all recognize that there is a problem with lost hours by people travelling back and forth. If someone finishes a job at quarter to or eleven o'clock, has a cup of coffee with their colleagues and then says ... I don't want to go back up there now I got to come down again. So we pressed for years to have that office moved. We've finally been successful after three years of pressing despite the fact that no one would listen to a great degree. Then the hoops you have to jump through in order to try to get the funds, and to get the contracts that - all of which are outside our control because they're done by other departments - and then to get the staff, that type of thing and it's amazing. I mean we've been jumping through hoops for about eight months to try to do that and it's not done yet.

<u>2) Qualitative role overload</u> Role overload that is qualitative adds to idea of volume the notion of complexity. Qualitative role overload occurs where task complexity renders role expectations either very difficult or impossible to meet within the confines of time, resources, and/or individual capabilities. Prosecutors, as has been pointed out in the previous discussion, can be overloaded simply by the sheer volume of routine job activities. They can also be overloaded by virtue of the fact that many of their particular assignments require high degrees of skill and expertise on one hand and the application of considerable thought in the face of time and resource constraints on the other.

The practice of criminal law is professional work. While many criminal cases are relatively uncomplicated and routine, some invoke the elements of indeterminacy and uncertainty characteristic of much professional enterprise. Indeed, some commentators maintain that prosecutorial work has become even more complicated in recent years. They note that the practice of criminal law is constantly changing in response to shifting societal concerns and requirements. In the last decade, for example, there have been significant increases in prosecutions concerning such sensitive, emotionally charged, and complex issues as wife battering, violence against children and youth, child sexual abuse, and sexual assault. Another especially complicated form of criminal activity, white collar crime, is also being prosecuted with greater frequency than in the past. The problems associated with coping with an enormous number of relatively routine matters in a limited time frame with finite resources are exacerbated by increases in cases which are volatile, high profile, and more complicated.

New laws governing both substance and procedure are continually being created and old laws are continually being modified through statutory legislation. Moreover, many judicial cases set legal precedent modifying statutory edicts through the subsequent application of case law. The new Canadian constitution with its Charter of Rights and Freedoms has had an enormous impact on rules of due process and legal procedure.

Some of the emerging areas in which added expertise is now being required include consumer and environmental protection laws, new evidentiary laws covering both acquisition of evidence and its presentation in court, utilization of video, closed circuit television and courtroom shields for the presentation of special, very sensitive evidence, and new policing techniques such as DNA identification and video surveillance. Increasingly, prosecutors find themselves called upon to understand and act upon the realities of dealing with special needs witnesses who may also be the fragile victims of such offenses as family violence and sexual assault. Crown attorneys must also deal with the need to protect victims by preparing victim impact statements and victim compensation requests for presentation in court (Mulligan, 1989). The use of the Charter and the various changes in evidentiary rules may transform a common impaired driving charge into a case more complex than a very rare although serious offense such as murder. Such developments broaden the base of knowledge and deepen the level of expertise required to prosecute properly. Further, the time required to prepare the case properly and to prosecute it effectively is significantly increased.

Prosecutors are very aware of the implications of these and other legislative changes.

> These changes in legislation? Keeps us on our toes. Most of the changes are for the better. Sometimes it's frustrating because you're trying to educate judges about it as well. I recently had a case dealing with political

> impact statements and I spent two days proving these were now admissible in the form that I was trying to present them. It was something that hadn't been done in that particular court before, so it's - in some ways it's like breaking new ground. It's almost like everyone's sort of feeling their way through the new legislation. An extra two days on a sentencing hearing -that was two days I could have spent doing other things.

The special qualities of trial work make it especially taxing for those Crown attorneys who are given such assignments. Twenty percent of all those interviewed made reference to the rigours either of participating in several jury trials in a row without a break or of participating in a single jury trial lasting from several weeks to, in rare cases, a year or more. Where trials involve some combination of intricate legal arguments, the potential setting of precedent, high degrees of public interest, and emotionally distraught victims or witnesses, prosecutors report that the process is all consuming.

> I live with it. We go out somewhere ... an activity of a social nature and I'm listening but I don't hear anything because it's on my mind. Right from ... [when I started the case until its completion] seven days a week twenty four - I would have dreams at night about it. I'd wake up in the morning when the alarm went off and the first thing that would be on my mind would be that case. The last thing at night when I went to bed would be the case. It would be on my mind. I [met with a local community organization] - the whole time it would be on my mind. Months, and it just, it's just that type - something of that magnitude.

The jury trial, in particular, occupies a prominent position in the minds of prosecutors in this regard. Because they are particularly 'on display' in this arena, because they are called upon to be animated for prolonged periods of time,

and because they are dealing with juries comprised of citizens largely ignorant of the niceties both of criminal law and of the court system, prosecutors feel that they must be especially well prepared, resourceful, and able to think quickly on their feet in this forum. Trial work in front of the jury is described as requiring the greatest talent and as testing the metal most. As one Crown stated:

> The jury trial, that's where the skill is most used. That's where the greater skills are needed in the criminal trial process. ... You're up front. You're in front of the press. You're in front of judges. You're required to adjust very quickly on your feet. You're often expected to adjust to very quick decisions sometimes, as well as having your interaction with people - and in criminal law you meet people in crisis all the time, they're always in extreme situations.

The gruelling nature of this experience is evident. Crowns mentioned exhaustion and burnout as real consequences.

> We were there <u>in court</u> every day dealing with issues every day and there was no let up. It's a kind of, you're caught. It kind of burns you out. And I'm still a little bit burned out at this stage of the game.

> The jury trial itself .. of normal duration a week .. ah will exhaust the lawyers the Crown as well as the defense. If you recall in the criminal process it's the Crown attorney who does at least 90% of the trial work and the defense attorney really sits there and just waits for an opening or two normally.

The overpowering nature of trying cases in this arena is apparent in the following Crown's observation.

> You find when you're doing a jury trial it never goes away. You could be out at a cocktail party talking with somebody and in the back of your mind you're considering a certain issue where you're trying to frame a question in a certain way in your mind, or it never leaves me anyway. Some of my best work I think is done at home and - during dinner I'll figure an angle on a particular witness and, like I'll line up documents with ah viva

> voce evidence. Sometimes I do my best work just lying on the couch watching TV, or lying in bed I'll come up with a solution or an approach. It's not just something that you sit down in the office and force yourself to think, but what I'm saying is when you're doing a jury trial - and I think every lawyer'll tell you every Crown attorney will tell you anyway - that you live with the case and you don't think about it all the time but it never goes away.

Since the days of a trial are consumed with the process of trying the case, coping with the complexities of jury trials usually translate into substantial effort above and beyond the normal work week.

> If you are in the midst of a jury trial, it is something that you kind of live and breath for a few weeks. And to do a good job you are going to need the overtime to prepare for the summation, or your opening address or interviewing witnesses or whatever, you are going to need that extra time that you don't get in court.

The level of commitment and concentration required and the amount of extra time invested is not without its deleterious impacts upon personal and family life.

> You're always, your life your personal life is secondary during the course of the trial. And it has to be, I suppose, because during a jury trial process you've got about 25 people depending on you, 12 jurors and all the court officials and what not. So even if you're sick or ill you've really got to be there unless you're practically on your death bed so you can't ask for a postponement because your car broke down or anything like that. You've got to, your first priority is the trial and it takes a strain on you. Most lawyers will tell you that they are exhausted at the end of a week.

> It was a really tough experience, not only the trial itself but the effect on my personal life.

Another dimension of qualitative and quantitative overload that affects prosecutors in their work is the 'unexpected' case. Twenty-five percent of prosecutors alluded

to the overload created by unanticipated assignments. One prosecutor described such a case pointing out that being caught off guard in this fashion can be quite disconcerting. Late one evening, he/she was asked to process on the following day what he/she had been told would be a couple of 'run of the mill' liquor violations. Things were not quite what was expected when he/she arrived in court the next morning. First, the number of files was in excess of what was anticipated. Second, several of the cases were less than entirely straightforward. Third, each of the accused was represented by defense counsel. The morning's work was infinitely more challenging and stressful than the prosecutor had foreseen.

> I got the files at quarter to ten and court was at ten, and I got the files and I said OK and I went in the courtroom and I closed the door and I started to read. And one of the police officers came in and I said, 'would you mind going out for five more minutes and coming back in 'cause I got to read it first before I talk to you about it'. And then he came in and I said, 'OK who's here, what did you do, OK I'll call you and you and you and you and you tell me what happened'. It was very stressful, very stressful. And I mean everybody was represented.

Prosecutors experience overload on both quantitative and qualitative dimensions. Quantitative overload exacerbates qualitative overload rendering very stressful professional work that might otherwise, under less intense circumstances, represent interesting and challenging intellectual exercises.

Uneven resource allocation as well as errors and omissions in the work performed by other actors in the criminal justice arena contribute to prosecutors' experiences

of overload. Half of the province's Crown attorneys cite the need for better trained police. It is, for example, by no means unusual for a file that is incomplete to reach a prosecutor's desk. Incomplete files, of course, necessitate additional work on the part of Crown attorneys. Regarding this problem, the following responses were typical.

> When I got into prosecutorial work I realised that the police lots of times aren't prepared, that your investigation reports are not always complete, that you've got to do a lot of work on your own. Lots of times when you go into trial you're prepared as you can be, but surprises arise because the police mightn't have been adequately prepared.

> I mean it is great to say on the one hand well he has got all these police at his disposal, but in practicality, sure you may have the investigator at your disposal, but your file is only as good as the investigator. If the investigator does a shitty job than it doesn't matter how many people you might have at your disposal. Yes, there is a certain advantage. The state obviously in most cases, as opposed to legal aid, does have certain resources at its disposal, within limits. When those resources however are constricted by budgets then we are talking about something different. So in theory we do have an advantage. In practicality, it is something different. Your case is sort of as good as the investigator and the resources, not the ones that you theoretically have, but the ones that you do have.

> I think what surprised me the most was the amount of assistance the police need from Crown prosecutors. I would have thought prior to that that the Crown would have simply received the file and it would have been ready for court and that would have been it. As it turns out that's not true at all. The police need a great deal of assistance from the Crown.

In addition to incomplete files, Crown attorneys reported another impediment to prosecuting cases forthrightly. It is sometimes difficult to contact the officer who is investigating a particular case in order to request critical

but missing information. Furthermore, making special requests to police management to approve overtime for a C.I.D. officer so that an investigation can be completed before court the next day is not straight forward.

> ... CID ... They're the ones that are investigating the murders, the armed robberies, the sexual assaults, etc., etc.. They work nine to five, five days a week, with occasional weekends so that sections are covered. They can't get overtime to complete an armed robbery investigation without going through murderous hoops. You know, there are times when I call up and threaten the chief of police in order to get somebody authorized on overtime to finish a file that I need for tomorrow.

Role Conflict

In addition to quantitative and qualitative role overload, there are four types of role conflict that impact upon prosecutors. Each form of role conflict is discussed in turn.

1) Inter-sender role conflict Inter-sender role conflict occurs when an individual occupying a particular role must deal with conflicting demands emanating from two or more sources within the context of their status set. Given conflicting sent roles, it becomes difficult if not impossible to satisfy all demands equally well.

On a daily basis, prosecutors deal with the expectations and the demands of others. Because the various expectations issued by one source are often incompatible with those issued by others, Crown attorneys must, as a matter of routine, decide which expectations to meet and to what extent and which expectations to set aside. Victims, witnesses and police may

expect or even demand that prosecutors vigorously pursue trial, conviction, and a lengthy sentence. Alternatively, court and Ministry of Justice officials, cognizant of case backlogs and overtaxed correctional facilities, expect cases to be expedited through the negotiation of pleas and the invocation of sentencing alternatives.

Sixty percent of prosecutors report incidents of inter-sender role conflict. Of that number, half identify these conflicts as isolated events while the remaining half indicate that they are much more common. Almost one quarter of all the prosecutors interviewed said that they almost <u>never</u> manage to satisfy anyone. They also report that it is distressing to be constantly surrounded by people and by groups whose expectations they cannot meet.

> More often than not when you go down to court you have unhappy faces all around you. The police are ticked off 'cause they don't think buddy got nailed so hard as he should have been, OK? The accused is ticked off 'cause he's he's going down on something right, he's not happy. The victims are unhappy because it's never the, it doesn't work out the way they want so you don't see a lot of happy faces around in the courtroom doing what I do. And that gets to you after a while.

> [The job] has its high points and its low points. [There are] days when it's really frustrating, exhausting. It's always stressful. You're always there. There's always someone mad at you. It could be a guy from the press, there's always somebody, a member of the public, who doesn't particularly like you what you have said. That makes it very stressful.

Inter-sender role conflict occurs on two dimensions - conflicting demands entirely from within the system and conflicting demands from without. The latter circumstance

involves what sociologists have referred to as 'boundary roles'. Performing in boundary roles positions role incumbents on the border separating their work organization from the constituent individuals and groups that comprise its environment. Boundary role performance usually, but not always, involves the processing and filtering of information. Prosecutors act in boundary roles when they 'represent' the criminal justice system, either formally or informally, to constituencies outside the system including the public, the media, and special interest groups.

At the root of much of the inter-sender role conflict experienced by prosecutors is the central formal requirement that they conduct their work in such a way as to ensure that justice is done. This role requirement is at some variance from the theme presented in the news and, in particular, in the entertainment media. The image conveyed in these sources is that the prosecutor's 'raison d' être' is to convict the accused. This is also, incidently, an expectation widely shared by police as well as by ordinary citizens. Crowns, however, are quick to point out that they do not measure their success by conviction rates. They emphasize first and foremost that the principal component of their role is to ensure fairness. At variance with common thought and expectation, they see themselves as officers of the court whose responsibility it is to ensure that justice is done.

> Our role is not to obtain a conviction or to win. Our role is supposedly to ensure that the process is done

> fairly so that all the evidence, whether it favours the accused or is against him, comes out. Our role is supposedly to be happy at the end that the process has been done fairly and correctly and thoroughly.
>
> We're always expected to be fair and impartial. A defense lawyer is expected to put forward his client's case but the Crown is expected to be totally objective and any information that they're aware of, pro or con to the position that they're putting forward or arguing, has to be presented to the court.
>
> You assess everything that the police give you and you interview all your witnesses then you go and present that evidence. If that evidence is there in your opinion that a conviction is warranted then you've got to fight hard to obtain it. But if that evidence isn't there, and a conviction isn't warranted, and you know it's weak, I think it's very wrong to let your ego take over and still obtain a conviction so that you don't lose face.

The prosecutors interviewed do not envisage themselves as lawyers _for_ anyone in particular. They do not see themselves as the lawyer for the victim, for the police, or for the government. Rather, they indicate that their responsibility is to do justice in the public interest.

> I do not perceive the government of Newfoundland and Labrador as my client, never have never will, no more than I perceive the Royal Newfoundland Constabulary or the Royal Canadian Mounted Police to be my client, never have never will. So there is that distinction in terms of where our duties lie, and I think that _I_ feel, and I think that others in this office feel that our duty lies to the public at large lies to the court. Above anything else it's to the court. If anyone is our client it's the presiding judge, it is not the government that happens to be in power.
>
> I am an officer for the court first. I don't wish to be presumptuous in my role as officer of the court, but I see myself not as being responsible for a successful prosecution at all costs, or at most costs within the confines of the law of course, as perhaps would be solicitor for a plaintiff. In civil litigation of course you are paid to win. I don't see myself as being that. I see myself more as being maintained to represent the interests of society and I think that is the most

> important thing that I do. It is to ensure that every time I get a file in front of me that represents a prosecution that it is first of all proper for us to proceed, and then in the course of proceeding in that matter that the best interests of society are looked out for.

Serving society's interests may or may not involve obtaining a conviction. Most Crowns were quite specific that they were responsible for and felt obligated to ensure <u>all</u> the available evidence was presented in court in order that a just adjudication be made. If evidence hostile to their case was available to them, they would either make full disclosure of it to defense counsel, or if the accused was not represented by counsel, they would themselves present the evidence to the court.

> I think the general public simply because they haven't been educated a whole lot about it and most of the perceptions come from TV and you see a very hard nosed person who's out to get someone and that's not the way our we see our role here. For instance, if we came across something here that we felt would clear a person then we're under a clear duty to bring that forward. A defense lawyer when they come across something that would implicate someone has absolutely no duty to bring that forward if they're representing a person. If that person comes in for example and tells them about some piece of evidence which would result in that person being convicted, the defense lawyer doesn't have to bring it forward. But if I came across a similar piece of evidence that would exonerate someone then I do have a duty to bring it forward.

Another major source of inter-sender role conflict for prosecutors involves their power of disclosure. At the Crown Attorneys' Annual Meeting in St. John's in August, 1990, prosecutors from around the province discussed at some length issues surrounding their powers regarding disclosure. At issue

were the prosecutors' duties to the court, to the police, to the victim, to Crown witnesses, and to doing justice in such a way as to ensure that accused persons have fair trials. The consensus among Crowns at the table was that although Canadian law does not, <u>and should not</u>, demand full disclosure to the defense, full disclosure would nevertheless be given - as a rule. There are exceptions, of course as one of the Crowns later pointed out in an interview.

> Defense are entitled to see just about everything unless there is a reason to fear for the safety of a witness. In a case that I mentioned earlier, a plea-bargaining case, there was a witness that we did not disclose because we literally feared for the safety of his life. I mean his very life could have been in danger. Most, barring exception to some cases, most defense lawyers will get full disclosure, that is, they will get to see the whole file.

On one hand, defense attorneys expect prosecutors to fully disclose the case against their client. On the other hand, if full disclosure is given police and Crown witnesses frequently feel that they have been betrayed by 'their' lawyer. Police conduct investigations and Crown witnesses give statements in order to secure convictions. They expect Crown attorneys to protect 'their' interests. According to some Crowns, when a complete file is opened for inspection by the defense, certain risks are taken with respect to police cooperation. The police, if they know a particular prosecutor routinely gives full disclosure to defense counsel, may withhold information from Crown attorneys on the premise that prosecutors cannot give away what they do not know.

> If the police get the impression that you're basically giving out the file to the defense counsel they're not going to tell you anything.
>
> The police think you're, some police think 'He's our lawyer' and he's not. Other police say 'He's a lawyer and I don't trust any lawyer', and that's a problem because if they won't tell you what they got in the file then I'm not able to do my job properly. I got to know what they got if I'm going to be able to do my job properly. If I don't have the information then I can't do my job.

Witnesses provide statements to the Crown for the purpose of introduction into evidence at the trial stage. Where witnesses are also victims, they find disclosure especially disconcerting because they believe that the Crown is supposed to represent their interests in an adversarial fashion.

> Statements that witnesses give to the police; they sometimes have a perception that the police are the only ones that are going to be able to look at that and the they're upset when defense lawyers manage to get a copy of it. In certain situations the court has a right to order that. And we provide full disclosure of our files anyway, so they are aware of the contents. They sometimes see that as a betrayal because they think that you are their lawyer.

In this regard, several Crowns agreed that if full disclosure is to be an automatic 'across the board' practice, then that fact must be made clear to witnesses at the time at which they make statements. The risk for the Crown in adopting such a procedure is that some key witnesses (who may or may not be victims) will subsequently be more reluctant and think twice about speaking not only to the Crown but to the police as well.

The situations in which prosecutors must deal with conflicting demands from others take several varied forms. In

provincial court, the prosecutor is responsible for organizing the flow of cases in court to maximize efficiency and to minimize delays. Since they frequently present several cases per session in comparison to a defense lawyer's one or two, prosecutors must deal daily with several defense attorneys, accused persons and victims and with what at times seems like a legion of witnesses. Each defense counsel wants his/her case heard at a given time and each has equally valid reasons.

> What happens here is if you go to provincial court you have between ten and fourteen files for a day. There are at least three witnesses per file usually and could be up to ten. You have all these people around the courtroom; you have lawyers, different lawyers on each file you're there with ten files. The lawyer comes in they only have one and they have one client and they want their matter to get on. It seems like you're being pulled in a lot of different directions.

Because of their positions of responsibility, senior Crowns are sometimes faced with a dilemma unique to their position in the chain of command. To execute the duties associated with their senior position adequately, the Justice Ministry directs that they spend between 40% and 60% of their time doing administrative work. On the other hand, staff shortages and the ensuing expectations of colleagues dictate that they take on their 'fair share' of cases.

> The way the staff feel and the Crowns feel the way the job is well .. ah you should be doing your fair share of the court work.

Crown attorneys, in many ways, work in a boundary position. They are officers of the court and employees of the Ministry of Justice. They are also public representatives of

the criminal justice system. In addition, they are the persons to whom individuals and groups providing support to victims and even advocates for some accused persons turn for help. They have duties and obligations to those who operate formally within the system, to those who are drawn into the system, and to the public to which they are ultimately accountable. On a variety of dimensions their boundary position can generate varying degrees of inter-sender role conflict.

The strains inherent in the occupation of boundary role positions have been enlarged by the recent expansion of victims' rights movements. The general public is becoming increasingly educated about the law and about court process. Consequently, prosecutors encounter questioning similar to that experienced by other professional groups ministering to the needs of a better informed clientele and a more enlightened public audience. Through rising levels of education and through the actions of various consumer activist and victims' rights movements, the public has become increasingly critical of many traditional social institutions. No longer do the motives and actions of government, church, the educational system, and the legal system go unquestioned and unchallenged. In recent years, the Canadian criminal justice system has been subjected to careful scrutiny of and open criticism by a variety of groups including civil and victims rights groups and the press. The formerly sacrosanct worlds of the court and of the prosecutor operating within its

walls have become the target of intrusion. Non-professionals and non-legales (individuals without legal training) are increasing their demands not only for information but also for explanation and for action (Ross, 1988). High profile cases such as the Nelles proceedings in Ontario, the Marshall inquiry in Nova Scotia, and the Hughes' and Winters' Commissions in Newfoundland have fuelled public debate and have stimulated calls for appraisals of the performances of various agencies within the system generally and within the realm of prosecutions in particular (Ross, 1988).

Crown attorneys must decide upon the nature of their response to this pressure. In Newfoundland, two thirds alluded to the extra pressures associated with this degree of accountability. They made specific reference to the necessity of documenting everything done or said on the job in an effort to protect themselves should they be called to account at some later point in time.

> Of course in days of the Hughes Commission we have to be covering our asses as well. Cover thy ass, the 13th amendment.
>
> It put unusual requirements on a normal prosecutor in that now they have to spend time safeguarding themselves and ah it's like you have to safeguard yourself forever. I mean, normally if you have a case and you're dealing with victims and family members of victims and you have meetings the things you said you can remember for a short time. [And for a short time you remember] things that went on. But if you're now going to be subject to an investigation fifteen years later! I mean, if you haven't recorded it in memos and notes and things of that nature you could be in trouble. So you know undoubtedly the process is changing right and you're even more under a spotlight than you were before.

Pressure is sometimes brought to bear on the Crown prosecutors' office from various outside sources such as special interest groups, political organizations and the media. Particularly in controversial and highly publicized cases, one group may demand a withdrawal of charges while another group may press for assurances that everything humanly possible will be done in an effort to secure a conviction and a severe sanction. To fulfil both demands is impossible. To fulfil one as opposed to the other may require some legal 'slight of hand', some manipulation of evidence. Making such concessions, of course, is in direct contradiction to the Crown attorney's formal role and may be unethical if not illegal.

> The feeling I think of most Crowns is that we like to concentrate on doing the case and not have any outside interference. There is sometimes interference from various people.... Like politicians expressing their concern about a case, personal opinions that they may give you about a certain fellow you may or not be prosecuting. [They are] not trying to obstruct you and not trying to tell you what to do, but just influencing you in a subtle way. On the other hand politicians come in and tell you about, 'Well my constituent is the victim in this particular case, I want you to do this or I want you to consider this'. And you sort of have to diplomatically say, well I appreciate your input, blah, blah, blah, rather than basically telling them to f-off.

As representatives of the criminal justice system, prosecutors are positioned between the informal expectations attached to their positions and the options available to all citizens in a liberal democracy. Twenty-five percent of Crowns said they felt inhibited socializing publicly in their communities. The reasons given were that they did not want to

bring disrepute to the Crown by having a drink in a public place, that they did not want to run the risk of encountering people whom they had recently prosecuted, and that they did not want to get too close to someone whom they might find themselves prosecuting for liquor offenses or child abuse at some point later in time.

> I don't know if other people feel this way, but I think, I am certainly, it's a lonely job. I'm the kind, I know like, a lot of people who work this career are very careful where they go. Now I don't know if others have talked to you about that but they feel like you shouldn't go in this bar, or shouldn't live on this street, right? Now I - I fight against that. I say you know, well I'm going wherever I want, and if that causes disruption for the powers that be, then so be it. But I think there is this sense that we should be - separate.

> In some ways I think it is just as easy not to mix with people because you never know when you are going to have to deal with a mother, father, with the degree of sexual assaults coming on. Oh god knows these days. It is just rampant.

2) Intra-sender Role Conflict Discrepancies among others' role expectations both within and beyond the criminal justice system are not the only sources of role conflict with which prosecutors must contend. Incompatible demands can and often do emanate from the same source. Sociologists refer to this phenomenon as intra-sender role conflict. While incompatible same source demands can originate from several points, the major one for the prosecutors interviewed was, not surprisingly, senior administrators in the Ministry of Justice.

Justice officials expect Crown prosecutors to execute their assigned duties without error within a reasonable time

frame. This expectation demands that they must efficiently (and inexpensively) manage and effectively process voluminous caseloads while at the same time ensuring that the criminal justice system does not compromise its mission to provide high quality prosecutions with all the necessary case preparation that meeting this objective requires. When they attempt to successfully deliver on both sets of expectations simultaneously prosecutors are often thwarted. In reality, Crowns find that they must compromise in the direction of ameliorating the most urgent and the most immediate problem confronting them at a given time. They must attend to the immediate mundane demands rather than constructing effective legal solutions to the most serious and complex cases the proper processing of which they believe that they will be held accountable for in the long run.

Prosecutors are expected to prepare cases and to keep their paperwork up to date. Nonetheless, they are able to spend very little time at their desks in pursuit of these objectives. More than three quarters of prosecutors made reference to the mountains of paperwork that rapidly consume the exceedingly little time available for the completion of office work. Even when they manage to get time at their desks, there is usually an interruption, a crisis of some sort that requires their immediate attention. The following is a typical scenario. The file being prepared on a complex charge must be set aside in order to attend to a case involving a minor

offence. Research, it seems, can always wait. An individual who is being held in custody until a Crown prosecutor takes his case before a judge cannot be denied liberty unwarrantedly. His/her other case, even though it might be quite important by comparison, must of necessity be shelved temporarily.

> What you find is on a day like today there's nothing in my calendar so [I can get to the paper work that's been waiting] and yet the phone rings and it's a policeman, "Got another customer". So, rather than doing this [rattling papers on his/her desk] which is what I wanted, ... I got to lay that aside to deal with that. ... That's a crisis, and I mean you're never going to stop that. The police are always going to be arresting people every day of the week. What it does mean to me is that it makes it difficult to take a block of time and say that's when I'm going to do this, because if something comes up that requires you go to court, then you've got to go to court. This can wait, the court can't. It's a matter of priorities. Granted, this may be much more important once in court. We're talking here an incest; serious, serious stuff, right? This is very important. The guy that they called on this morning, I mean it was just for tossing two or three chairs around. He was drunk. But that can't wait 'cause he's locked up. This can 'cause nobody's locked up, right? You're balancing it all the time ... and you do spend a lot of time running around putting out fires.

More than half of Newfoundland prosecutors cited similar instances where the need to deal with the comparatively mundane problems of the moment interfered with the expectation that they keep 'on top of' file completion, pressing case related legal research, and administrative work. Moreover, they reported that managing a day to day schedule in relation to prioritizing work was problematic and that keeping abreast of changes in law and legal precedent as documented in legal and other professional sources was extremely difficult. In

sum, prosecutors envisage that senior officials expect them to respond to immediate crises while at the same time meeting deadlines in other essential, complex, and time consuming work (case preparation, file completion, case law review, etc.).

Government practice in resource provision and allocation within the justice system is a further indication of conflicting expectations regarding volume versus quality that pervades so much of prosecutorial work. In the last decade, computer technology has assumed a very prominent role in many occupational areas ranging from balancing tires to space station design. In the legal system, a computer software package called 'Quick-law' is growing in use across Canada. In Newfoundland, this software is available to Crowns only through the Law Library at the Confederation Building. At the Crown attorneys' annual meeting in August of 1990, the desirability of 'Quick-Law' being made available to all prosecutors was generally agreed upon. In emphasizing the critical nature of this form of technical support, one Crown reported that there had been a case in mainland Canada where the judge involved maintained that any lawyer who did not employ 'Quick-law' in the preparation of his/her legal case was negligent. More than half the Crowns present at the annual meeting stated that they would like to have both computers and attendant software available to them in their offices. During scheduled interviews, three prosecutors stated that they would like to have this technology made available for their use but

expressed the opinion that it was unlikely that government would authorize this provision in the near future.

> It would be an allocation of resources that would make the lawyers more efficient and better prepared going to court if they want to make use of the technology. However, it won't put any more lawyers in court and therefore presumably doesn't have as high a priority where money is being spent. Quality is not as important to a bureaucrat as quantity.

Simultaneous occurrence of contradictory same-source role expectations is not a necessary characteristic of intra-sender role conflict. These contradictory demands can be and are sent to the actor in sequence at different points in time. Role senders, particularly those in positions of authority are frequently unable to reach decisions regarding the ways in which they wish a particular assignment to be carried out. Prosecutors experience these contradictory demands as they deal with individuals who press for one course of action when the legal process is initiated and then subsequently alter their positions prior to the commencement of the trial.

During interviews, Crowns reported that it is not unusual in the case of a spousal assault for the victim to approach them in court prior to the trial to request that the charges against her husband be dropped. The prosecutor initially is led to believe that the victim wants the protection of the criminal justice system. Subsequently he/she is faced with a wife pleading on behalf of her attacker. On the one hand a crime has allegedly occurred, charges have been laid, and evidence gathered that is sufficient to warrant prosecution.

On the other hand the same person who signed the original complaint, later asks that legal obligations be ignored and charges withdrawn. It is not always a simple decision. If prosecutors agree to withdraw the charges, they know that the abuse is not likely to stop and may in fact intensify. Alternatively, if they refuse to withdraw charges and the abused wife remains in the company of her abusive husband, subsequent episodes of violence may go unreported as she remembers the uncooperative prosecutor. Victims may tolerate more physical abuse without calling the police.

> Spousal assaults often ah they come down and say, "Gees, everything's fine now and, ah that punch in the face he gave me a year ago, well we've all forgotten about it and everything's fine. I don't want to proceed with the charges. I want to withdraw the charges." I generally have a policy that I don't withdraw them, you know. Often times I can sense that that is going to cause more discord in the family than if I just dropped it. There are circumstances when if you carry the spousal analogy to the conclusion ... <u>not</u> dropping spousal assault charges may in some way foster abuse in the home. The wife feels that if she's met me and the last time she was assaulted I didn't drop the charges. She may just want temporary relief from an explosive situation, you know, in her house and she's not going to call the police because basically they know they're going to carry off John he's going to be charged with assault and then the Crown attorney's not going to drop it. So maybe she's going to put up with a few, with an assault you know, taking a couple of smacks because they know I'm not going to accept a withdrawal no matter what happens. I generally don't withdraw them unless there are very compelling reasons to do so.

> You tend to have a lot of people come in, especially spouses who want to drop the charges against their husbands, which you try not to do.

Prosecutors, then, must deal with intra-sender role conflict on a number of dimensions of which officials and

victims are prominent sources. They believe that they must provide their employer with excellent service in the pursuit of justice. At the same time they are expected to accomplish this end without adequate resources and without the full technical support that would make it possible for them to do their job properly.

The areas of role conflict discussed thus far have dealt exclusively with the Crown in his/her prosecutorial roles. Conflicting demands emanating from different and from same sources have been examined. It is important to remember, however, that just as no one person is 'all of a piece', Crown prosecutors exist in life as more than lawyers for the state. They are spouses, parents, siblings, grown children of their own parents, and members of local community and sports groups. Each social status a person occupies brings with it a particular set of expectations and demands. When those sets of expectations conflict one with the other, the prosecutor experiences inter-role role conflict.

3) Inter-role role conflict The most common arena for inter-role role conflict for Crown attorneys appears to involve the clash between family and work. As one might expect, the family members of prosecutors demand a fair share of quality time from the spouse and/or parent. Especially at those times when the workload is intense and prosecutors must consequently invest a large number of overtime hours to keep abreast of each day's routines and crises, the requirements of

familial roles on the one hand and work roles on the other often conflict with one another.

> It [work demands] probably hurts [my family life]. My wife sometimes says that I am not there part of the time. And I'm not. I don't know, we are all human beings and we just can't shut off, I find I can't shut off anyway. But you try to keep it in the back of your mind as much as possible.

At the time of data collection, less than half of Newfoundland Crowns had children and not quite three quarters were married. Those who were parents reported that their jobs interfered with their ability to meet their own expectations of themselves in the parental role. Such feelings of inadequacy were periodic for most parents in the respondent group. Nonetheless almost a quarter saw deficiencies in their parenting as the norm. During the times when they were very busy with an excessive amount of work or when they were prosecuting a particularly complex trial, more than half of prosecutors found themselves responding to job pressure by being impatient and irritable at home.

> I mean I was very sharp with my children and it wasn't their fault and I'd be hollering at them for no reason and they didn't understand. It would be the same way with my wife and she would tolerate it 'cause she knew what was causing it. They didn't know what was causing it.

Almost half of the prosecutors who were parents made reference to their children's youth passing them by pointing out that there is far too little time to really know and enjoy their children. This problem constituted a very real concern for Crown attorneys with offspring.

> Directly sometimes because of work I can't spend time with my kids. And also indirectly I think, because of the stress that I feel a lot of times. I'm tired and I'm not particularly in a good frame of mind. I'm distracted a lot my kids are always talking and I'm like - and I'm thinking about something at work. I'm not spending the time nor the quality of the time that I'd like to, and feel they deserve.

Conflicting demands are routinely attached to prosecutors' roles as objective litigators on the one hand and as administrators on the other. Crown attorneys are key administrators in the court system. It is they who are charged with the duty of maintaining celerity in criminal justice case processing. They must ensure that cases move rapidly and efficiently through the court in order to minimize delays and to reduce backlogs. They are also expected to ensure not only that justice is done but that it appears to be done. As administrators they might be expected to withdraw charges in a case that is unlikely to result in a conviction. As guardians of justice and of the image of justice they are expected to ensure that each person gets his or her day in court.

> But I'd rather to be honest with you ... say that really there's no likelihood that the court, when there's not a strong likelihood that we'll get a conviction I want to say, look why are we spinning our wheels? Let's ditch it, withdraw it, and be done with it and save the time.

When dealing with victims and witnesses prosecutors increasingly find themselves being expected to act as counsellor, advisor, and/or consoler. These are roles for which Crown prosecutors are not trained. Nonetheless they are real and necessitate a personal involvement and a subjective

advocacy that conflicts with what is required of an objective litigator. Many prosecutors assume this role with reluctance. They are very aware of their own lack of psychological or counselling training.

> I don't think it's our role on paper that we are supposed to give counselling, but if you have someone in your office who's upset it just sort of works that way. So there is a lot of counselling, but not on any sophisticated level. We're not trained to do it.

> The role that we've been assuming right now, which we probably shouldn't be doing, but we've been working with victims a lot. We're almost a victim liaison person, and I think that's a role that we've been assuming because no one else does it. We're the intermediary between the victims and the courts.

Assuming the intermediary roles that encourage identification with the victim makes it more difficult to act as a neutral officer of the court whose primary interest is to ensure that justice is done and appears to be done for the accused as well as for other involved parties.

<u>4) Person-Role Role Conflict</u> There are times when individuals are required by virtue of the position they hold, to perform tasks that are in conflict with their personal value systems, their individual needs, or their own wishes for their future. This kind of moral dilemma or internal conflict is called person-role role conflict.

Prosecutors are confronted with difficult moral and ethical questions on several fronts. There are dilemmas related to political issues including the nature of law and law enforcement practices. There are complicated questions concerning both sensitive and/or controversial cases and

re uc [illegible]

charge(s), emerges not solely from legislation but also from legal responsibility and professional accountability. Prosecutors must make decisions the rationales of which are grounded in judgments not strictly within the purview of the 'letter of the law'. They must, at times, consider what is best for the community. Almost daily, Crowns encounter issues concerning social as well as legal justice. In such instances they are called upon to respond in a manner that will preserve the delicate balance that a free society must maintain between collective security and individual freedom. In the wake of the introduction of the Charter of Rights and Freedoms and in the aftermath of the Marshall and Hughes Inquiries, the pressure on prosecutors to resolve these dilemmas has changed in nature and increased in intensity.

> The way we do our jobs is changing in terms of our relationship to the police and the changes in the law. You know it's all becoming very different and god knows what the Hughes commission is going to say about how we do our job. And it's placing a lot of responsibility on us, some of which has always been there and some of which is new and unfamiliar.

One aspect of prosecutorial responsibility is the requirement that the justice system's response to a wide variety of offenses as potential cases be assessed, and that the adequacy of law enforcement practices be evaluated. In cases of inadequacy or error, prosecutors must decide first whether they will take corrective action and second, if action is taken, whether it will be based primarily upon tradition

and informal norms on one [illegible]

the other. Fifteen percent of prosecutors provided examples of strategies that have been employed to alter the justice system's response to particular infractions of the law, sometimes with and sometimes (initially at least) without collegial support.

> The sentences imposed upon people who abused children were so low it was frightening. They're still low from my perspective, but they were so low it was terrifying and I remember meeting with two other solicitors, two other Crown attorneys, and saying 'OK let's start slowly, let's start really pushing. Let's make sure that we're really prepared for the sentence hearing and let's appeal each case'. It's been a very slow process.

> I was laughed at within the office, I mean not cruelly, for wanting to go to court on the cases of the battered women, because this was seen as nonsense. It was like, gees, he's a real sucker he wants to do that. But at least now it's publicly recognized.

Doing justice at times requires an objectivity and a detachment that are not easily achieved. Cases like, for example, battering, sexual assault, and child abuse, are emotionally charged. Some cases such as those involving abortion and labour unrest are politically volatile. Setting aside personal opinions, feelings and convictions regarding the justice of a law or the fairness of a penalty can be difficult. Prosecutors are aware, sometimes painfully, of the pitfalls that they face in this regard. There is frequently an inherent conflict in trying to juggle legal objectivity, compassion for the accused and the victim, and political commitment.

> and you've got to be very careful to try to keep yoursel objective and at the same time have compassion. You can't become too hardened with those things and know the right thing to do.

Crowns face a particularly difficult dilemma when they are faced with a Crown witness who does not want to testify for fear of retaliation from the accused. At times, there are cases where prosecutors believe that success is imminent with a witness's testimony but impossible without it. In such circumstances, prosecutors are torn between their legal obligations as Crown attorneys and their compassion for a frightened human being. Prosecutors have the authority to compel an individual to testify. It is their responsibility to determine what course of action will best serve the interests of justice.

> OK I got a little old lady who calls me up and says, "I don't want to go to court because I don't want that guy who broke into my house to see who I am". So you go, but you know that if you don't have her down there chances are ... you won't prove your case, so you ... sort of say to her, "OK well now you sleep tonight, don't you worry about it. And I'll call you if I need you". And then you go down and you try to work a deal. You go down there and you say to the defense counsel, "Gee, boy, you know, what ... if he pleads guilty to a lesser charge", even though you know that if she's down there you probably could've, you could prove the whole thing. Sometimes you compromise. [There is] a lot of compromise in this job.

> I'm always reluctant to ask for the arrest of a witness.

> I've got a very important job. I've got to stand up and I've got to say something. If this woman doesn't show up you know, what do I do then? If she's terrified to come to court what am I going to do - send two policemen up to have her arrested because she failed to obey an order of the court which is a subpoena?

Crown attorneys occasionally deal with sensitive and controversial cases where the alleged victim is the only witness. Where the victim's testimony is weak a conviction is unlikely. In such instances the Crown must decide whether or not to proceed with the charge(s). Here again prosecutors face moral and ethical dilemmas. Court process can be quite traumatizing and if they proceed with a case that is unlikely to be successful they risk further harm to the victim. Coincidentally, they also risk bringing the justice system into disrepute since insupportable charges can be construed as harassment.

> You have a single witness that has to tell her story of what this person did to them and me in asking the questions, I often wonder whether or not I am putting them through more harm in going through the trial and if they - because a lot of them say I just want to forget it. But we have got the charge and you believe them. Like I always try to believe everyone and I try to - there are people that you may not believe, but there is other evidence to support their case which would tend to bolster their testimony. You are sort of in between a rock and a hard place as to whether or not to proceed with the charge or not. We generally proceed.

> I find myself feeling that the simplest way to do this would be to get rid of a few charges. The Hughes commission's over, right? [brief laugh] Maybe I should go back to the old style of saying, "Ah nah go 'way 'by', don't be so foolish", right? no need of this one going to court .. you know .. it's too minor. Witnesses aren't real strong. Very little likelihood of a conviction. Let's ditch it, you know - part of the rules of the game to be able to do that, right? But on the other hand like I can't get over this thing that that's not really right for me to do that.

At times there are moral contradictions that flow from the nature of the legislation itself rather than from the enforcement and procedural practices of the justice system.

Crown attorneys, like other persons in society, may or may not agree either with the existence of some laws or with the penalties attached to some violations. Nonetheless, prosecutors are responsible for ensuring that the law is upheld, that transgressors are justly prosecuted and that the convicted are appropriately punished. Quandaries arise when Crowns are called upon to prosecute individuals whose actions they believe to be reasonable under the circumstances. Nearly one quarter of prosecutors cited instances in which they were reluctant to prosecute. Examples of such instances of reluctance include abortion (when it was still in the criminal code), civil disobedience, and the severe penalties attached to poaching.

> I've been wondering what would happen down here if something really controversial came up; like in the sense that would you please prosecute doctor so 'n so for doing an illegal abortion. You know, there does come a time when you have to say to yourself, well I may not like it but christ I'd do it.

> It creates a conflict. ... There is an ongoing issue, which I'm sure you're well aware of, the number of women who were arrested in the not too distant past [after the occupation of the St. John's office of the Secretary of State to protest the federal government's budgetary funding cuts to Women's Centres] and I had publicly supported those people. And had my name in the paper and so did another Crown saying that we publicly supported them. And I couldn't go to the protest. But then a conflict comes up when they're arrested. So I have intentionally set up controls to keep me from that process.

> Occasionally you have to prosecute something that on a very personal level you don't believe in. OK, I have some difficulty in prosecuting people on a moose. Under these moose charges the penalties for moose possession, especially the second time around, are extremely hard. You get a very large fine and a mandatory jail sentence

> the second time you're caught with moose illegally taken. At a very personal level I sort of believe that I'd like to see a law saying that it's mandatory to shoot any moose seen within three hundred yards of the road. ... So in that sense I feel somewhat sympathetic for the poor woodsman who's up there, he's on social assistance and he doesn't have much money, and he's hunting his moose and he's feeding his family. And I have some difficulty with giving him a fine I know he can't pay, so basically locking him up for four months for shooting a moose. Well people I know are having accidents with moose and people I knew were killed by them. I have some difficulty with that. I - I on a personal level - I do it, but I find that it puts me in conflict.

When a case concludes and the result is not what victims, their families, or witnesses might have desired, Crowns are frequently left to provide explanations regarding the outcome. They may be pressed to appeal a decision when they know there is little legal justification. They find themselves in the awkward and disconcerting position of defending a system that has failed to the persons whom it has let down.

> The case disappeared, and the little girl used to write me letters wondering if I could appeal and do it again. I couldn't. There was nothing there. It was a fair trial. He was acquitted.

Chapter Summary

This chapter has provided evidence that Crown prosecutors are subject to high incidence of quantitative and qualitative role overload and to significant levels of all categories of role conflict.

Quantitative role overload is evidenced by the high volume and the very wide (and widening) scope of prosecutorial duties. The severity of backlogs in the province's court system, the increased length of criminal trials in

Newfoundland and Labrador, and the increasing time requirements for court preparation, combined with the shortage of available resources necessitates Crowns' working more than a regular forty-hour week.

Prosecutors are also subject to qualitative role overload. Numbers of cases related to offenses involving family violence, sexual assault, and child sexual abuse have escalated in recent years as has the incidence of commercial crime cases before Newfoundland courts. Prosecuting these cases involves meeting demands and performance expectations that are significantly greater than those entailed in more routine work. Because of their substantive complexity, they require infinitely more time, energy, and attention to detail than do more straightforward run of the mill cases. Prosecutors also have to cope with increased numbers of jury trials which are especially unpredictable, physically and psychologically exhausting, and very public. Contending with a shortage of both time and technological resources, with changes in substantive and procedural law that have resulted from the introduction of the Charter of Rights and Freedoms have made it even more difficult to perform properly the tasks associated with prosecutorial work.

In addition to quantitative and qualitative role overload, Crown prosecutors experience, in varying degrees, all forms of role conflict. They are subject to inter-sender role conflict on at least two dimensions. First, they receive

conflicting demands from many different role senders within the criminal justice system and, second, they operate on the boundary between the justice system and the rest of society. As a consequence, they are subject to competing expectations from various individuals and groups that are situated outside the system. Prosecutors frequently must make difficult judgement calls in response to issues such as disclosure, the respective centrality of duties related to litigation and administration, and personal accountability.

Intra-sender role conflict is experienced at those times when conflicting expectations are sent to prosecutors from the same role sender. For example, administrative officials of the justice ministry require both quality and quantity from Crowns in the face of time restrictions and resource constraints. Such contradictions place prosecutors in the position of what sociologists call intra-sender role conflict. The same type of conflict occurs when victims who have initiated charges sign a complaint at the outset only to renege later asking to have the matter dropped prior to the onset of the trial.

Prosecutors experience inter-role role conflict when they must balance family expectations with the demands of the work-place. Those who have families, particularly if they are parents, report that this is a matter of concern and regret. Crown attorneys also function in dual and competing roles. Evidence indicates an incompatibility among roles on at least two dimensions - 1) litigator versus administrator, and 2)

objective representative of justice versus victim counsellor and advocate.

In the course of executing their duties Crowns are confronted with legal, moral and ethical dilemmas that they must resolve. The action that they take must take account of legal obligations, the needs of society, and the particular circumstances of the individuals involved in controversial cases. Their quandaries often concern the manner in which the criminal justice system responds to certain offenses, and to the actions and expressed needs of victims and witnesses. Also producing concern are prosecutors' perceptions of the needs of society, and/or the nature of specific laws.

Role overload and role conflict are occupational hazards for Crown prosecutors which bring to their work specific, and in the present circumstance, predictable pressures. These 'felt tensions' are referred to by sociologists as role strain. Role strains result from the extremely high incidence of quantitative role overload, a significant problem in itself, and from the added stress brought on by qualitative role overload and by role conflict in its various forms.

Chapter five examines the degree to which role overload and role conflict impact on both individual Crown attorneys and the criminal justice system. Various means by which such pressures might be lessened are also outlined.

Chapter Five

Research Findings on Role Strain

Introduction

Chapter Five examines the way in which role strain manifests itself as a result of role overload and role conflict. The impact of role conflict is itself exacerbated by the experience of qualitative and especially of quantitative role overload. Prosecutorial role strain originates from two analytically separate but in reality highly related sources. First, Crown prosecutors are responsible for managing an excessively high volume of cases in the face of a finite resource base and in the context of a caseload that is increasingly complex and sensitive. Second, exacerbated by the burdensome amount of work, prosecutors are confronted by competing and conflicting work related expectations emanating from different and same sources both inside and outside the criminal justice system. They also face contradiction as they attempt to resolve legal and moral dilemmas.

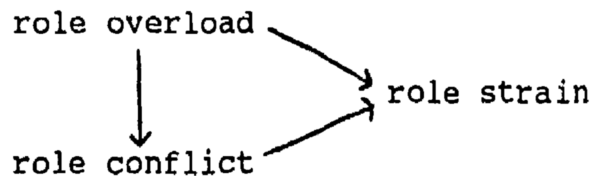
This chapter investigates the ways in which role strain exacts costs both upon individual Crowns and upon the criminal justice system. Crown prosecutors report flagging enthusiasm for their work, physical and mental exhaustion, and self-diagnosed 'burnout'. From their perspective, the system is seen as less able to provide 'justice for all' because it is under-resourced, because prosecutors are over-burdened, because their talents do not always reflect the needs of the

cases to which they are assigned, and because the system continues to engage the services of both Crown agents and police prosecutors.

The ways in which both individual Crown attorneys and the criminal justice system respond to these problems are discussed and suggestions for resolving at least some of the difficulties are presented.

The Experience of Role Strain

Role strain refers to the physical and psychological distress that actors experience when they are unable to satisfy properly the demands of their roles. Role strain is produced directly by overload and conflict. It also appears that overload impacts on strain indirectly by virtue of the fact that quantitative and qualitative overload intensify the impacts of role conflicts.



Because of their unique position in the criminal justice system, Crown attorneys are highly susceptible to role strain. Court processes involve an enormous volume of cases, some of which are very complex and precedent setting. The spectrum of cases has been expanded by the introduction of the Charter of Rights and Freedoms and by the growth in numbers of 'sensitive' cases involving sexual assault, family violence, and civil disobedience. The backdrop for this volume and

complexity is one of finite resources in terms of professional and support personnel, time, finances, equipment, and facilities. Prosecutors must balance conflicting expectations and demands on several dimensions. They negotiate their roles and carry out their duties in the face of expectations emanating from a variety of other actors within the criminal justice system. At the same time, they occupy a boundary position that separates the insiders - criminal justice practitioners, from outsiders - interest groups, the media, the public, and those pressing for greater judicial accountability. Prosecutors must evaluate their own moral positions on a wide variety of issues in light of both the pragmatics of case processing and the political realities associated with the administration of justice. The potential for pressure and subsequently for the experience of physiological and psychological stress is high.

Well over half of the Crown attorneys interviewed reported some symptoms of job related stress. The problems that they describe cover a wide range of difficulties, including helplessness, when dealing with victims of sexual abuse and personal violence, physical ill health related to work pressures, emotional exhaustion particularly after a complicated trial or one dealing with a traumatized victim, a deterioration of family life, and some degree of unwanted distancing from other family members.

> Yesterday I was just a [illegible] at [illegible] e en [illegible] rope. ... it does happen. It was quarter to three in the afternoon and we were doing sentencings and dispositions. It was quarter to three and I thought - I thought - I just can't do this. I said my God I just can't do it. I just want to - I want to stop. I just want to get up and walk out. - And then last week ... this defense counsel, he was up there and he was talking. He was still talking. And one of the [accused], he was in custody and he wanted to go out in the holding area, the holding cell, because it was long I guess and he was tired of listening to the guy, and I felt like saying to the police officer, 'will you take me too?'.
>
> There should be more to life than tolerating. That, you know what I mean, there should be time for family and happiness.
>
> It does. It does. It affects your family life terribly. And it can affect you mentally too, especially over a period of time. ... Your system breaks down. [There is] constant pressure from a job like this.
>
> The stress. I think that's what it is. It's the stress, you know. You get tired and then things become overwhelming and insurmountable, and that's when I start to get very sort of feeling defeated.

In varying degrees, sixty-five percent of Crowns cite a plethora of strain related problems - less energy and enthusiasm, reluctance to go to work and needing to push themselves so that they do go, and self-diagnosed burnout. They also confess an inability to simply take time off and rest because they feel the pressure of so much work. They know that the caseload will not disappear while they are absent. Half of those interviewed take work with them when they do leave the office because they simply cannot mentally leave it behind. Thirty percent say that in the evening they endlessly reanalyse and reassess the day's events. They think about what

happened, what should have napp , " " ˎ -

happened, what they did correctly, and what they did badly.

> I prosecuted a fairly controversial trial that went on for quite some time, and it was in the media every night and it was getting perhaps an undo amount of coverage, but it was juicy. By the time that was over I was really, really tired and stressed out. I was told I should take a couple of days off. I tried to, but I, I came in a half day here and a half day there. That didn't work.
>
> I did a murder trial a few years ago and I had some trouble sleeping because of the nature - you want to make sure that you do a good job. You want to do your best for the victim, and you don't want to railroad the other side. But you want to see that everything is done properly. I can't say too many lawyers can sort of look you straight in the face and say I don't take it home with me. You do.
>
> It's part of your life. You spend most of your time at work and it's impossible - I find it impossible to just shut it off when I go out the door. I think about it. I think about some of the people that I've had to deal with. I think about a particularly difficult file, how am I going to prove that - what do I need. I think about sometimes being down in court and maybe snapping at someone 'cause I've just had twenty people asking me the same thing and unfortunately the twenty-first person comes along and says something and I just snap, and then I - that causes me anxiety.

More than half the Crowns in Newfoundland reported feeling varying levels of fatigue and stress which appeared, not surprisingly, to be related to their caseloads. More senior Crowns confess that it requires more energy output at present than it has done in the past to complete the same amount of work. Twenty percent indicate that they find themselves feeling some degree of aggravation with their employer because the working conditions are not better.

> I don't have the same level of energy for my job that I did five years ago. I think I still have the same level of interest, but I think we're all suffering from being

advantage o [illegible]
think the system's been taking advantage of our sense of professional responsibility certainly for as long as I've been there. We've carried staff shortages for as much as a year at a time with everybody else filling in, and what happens is as long as we're willing to do it, and as long as we carry the work, nothing changes. So when you look back on it, you think - like - you've been used.

> I tend to be saying four o'clock in the afternoon, [deep sigh] what have I got tomorrow. I find it hard to get psyched up for it. I do it, but I find it harder all the time. And I feel disaffected. I feel like - I feel - I guess somewhat of a resentment against the government in the sense that, I think that this could be a lot better. [It could be] run a lot more efficiently if they had more staff. I think everybody feels that way and I know that. So I feel like I'm constantly flip-flopping around and I don't really know what _I_ can do to make it any better.

More than half said that they were at that time or had been recently feeling 'burned out'. Twenty percent indicated that they used alcoholic beverages and cigarettes more than they thought was healthy. "I probably resort to alcohol more than I would hope and I smoke way too much." More strongly indicative of the pressure-cooker nature of their work, three senior Crowns outside the provincial capital have previously had to seek medical help for health problems that were directly related to job stress (Hickey, 1988).

Thirty percent depicted court as an unhappy place. Almost no one is satisfied with most results. They spoke of dealing with people as an essential part of prosecutorial work but a part that often leaves them feeling unappreciated.

> There's _no joy_ in this job. Very few people will tell you 'my, you did a great job today', no matter how hard you worked. If you get, if someone is found guilty say of a sexual assault and you've put all kinds of time and effort in it, sometimes people will say 'gee thanks very

> ....it's really frustrating - exhausting. It's always stressful. You're always there [in court]. There's always someone mad at you....We're all here, we're all under stress - tremendous amounts of stress. ... There are days I didn't want to go to work - just felt so sick - physically sick from the anxiety and the stress of the work. But you push yourself.

Half of Newfoundland prosecutors made reference to pressure that they felt to protect a professional reputation that is at risk every time they enter a courtroom. Crowns note that they are constantly on public view, that they are recorded when they speak in court, and that they may be subject to ridicule if and when the case goes to appeal if their original arguments lack legal finesse

> Every time you open your mouth to speak your reputation is on the line. There are people listening to you and they don't know if you had fifteen minutes to prepare for this argument or fifteen days. There are people listening to you, so I mean, you want to be known as having some sense.

> I drafted an appeal today that is going to be handled by the special prosecutions unit. ... They'll spend a lot more time researching the points of law than I did down in court because it was one of these arguments, a sort of a spur of the moment thing where you stand up and open your mouth and hope that what you say is going to make some sense so that when the transcript goes up to the court of appeal they don't sit down and laugh.

Forty percent of Crowns report that they dread the possibility of making a major mistake and finding themselves at the centre of a debacle such as the Donald Marshall fiasco in Nova Scotia. Prosecutors claim that their fears in this regard are more than justified by the present state of affairs in which excessive caseloads, for senior Crowns especially,

they are neither sufficiently prepared nor sufficiently experienced. Prosecutors express concern that inadequate preparation time coupled with fatigue will someday produce a high profile crisis in Newfoundland courts. For some, the only questions are when such an incident will occur and who will be on hand to assist whoever is unlucky enough to be caught in the maelstrom.

> It's particularly frightening over the past couple of years given the working conditions that I've talked about; being understaffed, not having any support services. Sometimes you go down to court and you're not sure if you've got all your files there, and a case has come up that you've never heard of before. Because of the way the system works it just got lost in the shuffle somewhere. Thankfully they've only been small cases, but one of these days there's going to be a big one. We just really wonder with all these things hovering around us that when the explosion comes who's going to be there to cover us?

There are a couple of bright spots, however. One Crown who recently assumed a new position within the department reported that his/her new job offers increased autonomy and a much more reasonable and interesting workload and that he/she is therefore happier and considerably less stressed.

> I find it less stressful now. Some people might find the magnitude of the cases to be very stressful, the fact that they're important cases. ... It's not more stressful. To me it's a much more, in the long run more relaxed approach. What I mean by relaxed is that you have more time to prepare and you know when you go to court that you've been able to prepare for it and you know what you're doing.

> The job I'm doing right now, I'm happy with what I'm doing and I've got a significant amount of independence

> that I make my own decisions, and when I don't make my own I realise that you've got to talk to other people so - you know I'm happy.

Furthermore, there appear to be two more rural offices where overload is not as severe as elsewhere in the province. Crowns working in these locations report distinctly lower levels of stress than appears to be more generally the case.

> Out here and I found that it is not even busy. I am probably the only Prosecutor in the province that has no overtime.

Systemic Impacts of Prosecutorial role strain

When the central figures in a system suffer role strain to the extent that prosecutors do, it is unlikely that the administration of justice remains unaffected. Aside from the obvious and highly publicized difficulties inherent in backlogs and in case dismissals due to trial delays, there are other less visible problems that, according to Crowns, plague the criminal justice system. These include a diminished faith in the system's ability to meet its goals, a periodic mismatching of cases and prosecutors in terms of the complexity and difficulty of the case and the ability, expertise, and experience of the prosecutor, the increasing use of Crown agents, and the continued use of police prosecutors.

1) Loss of faith Almost half of prosecutors expressed some distress that the word 'justice' in the title 'criminal justice system' is more misnomer than accurate description. Sadness was expressed that justice, in any real sense of the

word, did not occur as often as it might because society, and therefore the criminal justice system, has no real commitment to the notion of justice as a real, or possible, or even fully desirable outcome. Twenty-five percent of prosecutors bemoaned the lack of political will to commit the funds that would be necessary to address some of the social problems that contribute to crime. More than half complained that, with the workload they have, Crown attorneys simply cannot prepare as well as they ought to for the cases they present in court.

> What we're doing now is we're taking people and we're putting them through a very unfair system. We're taking victims, witnesses, and for that matter accused and putting them through a very unfair system which is totally wrapped up with what the lawyers and judges want and to some extent what the police want, and we're losing sight of what this is supposed to be all about. 'Cause presumably we're trying to reach some sort of equilibrium in society. ... I don't think we're trying to prevent the problems. I think that we're allowing the problems to continue, and in some situations we're making them worse. We're aggravating them. And so I guess I ultimately feel that at this stage in our society we don't want to change it. We don't really want to change it. We don't care.

For those prosecutors who feel a strong commitment to the ideals of justice, preparation is mandatory. To achieve the best possible level of preparation while carrying high case loads, they find it necessary to work virtually all the time. While they see themselves as doing the best job that they can, they are wearing down. In their view, the system suffers as a consequence. Over half report high rates of fatigue and burnout. According to Crowns, they work hard to ensure that the system does justice to victims, to accused persons, and to society. For a time, they say, their work pays off. However,

senior Crowns maintain that once people work with such intensity for prolonged periods of time, stress and fatigue reduce the quality of the performance and concomitantly erode morale.

> There was a real camaraderie. ... I mean we were pulling together but we were so darn tired we couldn't see - didn't know what the other person was doing because we were just exhausted, whereas it used to be if someone had a jury trial, you know they had one on you'd go and pop in and see how they were doing and that sort of thing. And that sort of really that enhanced the spirit. But when then when everybody was just so overworked - we sort of got together just to complain.

2) Mismatch Despite the best efforts of senior Crowns, there are times when it is impossible to assign particular cases to the attorney who is best equipped to process them. This problem usually occurs because the desired prosecutor is already overburdened and cannot add a new case. The case is allocated solely on the basis of who is available at the time. Of necessity this means an important, complex, and occasionally precedent setting case is undertaken by an inexperienced prosecutor. According to Crown attorneys, this inescapable practice may result in a deficient prosecution and, in the final analysis, an appeal that should not have been necessary. In this circumstance, justice cannot be served as well as it ought to be.

> I try as much as possible to have an appreciation for what the skills of each prosecutor are, and to match those skills or lack of skills with the case - with the legal complexity the actual complexity, whether that case is going to take somebody who needs a lot of research and this person has good research skills or this case doesn't need research as much it's all based in the facts and you have a very weak victim so therefore you need someone

> who's got strong skills at dragging that victim through and holding him or her up then I try to match it that way. Or this is a case which may not be terribly complex legally and have no emotional issues but is a complex commercial crime case, OK - someone who has that kind of mind. So I try to do it that way but because we have such a shortage that doesn't work, so I - I to be quite honest have assigned cases to people who I know do not have the ability to successfully prosecute that case, and I hope for the best.

3) Crown Agents In 1988, there were twenty-five provincial court judges, nineteen supreme court judges and seven court of appeal judges for a total of fifty-one judges in the province. By contrast, in a system where proceedings cannot begin without a prosecutor present, there were only twenty-three prosecutors (Hickey, 1988). To make up the shortfall in its prosecutorial staff, the Newfoundland Ministry of Justice utilizes the services of both Crown agents and police prosecutors.

In some jurisdictions, Crown agents are known as 'ad hoc prosecutors', lawyers who are not full time prosecutors but who prosecute for the Crown usually on a case by case contractual basis. Crown agents cost more than staff prosecutors and the quality of their prosecutions is more variable and less amenable to Ministry of Justice control (Mulligan, 1989; Hickey, 1988). Only a small number of prosecutors, fifteen percent, spoke of Crown agents and their reviews were mixed. On the one hand, they were pleased to receive the assistance. On the other hand, they expressed concern about the considerable costs involved in hiring agents, especially if they had to be imported from outside

areas. Furthermore, Crowns pointed out that hiring agents only allowed cases to proceed in court. Time consumed in file preparation and file completion remained the responsibility of the Crown attorney.

> Agents were used extensively ... On the one hand you may think that helped a lot. It did, in the sense that I didn't have to be in two places at once. ... After a while what happened was I ended up retaining an agent more or less full time to look after [one part of the jurisdiction] ... which then left me the comparative luxury of only having to look after [the remainder]. That became much better. ... However, we had to do all the files. It still didn't leave you time to prepare adequately for some of the more major things.

From the prosecutors' perspective, it remained the most desirable situation to have staff prosecutors available in sufficient numbers to cover all court rooms at all times. Shuffling files between various prosecutors and agents as a case progresses through the system is a problem in at least one part of the province.

> My feeling is that [if there was adequate staffing] ... you wouldn't need to be hiring any agents. There would be continuity on the files rather than having four different prosecutors dealing with the file from the time the charge is laid until things are finished with which makes the police and the victims and everybody a lot happier as well as defense counsel.

4) Police Prosecutors Several Crown attorneys noted that police officers prosecute criminal cases in court in Newfoundland more than in any other part of Canada. Reasons given are the dearth of staff prosecutors and the high cost involved in retaining lawyers to act as agents for the Crown. Police prosecutors are utilized to prosecute summary conviction cases outside the city of St. John's.

> A lot of other provinces don't seem to have the problem of recruiting that we do. They all have problems, but I can't think of any place that has problems to the same extent that we have here. We still have police officers prosecuting criminal cases in this province which is pretty outrageous in this day and age.

The practice has been approved, in summary conviction matters only, since the Supreme Court of Canada ruled in the Edmunds case in 1979.

> There's a case called Edmunds which back in 1979 ... that was the original Supreme Court of Canada decision. It decided that for the first time that in fact lawyers were required to prosecute indictable matters. Prior to that they were not here in Newfoundland and in fact police constables were doing indictables here as well and our Court of Appeal upheld that, and it was only the supreme Court of Appeal that overturned it. The Crown took it. It went all the way to the Supreme Court of Canada and the Crown vigorously defending it and resisting the idea of having lawyers do the indictables or being required to do the indictable offenses. Police prosecutors at that time were rampant, but subsequently throughout the 70's, throughout the 80's the administration for the Crown has always fought a rear-guard action to maintain its right to send in police prosecutors in summary conviction matters, and I presume now even tomorrow still would. I personally don't agree with it - never have, and I know a number of staff lawyers do not.

Half of Crown prosecutors point to a number of problems that arise from this practice. They argue that inherent in police training is an orientation both to apprehend criminals and to ensure that they are punished to the fullest extent of the law. The primary goal of police is to obtain a conviction. This objective contrasts with the proper prosecutorial goal of ensuring just and fair results. Unless they make their own arrangements on their own time, police officers receive training neither in rules of evidence nor in proper courtroom procedures.

> There are a number of police prosecutors who don't know very much at all about evidence admissibility procedure practice, and some of them don't even know much substantive law. And in that sense it's not desirable that they be prosecuting.

Crowns report that, with few exceptions, officers do not enjoy the prosecutorial role for they risk facing defense lawyers who may well humiliate them in court because of their lack of legal training.

> Well it's a definite problem for two reasons. Number one they hate to do it and they tell me that, and they'd tell you that too if they felt that it wasn't going back to their commanding officer. They don't like to do it. It's not what they were trained to do and they don't like to be embarrassed by defense counsel. They're not legally trained. They're not prepared for legal argument, and they're right. They're a hundred percent right.

> If you get into a trial situation they are not legally trained. They are not legally familiar with the rules. A lot of lawyers aren't; you have got to be at it for a fair bit and for a fair length of time before you feel fairly comfortable with it. I guess that is the biggest thing, the fact that they don't have any legal training. But I have seen some that are fairly good at it. If you have been around for a few years and you have been in court a lot, if you have an interest in it - . There probably are problems if you get a lawyer on the other side, in fact most fellows I know who have done any police prosecuting are pretty nervous when they get in there with a lawyer on the other side which is understandable.

> There should be no police prosecuting any summary conviction criminal code charges at all. ... In my experience most police don't like doing it. Some of them are good at it but not very many of them. It's more by trial and error if they do become good at it. They never do - none of them ever acquire sufficient expertise in the law itself to do the job properly, and it just doesn't look right. In 1990 it doesn't look right. It may have looked fine in 1970. It's not fine in 1990.

Prosecutors believe that the appearance of justice is compromised when police officers prosecute cases because there

is no separation of investigation and prosecution. Even if police officers attempt to be fair, the perception remains that they are more interested in conviction than in seeking just resolutions.

> I really think there should be separation of investigation and the prosecution.
>
> I really believe that it would be better to have the police doing their role and the Crown doing their role because I think they are very separate roles. I think you have to work together, you have to coordinate, but I don't believe the Crown's role is to do the investigation, I think it is most improper. Equally I don't believe there is an impression of impartiality when you do the investigation and do the prosecution. Most police officers will acknowledge that. I think, not only justice must be done, but justice must be seen to be done. And I often wondered if when police officers prosecute you are losing that impartiality.
>
> We had an incident ... a month ago ... the investigating officer was the wife of the prosecuting officer and she gave evidence at the trial. What the hell's he doing? If he gets her on the stand, just take it theoretically, if her evidence starts to slip up what's he say? He's got his wife on the stand. He's prosecuting. What's he do declare her adverse and she goes hostile on him and all of a sudden we get a husband and wife fighting with each other in court.
>
> I think every lawyer in the Province would tell you it is a huge problem, they are not trained for it because they are police officers. They frequently do not have the necessary attitude of fairness first. They are often very authoritative. In terms of the ethics of it, I know the Supreme Court of Canada says it is alright, but they [the police] are involved in the investigative end of it, even if they don't have a stake in the outcome, they can be perceived as having a stake in it and that doesn't help public perception on the way the system works.
>
> I think that it's desirable that somebody other than the police actually do the prosecutions. I think there's a lot to be said for a prosecutor who's independent of the police and who's able to look at a file and say well look boys I don't care what you say, this is not going to go to court. ... I have some difficulty with their independence in the sense that as a paramilitary

> organization they are subject to censure from their superiors in a way that a Crown attorney is not, and I have some concerns that occasionally a police prosecutor who says well this shouldn't be done in court will go to court because he's told by a superior police officer that it's going to court, whereas I think a Crown attorney has a little more independence than that. So I have some concerns about it. I don't think it's desirable.

One other problem concerning police prosecutors arose in a more rural area of the province where the workload is high and where police routinely prosecute summary conviction matters. There are certain offenses in the Canadian Criminal Code known as hybrid offenses. These are offenses that can be proceeded on as either summary or indictable charges. The choice of a summary or an indictable charge has some rather serious implications for the accused since indictable offenses are seen as more serious and therefore are sanctioned more severely. The individual responsible for electing the path to be taken in this regard is the Crown prosecutor. However, there are times, places, and cases where police elect to take the case to trial as a summary matter without a Crown attorney having had an opportunity to review the file. The concern is that in some of these cases the prosecutor might have preferred to make the charge indictable. Moreover, some summary offenses do have charter implications. When the Crown is overworked doing those cases that are clearly indictable, it becomes difficult to review all files or even all hybrid files. The result, prosecutors point out, is that some cases are inappropriately handled.

> Especially the higher ups in the RCMP are in some ways the old guard where they investigated and prosecuted, and they are loath to give up that prosecution authority. And as you know in Newfoundland they don't have enough Crown attorneys. They still allow police officers to prosecute summary conviction offenses. Well you are probably familiar with the hybrid offenses we have. The question is what is the Crown's role in that area - whose jurisdiction is that. ... In the summary areas the RCMP are loath to give up, even if there is a Charter argument involved or it is a sexual assault which I don't feel they have the expertise to handle.

It would appear that because of the financial restraint under which the Ministry of Justice must operate in Newfoundland and Labrador and because of the difficulties of recruiting qualified lawyers to assume full time prosecutorial positions, police will be prosecuting in this province for the foreseeable future.

> At one point actually, after 'X' originally made a decision ... that the criminal code required that all matters be prosecuted by a lawyer for the Crown. In fact for a period at that time there were Crowns doing everything on the Island and Labrador. There were arrangements made, but it was expensive. At the time I can remember telling ... the then director of public prosecutions that we should not appeal the thing. ... A number of lawyers did, they said no this is the way, this is the stick you can use to beat the bureaucrats over the head to get enough money to hire enough lawyers. He appealed it and won the appeal and therefore police can still prosecute. And the department has - in fact it's been challenged a number of times and the department has always vigorously fought any court decision that would require lawyers to do all summary conviction matters and indictables. The administration has always done that because it would cost money to do otherwise.
>
> From a strictly theoretical legal ethical point of view I think it's very wrong. From a strictly practical economical point of view I don't think we have any choice. Every room in a hospital should be a private room - we can't have it. Everybody on welfare should be receiving twenty thousand dollars a year minimum - they can't have it. Everybody who's charged with an offense <u>should</u> be able to have a legally trained prosecutor,

somebody who's a step back from the pol ce aspec , o. . criminal justice system. The reality is we can't have it, and I don't expect that we ever will have it. I don't think we can afford it.

While this practice is a matter of concern, at least one prosecutor pointed out that it must be acknowledged that some police officers do take the time to learn procedural law in order that they can perform properly in court when they are called upon to prosecute.

> I will say that there are a number of police prosecutors out there who are very good at what they do who do take the time and effort to study up on it on their own time.

Adaptive responses to strain

In response to their experience of strain, Crown attorneys adopt one or more of several different coping strategies. Most engage in a tactic that involves selective conformity. Selective conformity entails either trying to satisfy one set of expectations entirely or attempting to meet at least some of the expectations generated by each constituency of actors involved within and outside of the system. While opting for the latter strategy, most of the prosecutors interviewed note that satisfactorily meeting even some of the multitude of expectations placed upon them requires constant effort.

> You do one of two things. None of your work gets done nearly as well, or you end up spending most of your time working. And for most of us I think it means we spend most of our time working, and I think the nature of anybody is you can only cut that pace for so long and you start to get tired. You don't have the same level of energy to keep going.

performance expectations. Avoidance can be physical, staying away from work, or mental, avoiding certain disconcerting expectations and tasks. Physical avoidance is expressed in absenteeism and in turnover. The difficulties associated with retaining prosecutors in the system and of replacing those who leave are well known. Those who depart temporarily on leaves or permanently for other positions are influenced in their decisions by the role strains experienced at work.

> I'm leaving. ... One of the reasons I'm leaving is because of the ongoing nature of what's happening, the frustration of knowing that it's not going to get any better, and the need just to get away from it all. It's just - it's crazy.

Continuing departures and the inability of the Ministry of Justice to fill vacancies on the professional roster in the Crown attorneys' office, particularly at senior levels, provides concrete evidence of retreat from these positions.

The final adaptive strategy involves a process of redefinition. Redefinition occurs where members of a work group seek, with some degree of vigour, to negotiate new and presumably more favourable working conditions. Redefining their work is an effort being undertaken by prosecutors in many of the Canadian provinces. Such initiatives are by no means confined to Newfoundland. In such provinces as Ontario, Saskatchewan, Alberta, and British Columbia, Crown attorneys have pressed for constructive changes in the areas of staffing, resource allocation, and victim support. As in the

because they fly in the face of the informal professional norms that generally govern the practice of law.

A small minority of Crown attorneys have redefined their work on a personal level. These lawyers state that they refuse to sacrifice their physical health and emotional well being by investing excessive hours in their work especially where that work is of the routine variety.

> You find yourself saying, well worry about it later, then just go in and do it. I am not going to kill myself.... I am not going to work till 12:00 at night. There's the odd case you get into where you've got to put your teeth in it if you feel it is worth it. A lot of the run of the mill stuff you just do it and - I am going to get paid. And all my friends are out socializing right now, what am I doing in here? I am not going to get paid any more money for it, because I don't. They used to say well you are a professional, you do the job that is there and if you have to work a bit over, fine. By the same token, if you don't, you go play golf.

<u>Remedying the problems</u>

Provincial Ministries of Justice across Canada are by no means unaware of the onerous working conditions encountered by Crown attorneys. Nor are they oblivious to the fact that recent developments in the law and in the administration of justice nationwide have aggravated an already difficult situation. The former Minister of Justice for British Columbia, for example, summed up his observations in a statement delivered to the provincial legislature in April of 1989.

> We expect them [Crowns] now to be victim's counsellors, witness preparers. We expect them to spend time

Newfoun an [illegible]

their respective Ministries of Justice about the deleterious consequences of overload, conflict, and strain. They have cautioned their governments about the occurrence of potentially volatile situations similar to those brought to public attention in Ontario by the Nelles inquiry, in Nova Scotia by the Marshall investigation, and in Newfoundland, in the media at least, by the Hughes commission.

Respondents indicate that they have notified Ministers of Justice both present and past about their concerns regarding overwork and the potential for making serious errors. They have disavowed responsibility if a mistake is made because a Crown attorney lacked adequate time to read the file and prepare for court. This notification has been given both in meetings and in writing but to date no significant changes have been made that would indicate improvement.

> We've sat down with the former minister with the current minister and said, well look, we're sorry, but we're putting you on notice that things are going to potentially go very wrong in the system. And we want you to know that we can't, we can't be responsible for it when it hits the fan. You have to be able to say that you were warned that it's going to blow, and that we couldn't maintain the system at the level that you're asking us to maintain it. We go through all the political platitudes and nothing changes. Basically we've done that a number of times. It doesn't change, it stays the same - gets worse.

In response to the enormous strains of the work and to the perception of government's reluctance or inability to resolve at least some of the problems, the possibility of job action was raised in at least one meeting and in a handful of

> individually with every witness and victim. And we expect them to donate a considerable amount to preparing people to go to court, not just as witnesses but also emotionally - and that takes a lot of time. In making those demands on Crown counsel, we've got to give them the kind of resources that they need (Mulligan, 1989:5).

Improving the material lot and the morale of prosecutors, in all probability, will improve the delivery of justice. Such initiatives are important to maintaining among Crown attorneys a commitment to the quality of justice. While virtually all recommendations are easily articulated, most involve expenditure. In an era characterized by economic recession, by ballooning government deficits, and by a disgruntled citizenry already taxed to the brink, politicians faced with a plethora of demands from other vital constituencies in such public domains as health care, social welfare, and education, are reluctant to support costly initiatives. Two facts remain, nonetheless. First, from the perspectives of prosecutors as a work group, the trials associated with doing justice properly on a day to day basis are immense. Their needs require attention if justice is to be done and appear to be done. Their efforts and the importance of their roles require a degree of recognition considered lacking by many Crowns on the firing line.

> I don't think that we feel that the department feels that what we do is important. I think they're happy simply to have a warm body in place, and as long as there's no major catastrophe then that's fine. And if nobody brings any problems to their attention they seem to be satisfied. That's by far the most frustrating thing, is that I don't think we're seen as - I don't think our role is seen as important at all, and I think it's very important to a large number of people. We don't seem to

> have gotten that across very well that what we do is important, and hard, and difficult, and requires certain skills to complete successfully.
>
> I think primarily and in a very general way we just have to have an idea or some sort of sense that the quality of our work is important. And that we should be doing things to ensure that the quality is high and that we're doing, as a group of prosecutors, that we're doing a good job. And that's I guess primarily what I mean...I think that's what we need.

Second, the criminal justice system wields enormous power over those who appear before it. Furthermore, its adjudications affect not only the fates of accused persons, but the lives of victims and their families, the moral of the police, and the faith and trust of a public extremely concerned about the problem posed by crime in Canadian society. The costs associated with error or misjudgment are by no means trivial. Prosecutors occupy the pivotal position in the criminal justice network. For the system to function as it is intended to function, it is especially critical that Crown attorneys be provided with the resources and supports that will enable them to perform their roles properly.

For these goals to be achieved, it is obvious that existing but as yet vacant positions need to be filled as soon as possible. In Ontario, faced with similar problems in the courts, the provincial government increased both the number of prosecutorial positions and the remuneration attached to them. More positions would permit the distribution of workload in such a way as to ensure that adequate preparation time was available especially to Crowns assigned to qualitatively

complex, challenging, and potentially precedent setting cases and appeals. More positions might well diminish the monetary costs associated with retaining the services of private counsel (Crown agents) while at the same time increasing the Crown Attorney's Office's control of such cases. Finally, retaining more attorneys as full-time prosecutors might reduce the use of police prosecutors or at least increase their levels of supervision.

The ever present spectre of prosecutorial stress or burnout requires remediation. Sabbatical programs are one answer while increased time off is another. In Saskatchewan, for example, it is recommended that Crowns receive extra rest time in the form of three consecutive days away from work per quarter for a total of twelve days per year. In addition to increased time away from the firing line, stress management programs might be implemented to provide concrete suggestions for dealing with pressing problems arising from work of this nature.

Several of the prosecutors interviewed emphasized the utility of a policy handbook by means of which certain ambiguities inherent in current role enactments could be reduced if not eliminated.

> So what they need to do to save me and them the time and trouble - and everybody else - is to set out these things in some kind of articulable fashion ... such that, OK I know I can do this 'cause it says right here I can do this all on my own and I'm not going to get flack for doing it so I'm going to do it. OK? If you know what the rules are then you can play the game. If you don't know what the rules are then it gets kind of confusing.

> Do we have any objectives in terms of our role overall, and our role in relation to victims of offenses, our role in relation to witnesses and our role in relation to the police. We don't seem to have much direction in that way. Now that has improved in the last year or so to a certain extent, but not a great deal. We're still uncertain as to what our role with the police is - should we be giving the police advice at an early stage or should it be hands off until the police complete their investigation? Those are some of the areas in which we need direction...

Chapter Summary

This chapter has examined both the nature and extent of role strain as it is experienced by Crown prosecutors. The chapter has also outlined the manner in which the strain felt by prosecutors affects the operation of the criminal justice system. On a personal level, Crown attorneys, as a consequence of role overload and role conflict, suffer from exhaustion, stress, diminished morale, and in some cases, burnout. Part of their strain translates into a grave concern about the potential consequences stemming from their onerous workloads. Specifically, they fear a major crisis for which one or more of them may be held accountable.

Because their work is so central to criminal justice operations, the burden of strain on prosecutors has impacts upon the system itself. The use of Crown agents is very expensive. The use of police prosecutors detracts from the system's effectiveness in some cases. Assembly line justice and indications of ineffectiveness create image problems in the public eye that tarnish the appearance of justice. The high levels of strain endemic to the prosecutor position produces inordinately high rates of turnover and makes

positions, particularly senior ones, difficult to fill when vacancies or expansion occurs.

Crowns adapt to strain in three central ways. They conform selectively but still find their efforts spread too thinly. Some engage in avoidance, the ultimate example of which is leaving the post altogether. Across the country, Crowns have been pressing to have their positions redefined in a response to existing high levels of strain that have been exacerbated by recent changes in statutory and case law and in criminal justice procedure.

Remedies alleviating role strain for prosecutors and addressing the systemic problems that role strain precipitates are not without expense. Nonetheless, the costs of permitting these conditions to continue are considerable both for the occupation itself and for the administration of justice. Suggestions for amelioration of strain stemming from overload and conflict include increasing the numbers of positions, raising salaries, expanding personnel and technological support systems, increasing time off, and clearly demarcating policy in areas of ambiguity.

Contributions of the thesis research

The prosecuting attorney is the most powerful and pivotal occupation in the criminal justice system and yet it is the least investigated. There are only a handful of sociological studies of this occupation in the United States and only one in Canada. The previous Canadian study, while heavily cited in

the criminological literature on the administration of criminal justice in this country, is now dated. Data for this investigation were collected in the 1960's. Furthermore its problem orientation stemmed largely from legal as opposed to social and occupational issues. Therefore, the research findings reported herein add important, detailed, and contemporary information to the rather bare store of knowledge on this critical occupational group while at the same time offering valuable insight into the process and problems of doing justice on a daily basis.

The present investigation addresses important conceptual issues raised in the literature on professions that provide services in bureaucratic settings. Central among these issues are 1) the nature and extent of the experience of role overload, conflict, and strain and 2) the potential impacts of these phenomena both upon the professional workers themselves and upon the quality of the essential services that they are retained to provide. After all, prosecutors are integral to the functioning of an organization (the criminal justice system) that is second to none in its potential impacts both upon individual citizens and upon society at large. Investigations of problems impeding the performance of their prosecutorial work roles, therefore, are of the utmost importance. Findings suggest that prosecutors are highly strained as a consequence of overload and conflict. The levels of role conflict are significant and become more difficult to

handle because the degree of role overload, especially quantitative role overload, is by all accounts extreme.

The research documents the nature and extent of role overload, conflict, and strain as they are encountered and experienced by prosecutors. It offers some constructive suggestions for ameliorating these conditions thereby improving the working conditions of Crown attorneys and ensuring that the delivery of justice and the appearance of justice meets public expectations.

The interview data collected for this project are very high quality. First, they are detailed. Interviews ran as long as 2.5 hours. Second, interviews were taped and transcribed to ensure that quotations were completely accurate. Third, <u>all</u> Crown attorneys whose services were retained by the province of Newfoundland and Labrador agreed to participate in the study.

Very little research has been conducted on any facet of the justice framework in the province of Newfoundland and Labrador. The present study has provided insight into some of the problems and prospects inherent in operating the criminal court system in a province of limited means with a geographically dispersed rural population.

Finally, this study has laid the foundation for future work aimed at better understanding the vital work of Crown prosecutors in the administration of justice both by raising substantive questions of considerable interest and importance

and by demonstrating that research on this particular group is feasible, richly rewarding, and policy relevant.

BIBLIOGRAPHY

Aldrich, Howard and Dianne Herker. 1977. "Boundary-spanning Roles and Organization Structure." Academy of Management Review 2:217-230.

Archibald, Bruce, P. 1989. Prosecuting Officers and the Administration of Justice in Nova Scotia: A Study Paper. Prepared for The Royal Commission on the Donald Marshall, Jr., Prosecution. Nova Scotia: Lieutenant Governor in Council by the Royal Commission on the Donald Marshall, Jr., Prosecution.

Bacharach, S. B., P. Bamburger and S. C. Conley. 1990. "Work Processes, Role Conflict, and Role Overload - The Case of Nurses and Engineers in the Public Sector." Work and Occupations 17:199-228.

Bedeian, A. G. and A. A. Armenakis. 1981. "A Path-analytic Study of the Consequences of Role Conflict and Ambiguity." Academy of Management Journal 24:417-424.

Benson, Michael L., William J. Maakestad, Francis T. Cullen, and Gilbert Geis. 1988. "District Attorneys and Corporate Crime: Surveying the Prosecutorial Gatekeepers." Criminology 26:505-518.

Blumer, Herbert. 1969. Symbolic Interactionism: Perspective and Method. Englewood Cliffs, N. J.: Prentice Hall.

Brannigan, Augustine. 1984. Crimes, Courts and Corrections: An Introduction to Crime and Social Order in Canada. Toronto: Holt, Rinehart and Winston of Canada, Ltd.

Breaugh, J. A. 1980. "A Comparative Investigation of Three Measures of Role Ambiguity." Journal of Applied Psychology 65:584-589.

Carlin, Jerome. 1966. Lawyer's Ethics. New York: Russell Sage Foundation.

Carlin, Jerome. 1962. Lawyers on Their Own. New Brunswick, N.J.: Rutgers University Press.

Carter, Lief W. 1974. The Limits of Order. Lexington, Mass.: Lexington Press.

Champion, Dean J. 1979. "Private Counsels and Public Defenders: A Look at Weak Cases, Prior Records, and Leniency in Plea Bargaining." The Journal of Criminal Justice 17:253-263.

Child John, and Janet Fulk. 1982. "Maintenance of Occupational Control." Work and Occupations 9:155-192.

Churchill, G. A., N. M. Ford, and O. C. Walker. "Organizational Climate and Job Satisfaction in the Sales Force." Journal of Marketing Research 13:323-332.

Cohen, Stanley A., and Anthony N. Doob. 1989. "Public Attitudes to Plea Bargaining." The Criminal Law Quarterly 32:85-109.

Cox, Steven M. and John E. Wade. 1989. The Criminal Justice Network: An Introduction. Dubuque, Iowa: Wm. C. Brown Publishers.

Dershewitz, Alan. 1982. The Best Defence. New York: Random House.

Donnell, John D. 1970. The Corporate Counsel: A Role Study. Bloomington, Indiana: Bureau of Business Research of the Graduate School of Business, Indiana University.

Eagleton, Thomas F. 1979. "Foreword." William F. McDonald, ed. The Prosecutor. Beverley Hills: Sage Publications.

Engel, Gloria. 1969. "The Effect of Bureaucracy on the Professional Authority of Physicians." Journal of Health and Social Behaviour. 10:30-41.

Ericson, Richard V. and Patricia M. Baranak. 1982. The Ordering of Justice: A Study of Accused Persons as Dependants in the Criminal Process. Toronto: University of Toronto Press.

Finkle, Peter and Duncan Cameron. 1989. "Equal Protection in Enforcement: Towards More Structured Discretion." Dalhousie Law Journal 12:34-58.

Flynn, Colin J. 1975. "Policemen's Definitions of the Situation: an evaluation of a diploma program in law enforcement and community relations." Unpublished M.A. Thesis. St. John's, Newfoundland: Memorial University of Newfoundland.

Freidson, Eliot, ed. 1973. The Professions and Their Prospects, Beverly Hills: Sage Publications.

Freidson, Eliot. 1970. The Profession of Medicine. New York: Dodd, Mead.

Friedland, Martin L. 1989. "Controlling The Administrators of Criminal Justice." The Criminal Law Quarterly 31:280-317.

Friedman, Leon. 1982. "Discretion and Public Prosecution." Burton Adkins and Mark Pogrebin (eds.) The Invisible Justice System: Discretion and the Law. (2nd ed.) Cincinnati, Ohio: Anderson.

Geison, Gerald L., ed. 1982. Professions and Professional Ideology in America. Chapel Hill: The University of North Carolina Press.

Gilsinan, James F. 1982. Doing Justice: How the System Works - As Seen by the Participants. Englewood Cliffs, New Jersey: Prentice-Hall, Inc.

Glaser, Barney and Anselm Strauss. 1967. The Discovery of Grounded Theory. Chicago: Adline.

Gold, Raymond L. 1969. "Roles in Sociological Field Observation." George J. McCall and J. L. Simmons (eds.) Issues in Participant Observation Reading. MA: Addison Wesley.

Griffiths Curt T. and Simon N. Verdun-Jones. 1989. Canadian Criminal Justice. Toronto: Butterworths.

Grosman, Brian A. 1969. The Prosecutor: An enquiry into the exercise of discretion. Toronto: University of Toronto Press.

Gross, Neal, Ward Mason and Alexander McEachern. 1958. Explorations in Role Analysis: Studies of the School Superintendency Role. New York: Wiley.

Gupta, N. and T. A. Beehr. 1979. "Job Stress and Employee Behaviour." Organizational Behaviour and Human Performance 23:373-387.

Hall, Richard. 1968. "Professionalization and Bureaucratization." American Sociological Review. 33:92-104.

Halmos, Paul, ed. 1973. Professionalization and Social Change: The Sociological Review Monograph. Staffordshire, England: The University of Keele.

Hartnagel, T. and D. Wynne. 1975. "Plea Negotiation in Canada." Canadian Journal of Criminology and Corrections 17:45-56.

Haug, Marie. 1975. "The Deprofessionalization of Everyone?" Sociological Focus 8:197-213.

Heumann, [illegible]ton. 197[illegible]. [illegible] Prosecutors, Judges, and Defense Attorneys. Chicago: The University of Chicago Press.

Heinz, John P. and Edward O. Laumann. 1982. Chicago Lawyers: The Social Structure of the Bar. New York: Russell Sage Foundation, and Chicago: American Bar Foundation.

Hickey, David. 1988. "Department of Justice Study of the Workload in the Criminal Prosecutions Division." Unpublished. Prepared for the Department of Justice, Government of Newfoundland and Labrador.

Hosticka, Carl J. 1979. "We Don't Care What Happened, We Only Care About What is Going to Happen: Lawyer-Client Negotiations of Reality." Social Problems 26:599-610.

Hughes, Everett Cherrington. 1958. Men and Their Work. Now York: Free Press.

Inciardi, James A. 1987. Criminal Justice, 2nd. ed. New York: Harcourt Brace Jovanovich, Publishers.

Jackson, J. A. (ed.) 1970. Professions and Professionalization. London: Cambridge University Press.

Jacoby, Joan E. 1979. The Charging Policies of Prosecutors. William F. McDonald, ed. The Prosecutor. Beverly Hills: Sage Publications.

Jacoby, Joan E. 1980. The American Prosecutor: A Search for Identity. Lexington, Mass.: D. C. Heath & Co.

Johnson, Terence. 1972. The Professions and Power. London: Macmillan.

Kahn, Robert L. et al. 1964. Organizational Stress: Studies in Role Conflict and Ambiguity. New York: Wiley.

Katz, Daniel and Robert L. Kahn. 1978. The Social Psychology of Organizations, 2nd ed. New York: John Wiley and Sons.

Kemery, E. R., K. W. Mossholder, and A. G. Bedeian. 1987. "Role Stress, Physical Symptomatology, and Turnover Intentions: A causal analysis of three alternative specifications." Journal of Occupational Behaviour 8:11-23.

Kemery, E. R., A. G. Bedeian, K. W. Mossholder and J. Touliatos. 1985. "Outcomes of Role Stress: A multisample constructive replication." Academy of Management Journal 28:363-375.

Klen e- ame , .. .,
Tension, and Job Satisfaction Influences on Employees' Propensity to Leave: A multi-sample replication and extension." Human Relations 8:791-807.

Koenig, Daniel J. 1975. R.C.M.P. Views of Themselves, Their Jobs, and the Public. Victoria: Ministry of the Attorney General, B.C.

Kratcoski, Peter and Donald Walker. 1984. Criminal Justice in America: Process and Issues. 2nd. ed., New York: Random House.

Larson, Magali Sarfatti. 1977. The Rise of Professionalism: A Sociological Analysis, Berkeley, California: University of California Press.

MacKenzie, Kenneth. 1978. Organizational Structures. AHM Publishing.

Marcus, Alan M. 1987. "Environmental Assessment Study: Criminal Law Division." Unpublished. Commissioned by the Ontario Ministry of the Attorney General. Toronto: A.R.A. Consultants.

McGahan, Peter. 1984. Police Images of a City. New York: Peter Lang Publishing Inc.

McDonald, William F. 1979. "Preface." William F. McDonald, ed. The Prosecutor. Beverly Hills: Sage Publications.

McDonald, William F., Henry H. Rossman and James H. Cramer. 1979. "The Prosecutor's Plea Bargaining Decisions." William F. McDonald, ed. The Prosecutor. Beverly Hills: Sage Publications.

McKinley, John B. 1973. "On The Professional Regulation of Change." Paul Halmos, ed. Professionalization and Social Change: The Sociological Review Monograph. Staffordshire, England: The University of Keele.

Mead, George Herbert. 1934. Mind, Self and Society. Chicago: University of Chicago Press.

Menzies, Ken. 1986. "The Rapid Spread of CSO's in Ontario." The Canadian Journal of Criminology 28.

Merton R. 1967. On Theoretical Sociology. New York: Free Press.

Miles, R. H. 1976. "Role Requirements as Sources of Stress." Journal of Applied Psychology 57:248-256.

Brief. 1990. Submitte o [illegible] Commissioner, Alberta.

Neubauer, David W. 1974. Criminal Justice in Middle America. Morristown, N.J.: General Learning Press.

Neubauer, David W. 1988. America's Courts and the Criminal Justice System, third ed. Pacific Grove, California: Brooks/Cole Publishing Company.

Newman, Donald J. 1986. Introduction to Criminal Justice 3rd. ed. New York: Random House.

Parkington, John T. and BenjaminSchneider. 1979. "Some Correlates of Experienced Job Stress: A Boundary Role Study." Academy of Management Journal. 22:270-281.

Parsons, T. 1951. The Social System. New York: Free Press.

Pfeffer, Jeffrey. 1978. Organizational Design. AHM Publishing.

Ritzer, George and David Walczak. 1986. Working: Conflict and Change 3rd. ed. Englewood Cliffs, New Jersey: Prentice-Hall.

Robin, Gerald D. and Richard H. Anson. 1990. Introduction to the Criminal Justice System, 4th. ed. New York: Harper and Row,Publishers.

Rothman, Robert A. 1984. "Deprofessionalization: The Case of Law in America." Work and Occupations: 11:183-206.

Rosenthal, Douglas. 1974. Lawyer and Client: Who's in Charge? New York: Russell Sage.

Rothman, Robert A. 1984. "Deprofessionalization: The Case of Law in America." Work and Occupations 11:183-206.

Ruby, C. C. 1987. Sentencing. 3rd. ed. Toronto: Butterworths.

Samaha, Joel. 1988. Criminal Justice. St. Paul, Minnesota: West Publishing Company.

Schaubroeck, J., J. L. Cotton and K. R. Jennings. 1989. "Antecedents and Consequences of Role Stress: A covariance structure analysis." Journal of Organizational Behaviour 10:35-58.

Schmidt, Janell and Ellen Hochstedler Steury. 1989. "Prosecutorial Discretion in Filing Charges in Domestic Violence Cases." Criminology 27:487-510.

Smigel, Erwin. 1969. The Wall Street Lawyer: Professional Organization Man? Bloomington, Indiana: Indiana University Press.

Stenning, Philip C. 1986. Appearing for the Crown. Cowansville, Quebec: Brown Legal Publications Inc.

Toren, Nina. 1975. "Deprofessionalization and its Sources: A Preliminary Analysis." Sociology of Work and Occupations 2:323-337.

Tuggle, Francis. 1978. Organizational Processes. AHM Publishing.

Van Sell, M., A. P. Brief, and R. S. Schuler. 1981. "Role Conflict and Role Ambiguity: Integration of the literature and directions for future research." Human Relations 34:43-71.

Waldron, Ronald J. 1989. The Criminal Justice System: An Introduction 4th. ed. New York: Harper and Row, Publishers.

Wice, Paul. 1982. Chaos in the Courtroom New York: Random House.

Winfree L. Thomas, Lawrence Kielich and Robert E. Clark. 1982. "On Becoming a Prosecutor: Observations on the Organizational Socialization of Law Interns." Work and Occupations 11:207-226.

Wood, Arthur Lewis. 1967. Criminal Lawyer. Newhaven College and University Press.

APPENDIX

INTERVIEW SCHEDULE

WHY LAW

WHAT DEGREES / WHERE

HOW LONG IN LAW

WHY CRIMINAL LAW (as opposed to civil
did that lead to prosecutions)

WHY PROSECUTIONS

HOW LONG A PROSECUTOR

WHAT EXPERIENCE BEFORE PROSECUTIONS

DUAL ROLE PROSECUTOR/ADMINISTRATOR - WHICH IS PRIMARY ROLE
- WHICH MOST ENJOYABLE
- WHICH MOST DIFFICULT
- WHICH MOST STRESSFUL
- IS STRESS PRODUCTIVE TYPE

2 OR 3 MOST IMPORTANT TASKS OF PROSECUTOR

WHAT MAKES THEM IMPORTANT

2 OR 3 MOST SATISFYING TASKS OF PROSECUTOR

WHAT ABOUT THEM IS SATISFYING

WHAT ASPECT OF WORK - SURPRISED THE MOST
WAS EXPECTED LEAST

HOW HAS ATTITUDE TOWARDS PROSECUTIONS CHANGED SINCE BEGINNING

WHY

2 OR 3 MOST DISSATISFYING THINGS ABOUT THE JOB/WORK

WHY / PROBES: conflict with others at work
overload (too much work/too complicated)
?penalty for too few convictions
?problems related to constitution, expert witnesses or preparation time
difficult decisions
conflict with family (overtime etc.)
paperwork

DESCRIBE THE NATURE OF THE PROCESS OF DECISION MAKING ON CASES
consultation with colleagues/boss
relation to prosecutorial powers (lay a charge, withdraw

a charge, type of charge, disclosure, recommend bail/sentence, negotiate a plea)

HAVE YOU EVER PROSECUTED IN YOUTH COURT
how is it different from adult court / how the same
is it more/less difficult/stressful

DOES BEING A WOMAN MAKE A DIFFERRENCE TO THE WAY YOU WORK/ARE ABLE TO WORK DOES GENDER AFFECT PROMOTION

WHAT DO YOU DO FOR RECREATION

DO YOU PLAN TO STAY WITH THE PROSECUTORS' OFFICE / HOW LONG

WHAT WILL YOU DO AFTER THAT

WOULD YOU RECOMMEND YOUR JOB

ANYTHING ELSE OF NOTE THAT'S NOT BEEN TOUCHED ON?

SAMPLE PROBES

WHAT EFFECT/IMPACT DOES THAT HAVE

HOW DOES THAT EFFECT YOU

CAN YOU CLARIFY THAT

WHAT EXACTLY DOES THAT MEAN

WHAT IMPLICATIONS ARE ATTACHED TO THAT

HOW MUCH OF A PROBLEM IS THAT

WHAT DID YOU MEAN BY...

HOW MUCH OF A CONCERN IS THAT

DOES THAT BOTHER YOU / HOW MUCH / IN WHAT WAY

IS THAT A SOURCE OF IRRITATION

DO YOU LIKE THAT

[illegible] Burin Street
St. John's, NF
A1N [illegible]
89.10.28

Received
Oct [illegible]

Mr. Colin Flynn
Director of Public Prosecutions
Department of Justice
Confederation Building
St. John's, NF

Dear Mr. Flynn:

Further to our conversation in your office on Friday, October 27, 1989, following is the letter you requested.

I am currently a Masters Candidate in the Sociology Department at Memorial University, and am now preparing to begin work on my thesis.

I would like to examine the career pattern of Crown Prosecutors in Newfoundland from the perspective of the Sociology of work and occupations. Data will be collected on background characteristics of Crown Prosecutors, their reasons for making this occupational choice, recruitment, selection and job content. Data will be collected by means of standardized, open-ended interviews which will begin in late February, and conclude in April. I would like to interview all Crown Prosecutors in the Province.

Confidentiality for each respondent would be strictly and absolutely maintained. The chairman of my thesis committee, should permission be granted for this research, will be Dr. Ian M. Gomme.

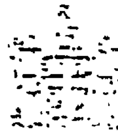
Should you have any questions, please feel free to contact me at 368-0674, or 737 7557. Dr. Gomme is not in Newfoundland at this time. However, he can be reached at

2232 Parkway Drive
Burlington, Ontario, L7P 1T1,
phone 416-336-2927.

Thank you for your consideration of this request.

Sincerely,

Mary Hall



GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
DEPARTMENT OF JUSTICE

ST. JOHN'S
A1B [illegible]

Our File: ________________

1989 11 [illegible]

Ms. Mary Hall
11 Burin Street
St. John's, Newfoundland
A1N [illegible]

Dear Ms. Hall:

Further to your letter of October [illegible], 1989 and your visit to my office, please be advised that the Department agrees to you undertaking research with our Crown Attorneys.

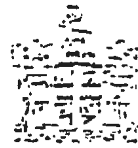
We agree under the understanding that the Crown Attorneys would maintain anonymity and that you would provide us with a copy of your results.

We will attempt to have our staff co-operate with you in this process. I am sure that they generally will be very keen on the process.

Yours sincerely,

Colin J. Flynn
DIRECTOR OF
PUBLIC PROSECUTIONS

CJF/brd



GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
DEPARTMENT OF JUSTICE

P.O. BOX 87,
ST JOHN'S
A1B 4J6

Our File No. ____________

January 11, 1990

Ms. Mary Hall
11 Burin Street
St. John's, NF
A1E 3S1

Dear Ms. Hall:

Further to your telephone call to this office of today, I enclose the mailing list for our Crown Attorneys.

I trust this is satisfactory.

Yours sincerely,

(for) Colin J. Flynn
DIRECTOR OF
PUBLIC PROSECUTIONS

CJF/brd

All Crown Attorneys
Department of Justice
Confederation Building
St. John's, NF
A1B 4J6

Dear

I am currently a Master's candidate in the Sociology Department at Memorial University. My thesis project involves examining the career patterns of Crown Attorneys in Newfoundland. While the tasks performed by prosecuting attorneys are absolutely critical to the proper functioning of the criminal justice system in North America their work roles in this process have received the least attention from social scientists. In comparison with other less influential occupations in the system (police, correctional officers, etc.), very little research on the role of prosecuting attorneys has been undertaken in the United States and even less has been initiated in Canada. The most recent detailed Canadian work on the subject dates from the late 1960's. In view of the many changes which have taken place in Canadian society and in Canadian criminal law since that time, renewed research initiatives in this area are warranted.

The central purpose of my project is to examine the careers of crown prosecutors and in so doing to examine the nature of the work involved in 'doing justice' on a day to day basis. The research will involve conducting interviews with all Crown Attorneys in the Province of Newfoundland. The resulting data base will contain information on educational background, occupational choice, recruitment and selection to positions, job content, and the informed perceptions of crown prosecutors regarding some of the problems and prospects inherent in the contemporary court system in Canada.

Interviews will be semi structured and open-ended. Confidentiality for each respondent will be strictly maintained. The text of my thesis will contain no names or any other individually specific identifying features. Interview records will not be available for public scrutiny. Once it is completed, a copy of my report will be made available to all prosecutors participating in the study. My thesis supervisor is Dr. Ian M. Gomme. The other member of my thesis committee is Dr. Lawrence F. Felt. Both are members of the graduate faculty in the Sociology Department at Memorial University of Newfoundland.

In October of 1989, I met with the Director of Public Prosecutions, Mr. Colin Flynn, to discuss the nature of my research. With his assistance, I was subsequently granted permission by the Department of Justice to undertake this project. Mr. Flynn informed me that he sent a memo last fall to all Crown Attorneys in the province informing them of my work.

I shall call your office in the next ten days to arrange an appointment. Given their absolutely pivotal role in the administration of criminal justice and given the paucity of information now available on their occupational roles, I think that this research on crown prosecutors is both important and timely. I am most enthusiastic about this project and I look forward to meeting with you in the near future.

Thank you for your consideration.

Yours sincerely,

Mary Hall
M.A. Candidate

St. John's, NF
90.05.23

Dear

Thank you for giving up some of your very valuable time to discuss your work with me.

Your comments were both informative and helpful and will be of great assistance to me in the completion of my thesis.

I trust you will have a very pleasant summer.

Sincerely,

Mary Hall

ANNUAL CROWN ATTORNEYS' MEETING
August 23-24, 1990

A G E N D A

August 23	9:30	Opening Remarks
	10:00	Outline where we are for the year
	11:00	Legal Issues: 1. Supreme Court of Canada update. 2. Newfoundland Court of Appeal. 3. Other Significant Cases.
	12:00	Ministers Comments
	12:30	Lunch
	2:00	1. Arson Amendments 2. Victim Impact Statements 3. Pre-Charge Youths 4. Sexual Assaults - Success - Failures 5. Brydges Decision 6. Crown Descretion 7. General Prosecutorial Matters
August 24	9:30	1. Provision of Crown Services 2. Policy Re Nelles Case 3. Classifications and Salary 4. Provision of Appeals - Trial & CA 6. Car Rentals/Accommodations, etc. 7. Agents and Accountability 8. Crown's Handbook 9. Other.

St. John's, NF
A1E 3S1
9[illegible].08.29

Mr Colin Flynn
Director of Public Prosecutions
Department of Justice
Confederation Building
St. John's, NF
A1B 4J6

Dear Mr. Flynn;

Thank you for allowing me to attend the second day of the Annual Crown Attorneys' Meeting. The session Friday morning was both informative and helpful. There was an added bonus for me [illegible] that the session on Crown Discretion that I had so wanted to hear, originally scheduled for Thursday, was held on Friday morning.

Thank you for your continued assistance.

Sincerely,

Mary Hall

Department of Sociology

November 9, 1990

The Hon. Mr. Howard Hampton
Ministry of the Attorney General
Province of Ontario
11th Floor, 720 Bay Street
Toronto, Ontario
M5G 2K1

Dear Mr. Hampton;

I am currently a Master's Candidate in Sociology at Memorial University of Newfoundland and am doing an occupational study of Crown Attorneys for my M. A. thesis.

It has recently been brought to my attention that in 1987 the then Ontario Ministry of the Attorney General commissioned an Environmental Assessment Study of the Criminal Law Division. It was done by Alan M. Marcus Associates, Inc., A. R. A. Consultants and is dated October 21, 1987.

If it is at all possible, I would greatly appreciate receiving a copy of the study including both the report and the questionnaire that was used in the study. What I have learned of the report convinces me that it would be extremely helpful and informative to my present research. I am of course more than ready to cover any costs involved in copying the material should you agree to send it to me.

I look forward to hearing from you at the above address at the earliest possible moment.

Thank you for your consideration of my request.

Sincerely,

Mary Hall

St. John's, Newfoundland Canada A1C 5S7 • Tel.: (709) 737-7443 • Telex 016-4101

St. John's, NF
A1E 3S1
90.10.29

Mr.
Crown Attorneys' Office
Mount Scio House
St. John's, NF
A1C 5T7

Dear

Thank you very much for the copy of the *Alberta Crown Attorneys' Association Brief* which you recently gave me. It is both extremely interesting and very informative. I truly appreciate your kindness in making this document available to me.

Sincerely,

Mary Hall

Office of the Minister

Cabinet du ministre

Ministry of the Attorney General

Ministère du Procureur général

720 Bay Street
Toronto Ontario
M5G 2K1

720, rue Bay
Toronto Ontario
M5G 2K1

416 326-4000

Ref. 03003

January 14, 1990

Ms Mary Hall
Graduate Student
Department of Sociology
Memorial University of Newfoundland
St. John's, Newfoundland
A1C 5S7

Dear Ms Hall:

I am in receipt of your letter of November 9, 1990 in which you request the Environmental Assessment Study of the Criminal Law Division. The Ministry of the Attorney General of Ontario commissioned Alan M. Marcus Associates, Inc. to do the report and it was completed in 1987.

I am pleased to pass this report along to you and hope it will be helpful to you in your graduate research work.

Yours very truly,

HOWARD HAMPTON
Attorney General

Enc.