

Continental Drift in the Legal Profession:
The Struggle for Collective Bargaining by Nova Scotia's Crown Prosecutors.

By

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Continental Drift in the Legal Profession:
The struggle for collective bargaining by Nova Scotia's Crown prosecutors.

By Shelagh Mary Reva Campbell

Abstract

This dissertation explores the apparent contradiction between the independence and autonomy of an elite profession and the pursuit of collective bargaining. Crown prosecutors employed in the Canadian public service bureaucracy are full members of the legal profession and also form a clearly recognized group of subordinated employees. Their need for prosecutorial independence clashes with management control in the context of dependent employment. This study examines the implications of a changing workplace and a changing profession for professional workers' choices of collective action. A case study of the Nova Scotia Crown Attorneys' Association experience and its members' struggle for collective bargaining rights forms the basis of this research. The study probes the question of how prosecutors move between two distinct strategies of labour process control and examines the implications of collective bargaining for professionalization. The research findings identify the existence of an occupational community within the broader legal profession. The occupational community reflects the marginalization of Crown prosecutors within their profession. Using narrative analysis of prosecutors' own stories of their career and labour struggles, the research reveals how this occupational community reflects the specialization and fragmentation of the profession and supports a unique work ethic and sense of professionalism among Crown prosecutors. Mobilization of prosecutors to demand bargaining rights, otherwise forbidden by law, is achieved with the use of specific language around fairness. This language has meaning and power in both a professional context as well as in the world of dependent employment, organization policy, and management decision making. An ethos of fairness enables Crown prosecutors to reconcile two competing logics of collective action, and to reclaim the benefits of professionalization eroded through dependent employment.

December 15, 2010

Dedication

For D. Scott Campbell
The definitive professional and working man

And

For Colin and Ada
who may yet redefine it all

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And Dad you were right, nothing in this life is easy. How lucky we are to be able to choose our struggles.

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Chapter 1 The Story of Nova Scotia Crown Prosecutors

“No man is an island entire of itself,
every man is a piece of the continent”¹

The Hollywood version of the prosecutor as a solitary crusader for justice does not mesh well with the realities of Canadian public service bureaucracy. Independence and autonomy clash with management control in situations of dependent employment. Prosecutors are not islands of criminal justice, but form a clearly recognized group of subordinated employees. The group is connected to the larger profession, which itself is shifting over time. This dissertation examines the implications of a changing workplace and a changing profession for professional workers’ choices of collective action.

The work of prosecuting alleged criminals on behalf of the people – public prosecution – has evolved over time in the province of Nova Scotia. In the early days of the province’s justice system there were no public employees who made a career of this work (Stager & Arthurs, 1990). Rather, lawyers in private practice would take on prosecution cases at the request of the Attorney General, who was an elected member of the legislature. The engagement of private lawyers on a per diem basis (hire for the day) still exists in Nova Scotia today as a reminder of how far the employment relationship has changed. As the population of the province grew, and with it the volume of crime and increasing complexity of the criminal code, the Attorney General appointed lawyers

¹ John Donne 1624, MEDITATION XVII Devotions upon Emergent Occasions

to full time prosecutor positions in the Department of Justice (Archibald, 1989). These appointments were through an Order in Council and were political patronage appointments, not the result of an open job competition. Employees thus appointed served “at pleasure”, which means they could be dismissed when one government fell and another Attorney General was elected. Over time and with increasing public scrutiny and sophistication in the public service, more and more prosecutors came to positions through a competition and following the proclamation of the Public Prosecution Act of 1990 all remaining Attorney General appointees were converted to civil service status. All new hires from that point forward have been civil service appointments through competitive job posting. Crown prosecutors are thus relatively recent civil servants and have enjoyed a regular, permanent employment relationship with their employer as a cohesive group for less than two decades.

The legal profession, as one of the elite professions, is renowned for the extent to which it values autonomy (Rosenberg, 2009); autonomy which has been closely tied to a traditional private legal practice and self employment. As a result, lawyers have been very reluctant to embrace any form of collectivism in the workplace. The legal profession’s governing body expresses the profession’s values in the form of codes of ethics and a duty to the public interest. These values are nurtured in students from the earliest days of law school training. Socialization of new lawyers to a common worldview perpetuates the professional norms and upholds individual discretion in decision-making and independence as the profession’s highest ideals. Other occupations, such as teachers and nurses, also exist in structured permanent employment relationships

with a public sector employer. These other professions have developed collective bargaining over terms and conditions of employment and recently have become full members of the trade union movement. Practicing lawyers, however, have been excluded from bargaining by statute. Both the Nova Scotia *Trade Union Act*, which governs private sector employment and the *Public Service Collective Bargaining Act* have specific provisions preventing lawyers from engaging in collective bargaining with their employers². Some authors' analysis of unionization among professionals suggests the model of industrial trade unionism that has traditionally been geared to blue collar workers and large workplaces is not appropriate to the needs and concerns of professional employees and may in fact be of questionable value (Black & Silver, 2006; Hurd, 2000, 2005). They suggest the growth of the union movement lies in traditional appeals to class ideology and that a different model of collective action is needed for professionals.

Nova Scotia Crown prosecutors, however, broke away from professional tradition to form the very union-like Nova Scotia Crown Attorneys' Association (NSCAA). The NSCAA attempted to engage the employer in collective bargaining, and took the extreme step of an illegal strike in June 1998, shutting down the courts for two days. This attempt to pressure the employer into meeting demands for an independent salary setting mechanism was successful, and talks eventually lead to a form of "voluntary recognition" of the NSCAA as the bargaining agent for public prosecutors. The employer voluntary

² The BC Health Services decision of the Supreme Court of Canada ("*Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*," 2007) may have the effect of removing this limitation on collective bargaining; to date the threat alone of invoking this decision has been sufficient to advance the bargaining agenda of the Crown prosecutors in Nova Scotia.

recognized the NSCAA for the purposes of bargaining over working conditions although by statute they were not required to do so. Half of the provincial jurisdictions in Canada currently have collective bargaining for Crown prosecutors and the rest are moving towards this status with the support of a strong national association. The story of how the Nova Scotia prosecutors achieved collective bargaining reveals unique characteristics of the working conditions of the employed professional. The reasons why Crown prosecutors in Nova Scotia sought collective bargaining and the effect this struggle for bargaining had on them and their place in the legal profession is the subject of my research. An analysis of the way that prosecutors framed their concerns and how they describe their professional and employment roles will help us to understand the structural aspects of a profession and the nature of the relationships between professionals and their employers.

When a group protects itself and its activities through rules and restrictions on access it practices closure. A profession that restricts the entry of members to a select few (Weber, 1947) practices exclusionary closure (Parkin, 1979). A trade union that challenges the power structure of an employer and strives to reclaim some control over the rules and conditions of work, practices usurpationary closure (Parkin, 1979). Some groups both restrict entry and challenge the restrictions of others. The Nova Scotia Crown prosecutors participate in both practices, called dual closure. As members of the Nova Scotia Barrister's Society they participate in control over who can enter the profession. Prosecutors also challenge the limits and rules of the employer through collective bargaining. Parkin (1979), however, questions the compatibility of professions

and the labour movement. He says the two groups do not share views sufficient to build solidarity that can overcome class boundaries. Traditional class theories highlight a distinction between the owners of the means of production and those they exploit. Nevertheless, many professionals are found in dependent employment and thus in positions of subordination to an employer. Employer control may be formal, through rules and procedure manuals, or real through intense atomization of the labour process. This apparent contradiction between control over knowledge as a means of production and dependence on an employer for the context and tools of production presents a theoretical challenge. Rather than limit the utility of closure theory, this dual development opens up a new perspective on professionalization. A closer examination of this case reveals occasions where the tools of multiple forms of closure are applied to further a group's professional aims. The Nova Scotia prosecutors form a case where reality has surpassed the literature.

The Research Proposal

The literature on professionalization describes the formation and coalescence of occupational groups into social structures whose aim is to establish and protect as close a monopoly as possible on their service. In return for this effort, professionals reap financial and status rewards and often enjoy privileged relationships with state regulators. Hinings (2001) traces an evolution of the study of professions in which he notes different stages of research; stages that focus in turn on definition, structure, monopoly, closure, labour process and politicization of professions. Current research on professional service firms examines the response of the professions to dramatic fluctuations in economic

stability and emphasis on profitability and economic survival (Hinings, 2005; Muzio, Ackroyd, & Chalat, 2008; Muzio & Hodgson, 2008). The case of Nova Scotia Crown prosecutors is an opportunity to revisit some of the core elements of the literature on professions and examine how the two strategies of professionalization and collective bargaining relate to existing bodies of theory.

There is a growing body of research into the employed professionals in private sector firms, specifically the experience of lawyers in private practice (Muzio et al., 2008; Muzio & Hodgson, 2008). Despite the growth of collective bargaining among professionals (Hurd, 2005; White, 1993) there is little that links collective bargaining with professions, and some research indicates professionalization generates hostility towards bargaining (Stern & Murphy, 1980). This doctoral research project examines professionalization in the context of labour relations. The project draws upon the literature of professionalization and examines the labour relations experiences of members of an elite profession, lawyers, when they engage in collective bargaining. Two formerly opposing approaches to social closure and protection are combined in the Crown prosecutors' experience when they bargain with their employer over terms and conditions of employment and remain members of the legal profession. A number of contrasts confront Crown prosecutors in their work relationships with legal colleagues. Prosecutors work side by side with peer members of the Barristers' Society to whom they are subordinate in a management hierarchy; they work in collaboration with the defence bar who are lawyers either in private practice or in non-unionized jobs with Nova Scotia Legal Aid. On the surface members of the same profession fill all of these different roles,

yet they are subtly different in the way their work is organized and controlled.

Prosecution is essential work in our society and yet fundamental characteristics of this work have not been explored in either the labour relations literature or the sociology of the professions literature.

This study examines public prosecution as a subset of the legal profession. The analysis described in the chapters that follow takes into consideration the history of Nova Scotia's prosecution service in particular, in order to explore the issues and the forces behind the struggle for collective bargaining in this subset of the profession of law. Benefits that the profession in a broad sense guarantees its members, such as economic power, are eroded when professionals become dependent employees for a single employer. In dependent employment, no matter how collegial, professionals give up some measure of control over their own work. One aspect of the closure strategy of collective bargaining is a desire to regain control over workers' labour process. The labour process refers to the specification of work practices and the application of expertise to solve work problems. A mechanic might describe her labour process in terms of the tools she uses, the steps in disassembling a machine, the diagnosis of trouble that she sees, and the nature of the repairs she makes as well as the way in which she makes those repairs. Her apprenticeship has laid down much of the knowledge and skill required to execute these processes, and her employer controls many terms and conditions of the work. The lawyer's work also involves the application of knowledge and skill developed through training and a form of apprenticeship. However, the process of the lawyer's work is somewhat invisible, particularly the application of discretion and

judgment. Decision making in prosecution involves complex application of legal principles and case law as well as the fundamental decisions of whether or not to proceed with a prosecution. This decision best reflects the concept of public interest in a profession; a professional acts not only in the pursuit of her own living, but in the public interest as holder of a public trust. Some of the autonomy that derives from an unfettered, self-regulated labour process is limited by organizational constraints in dependent employment. Constraints can take the form of rules and procedures such as a policy manual. The Nova Scotia Crown prosecutors chose collective bargaining to influence terms of employment to protect and reclaim some of their professional power, autonomy, and benefits such as the income that they sacrificed when they choose to practice law as employed public servants.

If a lack of control flows from dependent employment, where workers are contracted “in service” rather than entering a “contract for service” and collective bargaining helps to restore this control, what other dimensions of professional work also change? Does the move to dependent employment in the public service somehow affect the professionalism of lawyers? Does the legal profession as practiced by public prosecutors revert to an occupation where members are subject to an employer’s code of practice and mechanics of prosecution? In an occupation governed by codes of practice there are correct and less correct methods of practice which are monitored by non-professionals (Braverman, 1998). In the case of public prosecutions, these modes of practice are also publicly monitored and critiqued in the media. The exercise of professional discretion may also be jeopardized in dependent employment. The

application of specialized knowledge may be coded into operations manuals and usurped by management in the performance appraisal process and through the accountability framework of government departments. As a result, the autonomy of the profession may be diminished in reality as well as in structure. Once a professional becomes employed, does she cease to be a professional, whether through deprofessionalization (Rothman, 1984) or proletarianization (Johnson, 1972; Rosen, 1999)? An employed professional may also feel a shifting loyalty away from the profession and toward the employing organization. Crown prosecutors appear to be subject to the same limits on their labour process as other employed workers. If prosecutors' struggle for collective bargaining is an attempt to control their labour process and to redirect the financial and tenure security from the workplace into their non-work lives (Murphy, 1984), one might conclude that the membership in a profession has somehow failed to live up to its promise.

The results of this research will show that collective bargaining reflects another dimension of the legal profession as practiced by Crown prosecutors. Collective bargaining is a way to establish and maintain status and power of a sub-segment of the profession we know as criminal prosecution. While collective bargaining is a strategy associated with subordinate employees who strive to reclaim power from an employer, bargaining also serves to enhance the public status, rewards, and solidarity of the profession. In effect, collective bargaining helps the sub-segment of the profession to achieve social closure for Crown prosecutors and the attendant benefits when the traditional means of restricting entry and establishing a market monopoly for a service have failed.

Collective bargaining was not achieved solely because Crown prosecutors moved from self-employment to dependent employment. This change did focus attention on their diminished power to control their labour process, however the status of permanent employee also lead to a stronger sense of occupational community among prosecutors. An occupational community emerges among workers when they share an occupation or a workplace. Such a community is drawn together through a number of distinct elements, including intensity of involvement in work, extended relationships with coworkers that bridge home and work life, and socialization to a work identity (Salaman, 1971a). Preliminary research in to the legal profession in Nova Scotia indicates that intensity of involvement and socialization to a work identity are very strong elements of the profession in general. In many cases, extended relationships also develop within the profession. Salaman's work on architects reveals how professionals will form an occupational community beyond their own workplaces, which is often true of lawyers in private practice. However, marginalization also plays a role in nurturing occupational communities. Members of marginalized groups, such as midwives , share a common view of the role and importance of their profession and will be drawn together in an attempt to highlight the value of their occupation (Larkin, 1983). I hypothesize that the existence of an occupational community among Crown prosecutors is an aspect of their employment experience that supported their struggle for collective bargaining. The existence of a strong occupational community permits prosecutors to embrace both the exclusionary closure of their profession and the usurpationary closure of collective bargaining without losing any sense of professionalism. The particular employment experiences of the Nova Scotia Crown prosecutors also play a role in this struggle.

The object of this research is to understand the factors that contributed to the Nova Scotia Crown prosecutors' struggle and ultimately their success in achieving collective bargaining. This study addresses numerous dimensions of the prosecutors' story. Chief among these dimensions is the impact of employment status on control of the labour process. This is followed by examining segmentation within the legal profession and exploring the existence, evolution, and dimensions of an occupational community among prosecutors. Finally, the study deals with the process by which professionals achieve interest representation, and the relationship between collective bargaining and other strategies of social closure for professionals who are dependent employees and whose managers are also their professional peers. Through a discussion of whether closure theory and the distinction between its different forms are still valid, I hope to contribute to our understanding of the phenomenon of professionals who bargain over their terms and conditions of employment.

Research Site

Nova Scotia is a particularly appropriate site for this study because the Nova Scotia Public Prosecution Service (PPS) has a unique relationship to the Government. Due to its history, the PPS is independent of the Department of Justice and under arms-length superintendence only of the Minister of Justice. The Director of Public Prosecutions reports directly to the legislature and any direction or policy communication from the Minister of Justice must be made public, and published in the Royal Gazette. This structure was implemented in 1990 as a result of the report of the Royal Commission of Inquiry on the Donald Marshall Jr. Prosecution (Nova Scotia 1989), and

is intended to eliminate political interference in public prosecutions. The issue of independence in prosecutorial decision-making is particularly sensitive in Nova Scotia, and notions of autonomy and subordination are especially acute. Because of the considerable public scrutiny surrounding the Marshall Inquiry and the new organization structure, a distinct culture of independence has grown up around the PPS. Nova Scotia is not unique in its experience of public scrutiny and wrongful convictions like the Marshall case, however it is the first instance of an independent prosecution service in Canada, and thus an important opportunity to study the effect such a structure may have on the legal profession and employee representation in collective bargaining. A case study approach is well suited to examining the Nova Scotia experience as other studies of the process of labour mobilization and the institutionalization of collective power have shown (Haiven et al 2005).

The research design included some archival research, focus groups and semi-structured interviews. Participants included former and current Crown prosecutors, members of the executive of the Nova Scotia Crown Attorneys' Association and other key informants in the legal profession. The interviews generated narratives of key events in individual careers and in the struggle for collective bargaining. This data permits an analysis of the form and characteristics of collective action and the circumstances and context of job action incidents. Narratives also provide insight into the role and influence of power that is based in the profession, the employer, the civil service, and the criminal bar. The analysis of Crown prosecutors' stories enables exploration of the construct "professional" and how it is redefined by pursuing collective bargaining. The research

results show that conditions necessary to mobilize professionals to collective action include specialization in the profession, which in this case leads to dependent employment. In the workplace, professionals are positioned against each other in worker versus manager roles and finally, an occupational community emerges to unite marginalized professionals.

Why This Research?

There is little consideration of processes by which professionals define and achieve collective representation. Often they embrace the framework of industrial trade unions (i.e. nurses, teachers), a model which is becoming less and less relevant in emerging forms of work organization. Bargaining among professionals contains a dual problem, because the professional project is also less and less relevant for the forms of work that professionals find themselves in, namely dependent employment and unaffiliated networks.

There is a general consensus that the contemporary workplace is fundamentally changing, in large part due to the forces of globalization. Much of the debate and research has examined the private sector, and the impact that changing work structures and relationships have on rates of unionization (Schnabel and Wagner 2005; Bentham 2002; Verma, Kochan and Wood 2002). Significant questions have arisen regarding the impact these changes will have on the labour movement in the longer term, and how the movement will define its role in the new world of work.

There has also been an examination in recent years of the underlying tenets of professionalism and credentialization in the workforce (Haiven 1999; Cranford et al, 2005) as these features become more common among Canadian workers. In addition, researchers have examined the public sector for career development and work-life quality issues from the perspective of “employer of choice” (Duxbury, et al 1999) in an effort to understand the dynamics of that workplace, and to influence public policy on employee retention. Professionalization and the public sector have never been combined to examine the process by which professionals, some of whom have been restricted in their legislative right to bargain collectively, come to achieve voluntary recognition and collective bargaining in the public sector.

There is a growing body of literature in organization studies related to the nature of professional service firms (Muzio et al., 2008) and notably the legal profession. Little doubt remains that the tremendous changes to the world of work have touched the professions as well (Chreim, Williams, & Hinings., 2007; Powell, Brock, & Hinings, 1999). However, many lawyers do not work as self-employed practitioners or in law partnerships. They work as employees of large public sector organizations, and have for some time. However, the employed prosecutor has not been studied in any detail (Gomme & Hall, 1995). The legal oeuvre has considered the duties and conflicts surrounding prosecutors and prosecution as MacNair (2002) notes, but the employment aspect of the Crown prosecutor’s role is mentioned only in passing, where it surfaces at all. While there have been studies of occupations in traditional employment that are

professionalizing (Muzio & Hodgson, 2008) there are fewer opportunities to study cases of professions seeking collective representation in the workplace.

The case of Nova Scotia prosecutors provides a valuable insight into the subordination of professional workers and the resulting struggle for collective bargaining over terms and conditions of employment. The advent of permanent employment and a formal structure to the labour process of prosecution is a relatively recent phenomenon. The public employer has sought formal control over the prosecution labour process by gathering prosecutors in one organization and controlling the resources necessary for their work. Real subordination has been more difficult to achieve, though the use of extensive policy manuals³ and to some extent, the socialization of the legal profession itself, combine to control the labour process of prosecutors. The prosecutors' struggle for collective bargaining is more recent still. The public sector is also a growing sector of employment in the service economy (Kumar & Schenk, 2006) and a source of important employment for professionals. More and more professionals are finding work in employment situations (White, 1993) in the public sector. This research is relevant as employers still seek to restrict representation and limit bargaining unit gains – see for example the 2008 attempt by the Ontario Public Service to fold Amapceo into OPSEU and the waves of “new public management”.

³ The table of contents from the Crown Attorney Manual for Nova Scotia prosecutors is included as Appendix D

Finally, prosecutors have a significant social impact; “the discretionary power exercised by the prosecuting attorney in initiation, accusation, and discontinuing prosecution, gives him more control over an individual’s liberty and reputation than any other public official” (Grosman, 1970, p. 499). The volume of research into the function and legal aspects of substantive and procedural justice (MacNair, 2002) stands in contrast to the dearth of literature on the experience and issues of professional workers. Little has been written about the collective voice of these individuals as an actor in the labour process. Understanding the management of professionals in this regard is important to the broader study of contemporary organizations.

This dissertation aims to challenge the idea of monolithic professions and professional work. Through an examination of a case where an elite profession successfully attains collective bargaining rights and maintains their role and membership in the profession I will demonstrate the institution of the legal profession is rapidly evolving. The work conditions facing lawyers have an impact upon their sense of professionalism as well as their understanding of labour rights and labour issues. By developing an occupational community, prosecutors create an ideology that binds them to the community and that gives them language that helps them to adopt bargaining as a new form of closure. Bargaining helps them to achieve their professional aims as well meeting their immediate workplace concerns. The two strategies, bargaining and professionalization, work together to reinforce the prosecutors’ sense of identity in the workplace, in the criminal justice system, and in the broader profession.

The legal profession and prosecutors are important exemplars of the foregoing phenomenon. The legal profession is a dominant force in crafting and interpreting the framework of rules that governs society. Prosecutors are an arm of the state apparatus that enforces those rules. Every decision a prosecutor makes has the potential to impact legal precedent and all cases that follow. There are also individual and social implications of decisions whether to prosecute any given alleged offence. These implications extend to the lives of those directly affected, mental and financial wellbeing of the victims, alleged offenders and those who depend on them. The safety of as-yet unaffected members of society may also be implicated in such decisions. Prosecutors are also a vehicle for public policy on matters of criminal justice. In Nova Scotia, the Crown prosecutors bear the legacy of a criminal justice system in disarray. They became the bearers of a revised version of justice, and of public policy to remake public confidence in the justice system.

Dissertation Outline

The dissertation begins with a discussion of the theoretical framework in which professions and collective bargaining are situated in Chapter 2, Creating a Unified Theoretical Framework: Professionalization, Collective Action, and Occupational Community. The chapter describes a clash between the social importance of lawyers and prosecutors' legal diminishment within the profession and within the civil service. The discussion addresses closure theory and presents a closure continuum as an analytical tool. Occupational community is proposed as a framework to reconcile the different forms of closure used by Crown prosecutors. Chapter 2 concludes that legal

professionals, and Crown prosecutors in particular, are an under-studied subject, and the context of their work is of social and theoretical importance. The research problem of the study is posed as “How is it possible for professionals to move back and forth from usurpatory to exclusionary strategies of closure, using both versions of the collective action continuum, and still maintain full membership and support for both forms of collective to which they belong: the profession and the collective bargaining unit?”

Chapter 3, Methodology: Collected Voices, describes the research design and the choice of case study. Much of the literature on the classical industrial relations problems of why people join collectives for bargaining purposes has been reduced to survey methodology based on industrial unionism. In order to overcome this limitation, the study uses narrative analysis of long interviews to uncover themes and critical incidents in the careers and bargaining struggles of Nova Scotia Crown prosecutors. Chapter 4, The Evolving Legal Profession: Specialization and Subordination of Nova Scotia Crown Prosecutors, describes the evolution of the legal profession in Canada. This chapter presents the stories of a wide range of lawyers and traces the specialization of prosecution as a sub-segment of the legal profession. The chapter provides a history of the Nova Scotia Public Prosecution Service and the Nova Scotia Crown Attorneys’ Association and describes the circumstances leading to the demand for collective bargaining rights. The chapter concludes that an occupational community is possible as a subset of a profession.

Chapter 5, Trials and Files: The Role of Occupational Community and Ideology, demonstrates the existence of an occupational community among Crown prosecutors and

includes a discussion of the narrative analysis of the research subjects' descriptions of their struggle for collective bargaining. The discussion in this chapter situates the struggle for collective bargaining within the professional strategies of closure that define and uphold the prosecutors' control over their labour process. The analysis in Chapters 4 and 5 incorporates archival information from the Nova Scotia Crown Attorneys' Association and the Public Prosecution Service. Chapter 6, Conclusions and Recommendations, summarizes the research findings and addresses the limitations of the study and the implications for further research.

I was drawn to this study through my own workplace experiences, first as a credentialed Human Resource Management and Industrial Relations professional and then as management's chief negotiator in bargaining between the Government of Nova Scotia and the Nova Scotia Crown Attorneys' Association. My understanding of the issues facing Crown prosecutors and their rationale for seeking bargaining was at odds with the spirit of the direction I received as a senior public servant in the execution of my duties. When my time in public service ended, I turned to this research in order to understand more fully the experience and motivations of Crown prosecutors from their side of the bargaining table. The study has not been without its dramatic moments, as labour struggles often are. It has helped me to formulate some clearer questions and some potential answers for other professional workers, wherever they find their chairs at the negotiation table.

Chapter 2 Creating a Unified Theoretical Framework: Professionalization, Collective Action and Occupational Community

The goal of this chapter is to place the research problem in theoretical context. I will discuss three principle theoretical themes: professionalization, collective action, and occupational community. These themes are all arenas of worker control. I will talk about each theme in turn and then I will draw them together to show how these themes provide a way to understand my research problem. I will highlight workplace control as I review each theme and I will discuss the relevant theorists. I will situate my review of the literature in the context of contemporary employment conditions for public prosecutors, preparing the reader for the case study which follows. The theoretical discussion leads into the research problem for this study and the chapter concludes with a proposed framework which I will use to analyse my findings in subsequent chapters. I develop my discussion of the Crown prosecutors' case with a balance between the role of structure and the impact of individual and collective action. To accomplish this broader analysis I draw on theorists that may appear to offer contradictory arguments and I present a framework that unites these differing points of view. My description of the case of prosecutors who bargain collectively will then examine how these contradictions are reconciled in practice.

Three Theoretical Themes

The themes upon which the dissertation is based each address ways in which people organize their work: work spaces, work processes, the rules that govern workers, access to work, and the broader social relations of work. Each theme, professionalization, collective action and occupational community, is distinct because each takes a specific perspective on these various aspects of work. These perspectives are outlined in the following sections of this chapter. These themes are not arbitrarily chosen. Each theme explores a different forum of worker control. The manner in which the themes reinforce each other is the major contribution of this research. The combination of professionalization and collective bargaining is made possible through the presence of an occupational community. Leveraging this community enables prosecutors to achieve greater workplace control.

The work setting and work experiences of Crown prosecutors reflect each of the three theoretical themes. Through my analysis of the data I collected from lawyers across the country, I have developed a framework to help to understand the organization experiences of lawyers who practice criminal law and prosecutors in particular. Two of the classic bodies of theory on work and workers (sociology of the professions and labour process theory) on their own were not adequate to explain how prosecutors embrace very different strategies of workplace control. The legal profession professes a culture of individualism, while collective bargaining has its roots in the common good of its members. I have found that the literature on occupational community offers insights relevant to this particular case and provides what Astley and Van de Ven call “a more comprehensive understanding of organizational life, since only one school of thought invariably offers only a partial account of reality.” (1983, p. 245) Crown prosecutors in Nova Scotia exhibit characteristics of an occupational community within their profession. Drawing occupational community into the analysis of prosecutors’ struggle for collective bargaining provides insight into how prosecutors reconcile two apparently opposing approaches to workplace control.

The first theme I will address is professionalization. By professionalization, I mean the strategies workers use to create and control their occupation. These strategies define the scope of work, who can perform this work, and how access to the occupation is regulated. An important goal of limiting access to an occupation is to protect or increase its market value (Parkin, 1998). The body of literature that addresses these strategies is professionalization. This literature describes the ways in which professions organize

themselves, their work processes, and their social relations. I will pay particular attention to the mechanisms professionals use to distinguish themselves as unique and the tension I note between individual autonomy and group membership. Within this theme there are several different approaches and key theorists whose work builds in a progression, which I will discuss later in this chapter. The professions in Canada have been studied from organizational and institutional perspectives, drawing on both the sociology of professions and the sociology of organizations (Greenwood, Suddaby, & Hinings, 2002; Hinings, 2005). These traditions emphasize structure and organizational forms over agency and capacity to act (Ackroyd, 1996; Kirkpatrick & Ackroyd, 2003). An emphasis on structure is common in the literature on professionalization and collective action; however, I will balance this emphasis with a focus on the agency of individuals within their institutions. Incorporating occupational community into my analysis brings a balance to the structure/agency tension in the literature.

A second important theoretical theme addresses collective action, and specifically collective bargaining. The literature in this theme comes from a variety of perspectives: political economy, sociology, and economics. Collective bargaining in North America has its roots primarily in the industrial economy, with economic gains as one of its principal aims. The rapid post-WWII economic expansion coincided with significant growth for the North American labour movement (Kumar & Schenk, 2006). Not coincidentally, bureaucratic forms expanded at the same time (Genoe-McLaren & Mills, 2007). Professions also rode the wave of business expansion in the post war period, including the burgeoning of the public sector where many professionals are employed

(Godard, 2005; Stager & Arthurs, 1990). Since the 1970s the decline in the industrial base in North America has led the labour movement to focus predominantly on the service and public sectors (Kumar & Schenk, 2006). Union density, the proportion of workers eligible for union representation who are covered by a collective agreement ⁴ has grown for professionals in the period between 1997 and 2003; health care professionals in particular grew from 39.9% to 42% and nurses from 78.1 to 81% density (Kumar & Schenk, 2006, p. 72). It is thus not surprising to see two formerly divergent strategies of work control, professionalization and collective bargaining brought into closer dialogue because of the shift in organizing activity to professional and service sectors of the economy.

The literature based on the first two themes is criticized for an emphasis on forms and structure as determinants of social phenomena (Edwards, 2006; Kaufman, B. E., 2008; Martin, 1999). An overemphasis on structure does not consider that organizational forms do not act on their own; individuals act within those structures. In order to fully understand the collective bargaining of professionals it is essential to examine the effect that structure may have on agency – the capacity for action and the choices of actors in the work setting. However, neither structure nor agency alone can satisfactorily explain what has occurred in the prosecutor's struggle for bargaining rights (Giddens, 1979). Giddens suggests we examine the *interaction* of structure and action to gain greater

⁴ Labour legislation in Canada excludes some types of workers, including lawyers, from union representation. The exclusions have been challenged under the BC Health Services decision of the Supreme Court of Canada.

insights into organization life. Writing specifically about guilds, the forerunner of modern professions, Krause (1996) provides a framework that illustrates how we can include structure and agency in discussion and analysis of labour action. I return to Krause's model in greater detail at the end of the first theme on professions.

The third theoretical theme explores occupational community as a collective that is distinct from the formal structures of the professions and collective bargaining. Occupational community operates in slightly different ways from the first two themes and the literature examines different dimensions of work to describe and explain this collective. Authors have challenged the compatibility of professionalization and collective bargaining as mechanisms of workplace control (Isler, 2007; Rabban, 1991). Some call for workers to "choose between conflicting identities" (Isler, 2007, p. 443) before they can successfully pursue strategies of workplace control. I examine the concept of an occupational community (OC) (Van Maanen & Barley, 1984) as a device that enables professionals to retain full professional status while engaging in collective bargaining. OC explains why and how members of a profession are *simultaneously* successful in their participation in the profession and in collective bargaining when the two strategies have such different roots and philosophies. The situation of professionals in dependent employment differentiates them from their self-employed peers. The dependent employment setting creates a unique environment for the development of occupational community. The following sections of this chapter explore each of these themes in detail and create a framework for examining the experiences of Crown

prosecutors. In later chapters we see how prosecutors have achieved greater workplace control through a combination of these three themes.

Theme 1: Professionalization

Whether one takes a theoretical definition or looks to common usage, there is no question that law is a profession. It is not the goal of this study to examine the characteristics of professions in order to measure law against them and to decide law's status. However, it is helpful at this point to outline the characteristics of professions in order to move on in later chapters to explore how they operate in the case of Nova Scotia Crown prosecutors. What follows is an overview of the literature on professions with a particular emphasis on mechanisms of workplace control.

A profession is a collective that tries to establish and maintain exclusive control over an occupation and as a result gain or maintain a position of special status in society (Abbott, 1988; Larson, 1977). These controls address access to membership, define standards of practice, and establish market monopolies. Members of a profession strive for the exclusive right to practice and to maintain their practice through rules and conventions that govern practice standards (Weber, 1947). A monopoly is sought through regulatory relationships with the state. State regulation can limit the delivery of professional services by requiring people who practice the profession to be accredited and recognized by the professional body. Regulation is purported to ensure protection of the public interest, ensuring delivery of quality services. The profession-state relationship

can move to a point where the state delegates regulation to the profession: “self regulation”.

Self-regulation permits the profession to independently set admission standards either explicitly or tacitly. Admission standards include apprenticeships, university degree and training course requirements, and examinations. These dominate the liberal professions of medicine, law, and academia. Self-regulation also facilitates control over the creation and dissemination of knowledge which in turn helps to maintain the mystique of professions by removing the body of knowledge from the public domain (Freidson, 1986). Self-regulation includes the ability to discipline members of the profession who breach the professional standards. These standards are often expressed in codes of conduct. Finally, professionals are often self employed, although a continuum of employment arrangement exists (Campbell & Haiven, 2008). The guild model originally held several workers in a common work setting, where the conditions of work were maintained by the master craftsperson (Krause, 1996). In contemporary times, control over the workplace is sought through self-employment, contractual partnerships in professional service firms, or through negotiation with an employer in cases of large-scale professional employment. The mechanisms of control together effectively close off professionals from the open labour and economic goods markets resulting in occupational closure (Weber, 1947).

Closure Theory

Social Closure

Weber (1947) contributes two foundational ideas to a discussion of contemporary professions: social closure and bureaucracy. Occupational closure is the name he gives to protection of an occupation from free entry by anyone who so chooses. The liberal professions achieve closure, or closing off from outsiders, when the governing body of the profession is able to prescribe the rules of practice, the forms of preparation and access, the licensing and the evaluation of its members independent of external influence. Weber focuses on social structures and facts in his writing. His discussion of rational control in organizations stresses the structure and subdivision of tasks and responsibility and the rules that govern behaviour. The extension of this rational control is bureaucracy, which results when the rules are embedded in “files” that are controlled by carefully specified jobs. His work on bureaucracy provides a point of departure for analysis of the public service employment of Crown prosecutors.

In Weber’s discussion of the division of labour under capitalism, he sees the professions as social class-bound and status-bound. The role of the professions in the economic system is to codify the division of specialized labour and protect it from market forces. Professionals are characterized as elites and closure is both an instrument and a product of preserving social class distinctions. Weber’s view of the subdivision of labour in capitalism places structures before social interactions and the professions’ structure becomes a form of control; the institutional form of professional bodies controls the

members in addition to the instruments mentioned above. The internal mechanisms of the professional body and its formal relationship to the social and regulatory world correspond to the rigid structure Weber ascribes to other organizational forms.

This structuralist approach downplays any agency on the part of professionals; it largely ignores the members' capacity to act. Weber views social structures as stable and rigid and thus portrays professionals with little ability to change the institution of the profession. This is problematic, as it does not overtly address how a profession is built in the first place. Weber attributes professions' achievement of closure to social status of its members and the power inherent in ownership of property and capital. Weber alludes to active capacity of professionals when he describes how a profession is maintained. A profession self-perpetuates its position of privilege when members recruit and admit those of similar background and social position. In this way, Weber lays the foundation for later theorists who elaborate on the condition of the fully realized profession and work to address the gaps in his work regarding agency, power, and incomplete control. Other theorists also grapple with changing notions of class and social elites.

Professionals employed in the public service find themselves at the intersection of two powerful institutional forms: bureaucracy and the profession, each of which seeks to determine behaviour and professional practice norms. It might appear on the surface that the goals of public prosecution and those of good government are complementary. The first seeks to protect the public interest by prosecuting crime and upholding justice in civil society. Government creates those rules we call laws that govern civil society. However, when government acts as employer of prosecutors it extends its control over

the administration of justice. The legal profession maintains its role as a guardian of public interest even when its members are employed. However, the experience of Crown prosecutors indicates nothing so simple. The goals of the profession are much broader than protection of a public good. The profession and its members have significant social status and economic goals, goals that are beyond those of government as an organization and as an employer. The economic and social goals of the employer and the profession are often in opposition, in fact. I shall return to this issue that reappears in the tension between individual autonomy and group goals alluded to in the introduction to this chapter.

Exclusionary and Usurpatory Closure: Separating Out and Claiming Back

Parkin (1979, p. 45) labels Weber's social closure as practiced by professions "exclusionary closure". One of the key goals of professions is to exclude non-members from the practice of certain types of work. The medical profession is a good example of this (Larkin, 1983). One tactic of exclusionary closure by physicians is limiting access to resources, such as education, and thus opportunities to practice medicine with its attendant rewards. Social class plays a role in perpetuating exclusionary closure; physicians control access to the credentialing process and admit those they know and those in their social class. In the early twenty-first century Canada, social class perhaps does not limit opportunity for advancement as powerfully as it has in the past. However, access to opportunities for education, and thus access to professions, is still a very real problem for people who do not come from a professional milieu.

In contrast to exclusionary closure, which he claims is the dominant form of closure, Parkin posits another form: “usurpatory closure” (1979, p. 74) where members of one group mobilize to oppose and take power from a dominant group that practices exclusionary closure. The usurpers may be seeking membership in the elite group. Likewise, they may try to force their way into formerly restricted domains of practice. They may, as in the case of trade unions, be seeking a larger share of the economic pie. Usurpation usually challenges the status quo of social relations (Parkin, 1979). This form of closure is best illustrated in the trade union. The negotiation of terms and conditions of work and the creation of a collective agreement is a means to reclaim some measure of control of the workplace conditions from the employer. Parkin also uses trade unions to explain the existence of both forms of closure at once. Admission to an occupation can be limited in this scenario when terms of the collective agreement limit membership (common in craft unions and closed or union shops). The structure of the usurpatory form of closure has embedded within it the means of exclusionary control through limits on membership. The simultaneous existence of usurpatory and exclusionary closure in a workplace is what Parkin calls “dual closure” (1979, p. 91).

Parkin hints at the idea that usurpatory closure can be a means to shore up professional privilege. He claims there is a difference in motivation between professional and union strike action. The former is instrumental, taking advantage of a proven mechanism to further enhance their protected social position, while the latter use usurpatory tactics as an expression of class struggle (Parkin, 1979). In this way,

Parkin qualifies dual closure as a strategy for the marginalized or oppressed, and not truly available to professions. He does move the theoretical discussion further by recognizing collective action of groups. To some extent, his discussion touches on the action of individuals. However, the class distinctions that underlie Weber and Parkin's work are a limitation of their work. Class boundaries are not as meaningful in contemporary times as professions implement targeted recruitment of disenfranchised social groups. Any discussion of struggles over control in the workplace that has been based on theories of property ownership across broad social classes needs updating in light of several developments: the concentration of resources in the hands of fewer and fewer interest groups, increasing credentialism in greater numbers of occupations, and the increasing power of credentials themselves (Murphy, 1984).

Usurpatory closure is expanded in Murphy's critique of closure (Murphy, 1984). He states there are two forms of this closure: inclusionary usurpation, which trade unions use in their bargaining for higher wages, and revolutionary usurpation which "makes direct attempts to change the structure of positions in society and in some cases... the structure of nation states" (Murphy, 1984 p.560). His notion of two forms of closure ties well to organizational issues facing employed professionals. Professionals who bargain are trying to obtain a share of the benefits controlled by their employer and to be included in a broader movement of redistribution of this wealth. They are also effectively changing the structure of relations between the profession and other social institutions, such as employers and legislators.

Murphy seeks a theory of the deeper structure of closure and global social structures. His discussion of fragmentation of subordinate classes/groups (he uses the terms interchangeably) provides a valuable insight. Fragmentation illustrates how different factions of a profession can hold opposing views and strategies based on their relative position within the profession. Fragmentation within a profession results in subgroups and nested forms of closure. Subspecialties within a profession may engage with the main body of the group as though they were outsiders. Crown prosecutors form a speciality niche in the legal profession. Murphy's ideas of closure may suggest how Crown prosecutors may be located in a subordinate position within their profession. Thus situated, prosecutors adopt a strategy of usurpationary closure and remain members of an elite profession that also practices exclusionary closure. I discuss the fragmentation of the legal profession in more detail in Chapter 4.

Murphy's differentiation of forms of closure divides property from credential. Professionals thus oppose domination without making the struggle a question of property. This aspect of his theorizing is perhaps most helpful in explaining the collective bargaining of the semi-professions such as nursing, whose members do not typically own their means of production. Lawyers in private practice often do own their firms but the employed public prosecutor does not have any claim of "ownership" in a capitalist sense. Murphy opens up a discussion of "power and control relations" (1984, p. 564) that is relevant to organizations and employees. By taking a step away from the institutional powers of profession and class theory, his development of inclusionary usurpation sheds some light on the experiences of employed professionals. In Chapter 5 I explore how

Crown prosecutors use usurpatory closure to claim a greater share of privilege and benefits from the employer and a better social status relative to their professional peers. They simultaneously practice exclusionary closure to redefine their place in their professions.

Market Control and Closure

The next two theorists, Larson and Witz, bring the discussion of power and social dominance into the literature on professions. They also introduce additional forms of closure to aid in refining analysis of professional projects. Larson's (1977) contribution elaborates on closure theory, drawing in the concepts of market control. Her work addresses control over both labour markets and markets for goods and services. Professions, as outgrowths of medieval guilds, achieve market control by drawing on power resources. The professional project (Larson, 1977) is the web of structures, rules and behaviours which define, isolate, protect, and perpetuate a group's claim to exercise a particular expertise in the production of a good or service. The goal of the professional project is market closure and professionals collectively mobilize to achieve this goal. She describes how fully realized professional projects such as medicine are able to create the market for their service by controlling the knowledge utilized in professional work, and also controlling the creation of that knowledge, through the university-based education system. The extent to which a profession is able to create and sustain a monopoly in the marketplace for its services is also a key determinant of the success of that professional project. In establishing such a monopoly, the profession is somewhat dependent on the state to recognize and sanction licensing for the service, then to delegate control over

licensing to the profession itself. Finally the state's support of "monopolistic education systems" (Larson, 1977, p. 17) is also essential for a profession to establish control over production and reproduction of its specialized knowledge. This total control over cognitive and market conditions enables the profession to defend the need for its services, define what those services should be, and to develop additional scope of practice for new services. Because outsiders are excluded from each aspect of participation in the profession, the mystique associated with membership in the profession can be maintained. Larson's discussion emphasizes the self-serving aspects of professionalization, undermining arguments that support protection of the public interest.

Larson claims that a preferential social structure is necessary for the emergence of a professional project and that enhanced social power will follow successful professionalization. The practice of closure reinforces and enhances a group's social status. However, the social power of professional projects can in turn be weakened by changes in the social structure, particularly the democratization of knowledge creation we have experienced in the recent past. Globalization and the emergence of a knowledge economy whose transactions are widely accessible to non-professional workers (Evetts, 2003; Freeman, R. B., Hersch, & Mishel, 2005) undermine professionals' monopoly on specialized knowledge. This co-dependent relationship between the structure of an institution and the action of its membership hints at a notion I will explore in my discussion of labour process theory later in this chapter.

Labour process theory (Braverman, 1998) addresses formal and real subordination of labour and the ways in which rules and structures limit workers' power in the

workplace. Formal subordination succeeds when an owner of the means of production gathers workers together under a single roof. Workers no longer work for themselves, and do not own the output of their labour. However, skilled workers in such settings control the actual labour process and exercise autonomy over specific tasks. Real control of the labour process is still in the workers' hands. The pressures of competition induce owners to exert more direct control over the labour process in an effort to improve efficiency and profits. Machine discipline and Taylorism are ways that owners achieve real subordination of labour.

Larson highlights the difference between self employed, entrepreneurial professions and salaried professionals in her discussion of doctors versus engineers. She makes the distinction based on the latter's lack of power over the market; capitalists and industrialists determine the scope and nature of the engineering work to be done. In addition, the engineer's work is public, its success or failure is evident to the untrained eye, and thus the work does not embody the mystique attributed to medicine. Larson quite specifically addresses the circumstances of professionals in dependent employment, a concept that reaches back to Weber. She notes that little is left of the independent entrepreneurial dream, and that state regulators hold most power. Participants in my study echo this comment when they describe the current state of the legal profession in Nova Scotia. However, to discuss the success of various professional projects Larson draws her comparators from different professions. She does not examine the possibility that some members of a single profession may find themselves in varying forms of employment facing varying forms of labour subordination. Crown prosecutors, like in-

house legal counsel in a private firm, may have more in common with the engineers of Larson's description than they do with their peers in private practice.

Demarcationary Closure: Drawing the Lines Between Professions

Witz (1992) contributes an excellent review of the literature that highlights the evolution from trait (and functionalist) theories of professions, through processual theories to "institutionalized means of controlling occupational activities" (Witz, 1992, p. 41). This review emphasizes the primacy of closure as an explanatory device and the foundation of professional projects. Witz's discussion develops a hierarchy of closure, tied to social positions of dominance and subordination. She elaborates on closure theory by specifying what she calls "demarcationary closure" as a strategy used by dominant occupations that mobilize power sources to define and limit the practice areas of other occupational groups. These occupations exert their dominance both through limited access as noted above and by attempting to define the practice boundaries of other groups. Witz's discussion of medicine and midwifery illustrates the point succinctly. The distinction between the two forms of domination is one of perspective. Exclusionary closure's focus is inter-occupational control and demarcationary closure seeks inter-occupational control over "related or adjacent occupations" (Witz, 1992, p. 44). She categorizes two forms of closure as subordinate forms: inclusionary closure and dual closure. Inclusionary closure is evident when members seek to join the dominant group. For example, licensed practical nurses organize into a regulated subset of the nursing profession. In dual closure, members resist the dominant group and try to usurp power while at the same time practicing exclusionary closure to define their subordinate

domain, as in the case of skilled trades in the construction industry. Sometimes these skilled workers trade heavily on the public protection argument as well, as electricians do.

Together these two theorists, Larson and Witz, bring the discussion of power and social dominance into the literature on professions. They also introduce additional forms of closure to aid in refining analysis of professional projects. The contributions of Larson and Witz develop the structure/action dichotomy and give a more balanced view of the relationship between the institutions that perpetuate professions and the actions of individuals and groups within the confines of those institutions and their norms. However, the discussion to date has addressed distinctions between different professional projects and occupational groups. The contributions that follow further specify dimensions of professions that are most relevant to my discussion of prosecution as a *subset* of a large dominant profession.

Specialization Within Professions

Specialization within professions has been discussed as an evolution of the closure and monopoly features of professions by several authors (Abbott, 1988; Abel, 2004; Freidson, 1986; Gawande, 2007b). Specialized knowledge and the division of labour and professional power can be considered a response to structural, social, and institutional changes. Specialization in professions can be considered partly a reaction to the explosion in complexity and the knowledge economy (Freidson, 1986) and partly a response to increasing market scope through globalization which has put pressure on

professional projects to differentiate themselves and to stake claims to emerging markets. The result is a reduction in span of professional control over a narrower range of work, using increasingly sophisticated tools and methods, and command of a narrow but very deep and complex body of knowledge (Abel, 2004). This further excludes outsiders who do not possess this knowledge. In some instances, access to the knowledge may be limited by access to the employment and training circumstances where the knowledge is located. In addition, the licensing of professionals further limits those who can exercise the knowledge and develop the skills related to its application. Control over knowledge and its use in practice is countered by increasing access to information through the internet, increased participation rates in higher education, varieties of semi-professional training, para-professionals, and the automation of some discretion based work (Susskind, 2008). Professions are thus in a state of flux and transition, where market and social forces are changing around them, causing the institutional form and the social relations within professions to respond.

The specialization of professional work and the employment of professionals in heterogeneous organizations have lead to two streams of thought. Johnson (1972) discusses the proletarianization of professions that results under these conditions. He explains that professionals are alienated from their work and deskilled through managerial strategies and as a result of administrative controls imposed by management. Haug (1975) and others describe a de-professionalization where the power and characteristics of the profession are diminished to a point where they no longer effect control in any meaningful way. For example, Susskind (2008) examines lawyers in

particular as knowledge workers who face pressures of commoditization of their work in an increasingly complex, fast paced economy. Recent authors have successfully demonstrated that professions do persist in the face of changing employment forms (Rabban, 1991; Susskind, 2008; Wallace & Kay, 2008). Nelson and Trubeck (1992) make a compelling case that proletarianization of legal professions is not inevitable in a world where more and more lawyers are also employees. They argue that the capital versus labour dichotomy in professional service firms is a blurred line, with partners doing work and workers aspiring to partnership. The proletarianization thesis's three sources of loss of control: deskilling through task division, administrative control over tasks, and loss of control over the ends of production (Nelson & Trubeck, 1992, p. 203) are less salient for public prosecutors than other occupations such as nursing. The state employs prosecutors, their managers do not prosecute for the most part, and yet most individual prosecutors are responsible for the result of their work. Administrative control fetters individual professional discretion, however, and has encouraged a response and resistance from prosecutors, as we shall see more explicitly when prosecutors tell their stories of resistance in Chapter 5.

Institution Theory

To more fully understand how professions react to contemporary pressures it is helpful to briefly consider institution theory (Greenwood et al., 2002; Hinings, 2001). Professions are powerful institutions. Khurana (2007) summarizes the four elements of institution theory, namely institutional actors, institutional fields (the domain in which the institution operates, including various stakeholders), institutional logics (belief systems

that shape the behaviour of actors in the institutional field), and legitimacy. He describes how each of these elements contributes to creating and maintaining powerful social structures and activities that help regulate social action and give it meaning (Khurana, 2007). The legal profession embodies each of these elements and each in turn helps to mobilize resources to secure and perpetuate exclusionary closure. Greenwood et al. (2002) describe the organizational field as an intermediary structure between organization and broader society.

The profession, as represented by a professional body, forms an intermediary between an individual's professional practice or employing organization and the broader public interest served by the regulation of professional services. The professional body can act much like an institutional field, setting the policy priorities for the profession and monitoring change, publicizing and promulgating best practices. Lawyers are able to take action in their practice as well as to support the practice of other lawyers, particularly through the articling and mentoring processes. They also work in roles on the regulatory bodies and boards to further the aims of the profession. The interaction of lawyers with their clients, educational institutions, other associations, the public, and the state legislators forms the field in which the institutional practice of law takes place.

Institution theory's focus on structure (Hinings, 2005) does not leave much room for discussion and analysis of individual agency (DiMaggio, 1988). The portrayal of the profession as a singular force perhaps is not an accurate representation of the multiple interests involved in public prosecutions. Institution theory can be helpful in understanding the expectations a profession encourages among its members, and the way

the profession shapes to some extent public expectations of criminal prosecution, for example. Greenwood et al. (2002) use institutional theory to describe the changes to professionals in professional service organizations. This point is taken up by Muzio and Ackroyd (2005) who state that institution theory does not adequately apply to the case of lawyers and the legal profession. They examine Britain in particular, and though the profession has been subject to much rapid and jarring structural change through a series of political moves and legislative changes (Abel, 2004), Muzio and Ackroyd claim the theory fails to consider the agency of groups. The authors present a quantitative analysis of the structure of the legal professional service firms. They focus on this agency of groups, and the power dynamic that exists between the ownership/partner ranks and the salaried associates in law firms. While all commentators agree that the legal profession is changing, a more complex picture emerges when institutional actions and pressures are complemented by an examination of the strategies of groups within institutions and the organizations that comprise an institutional field.

The logic of the profession is embedded in its norms and values. These values are inculcated in lawyers from their early days of law school, and though not immutable, are slow to change. Institution theory draws us toward an examination of broader social shifts that help redefine the position of the profession relative to other social structures. While bearing in mind the power of these social structures, the speed of change requires us to look at ways that institutions are changing quickly. The debate over whether the professions are being proletarianized (Derber, 1982b; Johnson, T., 1972) or deprofessionalized (Haug, 1975) through social forces that undermine their market and

knowledge control continues to draw attention (Powell et al., 1999). However, the discussion is focussed mainly on organizational structures and where the relationships between individuals is considered, it is in terms of groups and archetypes (Flood, 1999; Kitchener, 1999). I note that little has been written on the power of individuals to effect change in an institutional context. My study addresses this gap. Wallace and Kay's (2008) study of professionalism among individual lawyers argues against the proletarianization thesis with the finding that professionalism is not dictated by employment setting (a social structure), but is influenced by the nature of the work undertaken by individuals.

Theme 2: Collective Bargaining

While Canadian and UK literature on professions exhibits a recent focus on professional service organizations (Ackroyd, 1996; Ackroyd & Muzio, 2007), my study examines the profession in the employment context of a large heterogeneous organization where the types of strain and workplace conflict arise from different roots. In such an organizational setting, the professionals are just one subset of dependent employees among many different types of workers, some of whom are also professionals but many of whom are not. Although shared working conditions may provide sufficient impetus to begin to mobilize workers (Kelly, 1998), successful collective action will need to overcome or otherwise assimilate the profession's norms and closure strategies as well. The goal of professional projects of closure is to exclude other types of workers, as we have seen above, and not to unite with them. In fact, lawyers compete with each other at every stage of their career. Law students compete for the best articling jobs, juniors

compete for partnerships, and the solo practitioner competes with other lawyers for work. Lawyers are not encouraged to work together; they are adversaries in legal battles.

Furthermore, in a heterogeneous organization there is a good chance that management and policy makers are not members of the same profession as the individual worker. The differences in values and perspective that may arise from differences in group membership can lead to workplace conflict (Braverman, 1998). The following section will address the theme of collective action in an organization where the above-mentioned conditions exist. There are certainly repercussions for the ongoing development and maintenance of workplace control in a heterogeneous setting and little literature that deals specifically with professionals in such a workplace setting.

The Collective Bargaining Project

“Modes of closure can be thought of as different means of mobilizing power for the purposes of engaging in distributive struggle” (Parkin, 1998, p. 144) Collective bargaining is also a means of mobilizing collective power. Kelly (1998) outlines how this is accomplished in his discussion of mobilization theory. Kelly discusses the translation of individual concerns into collective concerns, and he then describes how action escalates through a series of stages. Workers must recognize an injustice, feel it is possible and reasonable to have it addressed, and develop a shared interest in the problem’s solution. In many respects, the mobilization process is similar to the professionalization process, and professionals have already achieved collective representation to assert control over their work process. When professionals find

themselves in dependent employment, however, the employer and the diversity of workers in the workplace have the potential to limit professionals' otherwise autonomous control of their work. The following discussion of the union model reflects the Wagner-Act based approach in North America.

In contrast to the professional project, which defines itself in relation to social structures and the other groups of competing workers, the collective bargaining project defines itself in one of two ways: by craft or industrial focus. The setting of a single workplace defines the industrial union and the craft or occupation defines the craft union across a number of workplaces and employers. The craft union is analogous to the guild of the middle ages, and the industrial union arose in response to the changes brought by the industrialization and mass production in contemporary times. The craft union also has parallels with the professional project, where the focus of collective action is to protect the dimensions of the work itself, and admission to the practice of an occupation. However, in contrast to the social closure described by Weber, the industrial union project gathers members together to represent their interests in a subordinated role. The project is fully realized when the union is given sole and exclusive bargaining rights of state "certification", is a member of the broader labour movement, and is actively organizing workplaces and workers. Towards the other end of the collective bargaining spectrum are workers who gather informally, perhaps in an association without formal status under any labour legislation, to express their concerns and suggestions collectively to the employer. The employer may or may not recognize such an association for bargaining purposes and in the unorganized extreme may only discuss on a casual,

informational basis with no direct participation by workers in decision-making or policy development. There is thus a range from less to greater organization and engagement of members in developing worker-organization policy and negotiation priorities, dues collection and formal membership rituals. Recognition also follows a range from voluntary, informal without certification to full unionization under applicable legislation and formal, ongoing bargaining.

Collective bargaining, like professionalization, is also a strategy of control over dimensions of work. In Canada collective bargaining most often, but not always, takes place through representation of workers in a trade union. There are two important differences between collective bargaining and professionalization strategies, however. Traditionally workers gathering together under a single employer were not owners of the means of production (Braverman, 1998). Workers are called forth when an employer has an investment in capital resources and requires labour to realize the value in that investment. Workers contribute their labour but do not own the means of production itself. This is in contrast with the professional setting, where the means of production are tied to mental effort and knowledge with minimal physical tools required to do the work and ownership of the business is in the hands of the professional herself. The goal of collective bargaining is to wrest from the employer some power over management's control of the design of the labour process; the rules and structures around how work is completed. Bargaining also looks for a redistribution of the surplus from production. Some professions, such as nursing and medicine, have successfully combined exclusionary closure as a profession and collective bargaining where members are

gathered together by single, large employers. The health care setting, with its huge investments of capital and employer control over tools of “production” is an example of the pressure rapid change in the workplace brings to professions.

The second difference between the two projects is one of timing. Industrial forms of collective bargaining occur after the fact of employment. Workers organize in the employment setting that gathers them together. This is true of industrial unions; industrial unions organize workplaces irrespective of individual trades and work assignments and members are all located at one workplace/employer. Craft unions generally organize workers based on their work content, where members practice the same trade or craft and they are dispersed across different employers. Craft union members often must learn their trade before they become members of their union and find work. The professions are similar to craft unions in the way they organize members into the profession as a precursor to employment.

Both professionalization and collective bargaining strategies seek control over the conditions under which members execute their work. However, the professions are collectivist in the sense of needing a critical mass of members to assert claims for autonomy and self-regulation but they have much less of a collective focus than unions. The efforts of the professional project are aimed at carving out a market in which individuals can practice with autonomy. The collective bargaining project finds its strength in the commonality of work conditions that are imposed by the employer, and is galvanized as Kelly (1998) indicates, by a sense of injustice. Membership in a collective bargaining project is predicated on conflict with the employer (Sykes, 1967) while

professionalization is based in a drive for market control. Thus, the two strategies of workplace control have a basis in quite different logics. I will return to the notion of injustice in Chapter 5 as it plays a critical role in the Nova Scotia Crown prosecutors' struggle for collective bargaining rights.

Professionals in Organizations

Employed professional workers have traditionally been different from other workers beyond education and training requirements; they enjoy greater latitude for independent decision making than many non-professional workers and the quality of their work is subject to peer control (White 1993). These differences might indicate on the surface that the traditional model of industrial unionism is not viable for professional workers; however, unionism is no longer the preserve of blue-collar workers in industrial settings. The most significant growth in union membership in Canada since the 1960s has been among white-collar workers in the public sector (White 1993). Professional workers are increasingly subject to managerial control in public bureaucracies, a situation that has not been extensively studied. There are implications for the Canadian labour movement with the inclusion of unions and associations of professionals drawn from outside the economy's industrial base. These workers bring not only their numbers, voice and economic contribution to the movement, but philosophies developed through diverse experiences and processes of collective action and they represent an important group for further research.

Freidson (1986) addresses the status of professionals as employees. He highlights their role as supervisors or managers. His discussion also hinges to great extent on the relations between the profession and other, excluded, groups. For example, because the label supervisor or manager is drawn from the industrial model, its value in describing professional work is only useful when professionals are directing the work of non-professionals. Professional work itself is self-directed and peer-controlled. The notion of separating control from execution falters in the complex relations with the profession itself. On the one hand there is the autonomous decision making that is critical to the exercise of professional activities and on the other a collaboration and elaboration of roles and tasks is necessary to accomplish the professional work. The manager, Freidson claims, is ultimately a controller of resources and not of work in the industrial sense. Management exercises control over work done by professionals by controlling resources that enable or inhibit the application of professional autonomy rather than any overt control over the work processes themselves. This type of manager is not fulfilling their role in the capacity of a professional. Managers who are actually members of the profession they supervise may exercise a formal subordination over their peers. To the extent that policy can influence the actions of individual professionals, they may also achieve real subordination of professionals under their control. This real subordination is based on the manager's specialized, expert knowledge.

Freidson (1986) also discusses the similarities between employed professionals and managers and policy makers and how independence from supervision is itself a form of supervision. The community of interest based in this independence should enable

professional workers to organize under labour legislation (Freidson based his comments on the US). The managerial overtone of professional privilege and the confidential nature of much professional work meant that groups of professionals in Canada were excluded from larger collective bargaining units until quite recently. For the employed prosecutor this meant they were placed in management pay plans and covered by management policies for lack of any other suitable category. However, the prosecutors' occupational community drew a distinct divide between the regular work of the Crown prosecutor and the management cadre of the Public Prosecution Service, further highlighting very practical contradictions in the way the management designation was applied to all lawyers.

Other theorists challenge the notion of a managerial labour process (Armstrong, 1984; Willmott, 1997) in response to Braverman's (1975) claim that management is just another work process to be codified and controlled. The distinction between control over the work process for its own sake compared to control exercised for other, broader organizational goals is clear in the prosecutors' stories collected during my research. In provinces beyond Nova Scotia, prosecutors also chafe at the idea of being "lumped" into a pay scheme and job classification system designed for work so wholly unconnected to theirs.

Control of the Labour Process

Freidson calls professionalism the "occupational control of work" (Freidson, 2001, p. 2) and collective bargaining represents an attempt, successful to varying degrees,

at worker control of work. Though the members of the profession themselves govern and regulate their work in theory, the reality, well discussed in the literature, is that an ideal type of profession is subsumed in a bureaucratic form of professional body, with complicated ties to State regulators, the public interest, and prevailing ideologies that influence market activities. It is easy to distinguish collective bargaining strategies from professionalization where there is a distinction between dependent employment and self-employment. The distinction is less clear when professionals are employed.

Professionalization has been successful in achieving high status and market closure for professional services, as in the case of lawyers. I propose that the case of the Crown prosecutors illustrates competing logics of collective action seeking control over work. This dissertation explores how each closure strategy informs the other, and how together they help Crown prosecutors to wrest control of their labour process from management and the employer. The struggle for collective bargaining of prosecutors is nurtured in an occupational community. This community enables the otherwise individualistic nature of the legal profession to identify collective goals and mobilize for collective ends. This case study examines Nova Scotia the occupational community found among staff prosecutors of the Public Prosecution Service (PPS), as we shall see unfold in Chapters 4 and 5. Yet the OC draws support and from the broad community of all prosecutors across Canada.

Why is the structure of the profession, even when it is replicated completely within an organization like the PPS, insufficient to guarantee control of the labour process to the employed professional? Some tools of the profession do not “work” for

professionals in dependent employment. Alternatively, the organization structure is too powerful when its rules are used to define and control the workplace. However, in the case of law, the work content cannot be (or is not) specifically defined – that comes from the profession, so the administrative rules come to dominate in the bureaucracy of the civil service. This causes us to question what role management plays in this setting and in the control of professional work, especially management from within the ranks of the profession.

The employer exerts control over the design and execution of work in various ways. Some of those tactics are formal and impose structures and rules in an overt attempt to direct the workers' efforts. Braverman (1998) discusses the notion of formal versus real control of the labour process using the factory assembly line as the full expression of real control. On an assembly line the knowledge of skilled workers is appropriated, codified in work procedures, and handed back to the workers as small sequential steps, requiring no specialized knowledge. Real control is the effective control on the shop floor, which comes not only (or perhaps not at all) from formal structures. Other theorists have noted that workers do not “go quiet into that dark night” of formal subordination but resist and impose in their turn behavioural limits on themselves and their peers in the workplace (Burawoy, 1979; Willmott, 1997) to effect real control over the labour process. Professionals are subject to the real control of their professional norms. The profession inculcates values and standard work practices so that each professional perpetuates a real control over the labour process independent of formal restrictions.

One form of formal control is the salary system that assigns value to the labour of Crown prosecutors. The salary mechanism for management employees in government, which covered Nova Scotia Crown prosecutors until the advent of collective bargaining, was removed from the direct contract of employment and set by Cabinet fiat in the form of an Order in Council. Prosecutors interviewed for this study describe how the inconsistencies and favouritism rendered the assignment of value in exchange for their labour power meaningless. The salary system was a major issue of contention and was the first item negotiated in a collective agreement between the Nova Scotia Crown Attorneys Association and their employer.

Larson (1977) indicates command over scarce resources is necessary to establish and maintain professional power. However, it was due to low wages and perceived high workload that people were disinclined to participate in the labour pool for Crown prosecutor. The imposition of a salary system as noted above highlights a tension between professional control and employer control over working conditions.

Faulconbridge and Muzio (2008) argue that organizational and managerial control of professionals are possible only when the objectives of such control align with those of professionalism. Other writers (Ackroyd, 1996; Hinings, 2005) have examined professionalism and organization structure for the intersection of organization configuration and professional values. A labour process perspective provides a lens through which one can examine issues of control that derive from organization and professional sources.

Dependent employees

Professionals give up some measure of control over their own work in situations of dependent employment. One aspect of the closure strategy of collective bargaining is an attempt to regain some control over workers' labour process appropriated for organizational goals. The labour process refers to the specification of work practices and the application of expertise to solve work problems (Braverman, 1998). Like a mechanic or millwright, the lawyer's work also involves the application of knowledge and skill developed through training and a form of apprenticeship. However, the process of the lawyer's work is somewhat invisible, particularly the application of discretion and judgment. Decision-making in prosecution involves complex application of legal principles and case law as well as the decision whether or not to proceed with a prosecution. This decision best reflects the concept of public interest in a profession; a professional acts not only in the pursuit of a living, but also acts in the public interest as holder of a public trust. Some of the autonomy that derives from an unfettered, self-regulated labour process is limited by organizational constraints in dependent employment. Constraints can take the form of rules and procedures, such as a policy manual. Public prosecutors chose collective bargaining over terms of employment to protect and reclaim some of their professional power, autonomy, and benefits such as income, which they sacrificed when they choose to practice law as employed public servants.

The literature presents contradictions when we consider the employment of professionals, particularly in the public sector. Many public sector professional workers

are unionized yet the literature on professionalism and unionization generally juxtaposes the two concepts as competing options for occupational power (Crouch, 1982; Freidson, 1973; Offe & Wiesenhal, 1980; Parkin, 1979) whether the discussion is based on the traits of the profession, social class and material power, or logics of action. Isler (2007) describes the dilemma for professionals as a choice workers must make between constructing an identity as a professional or as an “organizable worker” (p. 443) Much theorizing about professions and professionals encompasses the self employed ideal type of autonomous professional as well as the professional service firm. Muzio and Ackroyd (2005) have recently explored closure theory in the context of professional service firms, demonstrating that mechanisms of social exclusionary closure continue to prevail, but have moved inside the firm rather than being located externally in the marketplace. Although aspects of employment and the labour process of professionals are changing in professional service firms, much of the context of the work and the relationship with clients remains the same. There is an external, paying client and the complexity of the work is measured in time and effort that is billed to the client. The movement in North America away from the billable hour towards a fee for service model has not yet altered this fundamental relationship to any great extent yet (Furlong, 2010).

A gap exists in the area of the employed professional whose conditions of employment do not involve an external client. Despite the preponderance of literature contrasting the two strategies of professionalism and unionization (Isler, 2007; Rabban, 1991), some professionals have acquiesced to positions as employees under “flat fee” situations, and bargain collectively. Nurses and allied health professions (Haiven 1999),

teachers, doctors, and now lawyers do so. In-house counsel who provide legal advice to employers are salaries employees, though they do not engage in collective bargaining. The employment of professionals is not a recent phenomenon (White, 1993), and offers a rich field for further study. Derber (1982) discusses employment of professionals and control by non-professionals as de-professionalization and deskilling of their work. However, now prosecutors are no longer in the Department of Justice; they are managed and directed exclusively by other lawyers who are also prosecutors. The “other” is government and its ministers and not a manager drawn from outside the profession’s ranks.

Class theory

It is important to take this opportunity to address class theory, if only briefly. The literature discussing class and white collar workers addresses a trend of bureaucratization and formal control of the labour process. The gathering of prosecutors into dependent employment places them in a position where comparisons with other white collar workers is inevitable. I do not propose to categorize prosecutors as members of the working class. They hold positions of significant social power that preclude any meaningful discussion of that status. However, prosecutors have sought an additional closure mechanism: collective bargaining. Some authors on class theory make salient points that are relevant for problematizing the Crown prosecutors’ struggle. This section touches on some of those ideas.

Parkin (1979) suggests that the enthusiasm with which professions join the labour movement and find solidarity in views and values based on class is limited. Traditional

class theories highlight a distinction between the owners of the means of production and those they exploit. But many professionals are in what Wright (1978) calls a “contradictory class location.” They own their intellectual capital and yet may still work in conditions of dependency and subordination. The ownership of intellectual capital contributes to the strong professional identity, yet the position of dependency through employment contributes to an urge to unite against the power of the employer. Nurses are one example of this phenomenon.

There is a broad literature on white collar workers, white collar unionism and the “new working class” (Hyman & Price, 1983). One of the most significant points made in reviewing this literature is that a singular definition of worker category or class is not possible. There is such considerable variation within the white collar and professional ranks that all ideological and political perspectives can be represented (Giddens, 1973). The concept of productive and unproductive labour itself is contested (Crompton & Gubbay, 1977; Giddens, 1973; Poulantzas, 1975). The decline in property relations as a basis for group division (Murphy, 1984) further clouds the debate. The final straw is the problem of the public service. Poulantzas (1975), for example, says that social relations rather than the work itself is the basis for understanding class position. Public servants are excluded from the working class because they are actively involved in reproducing capitalist social relations; however, they too are exploited. Public servants are employees and capital has “seized hold of their activities” (Poulantzas, 1975 cited in Hyman and Price at p. 111).

In their discussion of management and of Wright's work, Crompton and Gubbay (1977) highlight an important point. The worker who carries out only part of a capitalist function is no less an agent of capital because the duty is attenuated or divided. Management's dissatisfaction with bureaucratic limits to their authority does not make management part of the worker collective (Crompton & Gubbay, 1977). What is important to the situation of Crown prosecutors is the role hierarchy plays in structuring social relations at work. The hierarchy of the broader civil service and that of the newly formed Public Prosecution Service both obscure the prosecutors' class position. On the one hand prosecutors are more independent and express greater control over their labour process, and on the other hand they are confined in a more extensive hierarchy. Although the application of mental effort is not curtailed or exploited by technology in the same way as physical effort, management still tries to control prosecutorial discretion. Management in the PPS are full status members of the legal profession and may also take on some level of courtroom work. Staff prosecutors are peers in the profession, but subordinated to management and to the employer's economic aims. A focus on production of surplus value and lack of ownership of the means of production as defining measures of working class status is clearly out of date.

Collective Action

Why people join unions has been the subject of several different streams of research, as Riley (1997) summarizes and explores in her comprehensive review. Professionals are not usually examined in this research for the simple reason that the study of professionalization has focused upon private practice and the professional

services firm, and industrial relations theory building has been based on large industrial unions. The two seldom coincide. Some social identity research has examined the legal and medical professions, and particularly the development of the medical doctor's identity through internship (Harrison, 1994). There has been little examination of the professional's labour process in these studies, and little research into employed professionals, with some UK exceptions (Evetts, 2003, 2004; Muzio & Ackroyd, 2005; Muzio & Hodgson, 2008). Research is warranted that draws on both streams of theory, collective bargaining and professionalization, to explain the reality that professionals do unionize, and very elite professions at that.

Unions use usurpatory closure while professionals who bargain collectively use both usurpation and exclusionary closure (Parkin, 1979). Parkin questions the extent to which professions take the further step to join the labour movement, engage in collective action, and find solidarity in labour's views and values. He takes a class perspective on labour struggles, which would deny the elite professions any meaningful participation in labour action. However, a subordination/subjugation perspective draws different conclusions. Considering the broader realm of professions in various forms of employment (Haiven, 1999) it is increasingly common to find fewer traditional industrial unionists in the broader labour movement and more and more independent contractors, artists and fee for service employees, some of whom are employers in turn. These individuals and groups are seeking collective representation over compensation and other terms and conditions of the sale of their labour and labour value.

Offe and Wiesenhal (1980) describe the several ways in which collectives of labour differ from collectives of capital, highlighting how these collectives are constituted and the basis of interest representation. The basis for effectiveness of the two logics of collective action is particularly important here. The union's is based on willingness to act, whereas the capitalists' is based on willingness to pay. The union's logic is a momentum in favour of action. Without action, nothing is gained. However, the capitalist need not take action in a collective as he is master of his enterprise and retains significant control if he remains independent. If the capitalist wishes to relinquish some of that control in favour of some form of association of capital, usually at a cost, the incentive for such an action needs to be significant. A comparison can be drawn between the capitalist forms of collective and the professional association; sort of an "action if necessary but not necessarily action" approach to issues.

Lawyers are members of an elite profession that enjoys a position of social power. They exercise a monopoly over legal services. Their form of association exists to protect this monopoly and to define and control the realm of the practice of their specific skills and tasks, and to exert control over the expertise required to maintain autonomy and individual practitioners. In many ways, the professional association can be compared to the capitalist industry association. Although membership is compulsory for the lawyer, she subscribes to the principles of the Bar Society. The Society in turn acts on behalf of its members without continuous confirmation of its mandate and without requiring individual action. Members comply with external directives, such as the changes to Civil Procedure Rules. Lawyers are represented by the Society in consultations but collective

action is not necessary in every matter. The analogy can be continued even to the point where the individual practitioner does not fully realize the earnings promise of the monopoly until she hires others. A union or union-like collective is essentially the antithesis of this form of power, and represents a broad range of what Offe and Wiesenthal call life-based interest. The wage, continued employment, and working conditions of their members (redefined as they are through continued membership in the collective) are broader reaching dimensions of life than the manipulation and administration of capital (dead or liquid labour) for business goals.

Offe and Wiesenthal (1980, p. 78) discuss the power of individual interest in preserving autonomy of business organizations, and by extension this can apply to the professional under governance by the professional society. The Bar Society represents the interests all lawyers share in common for the integrity of the profession and their individual reputations. The Bar Society achieves these aims through certification and licensing in the profession. Interests regarding the practice of law and the freedom to conduct their practices unfettered are often reflected in the efforts of other forms of collective, such as the Canadian Bar Association. These collectives lobby government and the Bar Society alike, as well as promote public debate on topics and points of view of importance to the collective. Issues and concerns specific to a particular subset of the profession are represented by specialized associations; there is a Criminal Lawyers' association, for example, whose mandate is largely one of professional development for its members. Crown prosecutors across the country have formed associations expressly to represent their interests as employees of provincial prosecution services and to take on

the mandate of collective bargaining over employment conditions. This last form of collective is a response to prosecutors' feelings of powerlessness within their organization structures. In Chapter 5 we will see how the Nova Scotia prosecutors position their collective bargaining body within the realm of these various interest frameworks.

Lawyers do not lose their membership in the Bar Society, nor the benefits of membership and malpractice insurance protection when they join an additional representational group. In fact, membership in special interest associations is encouraged in order to meet individual lawyers' needs for interest representation. The provincial Bar Societies specifically deny they represent individual interests in favour of the protection of the public interest. In Friedson's (2001) model of the profession the occupation controls the division of labour and the market, as well as the training program for credentials. It is true even within the Nova Scotia Public Prosecution Service that the professional lawyer executes certain types of tasks and no other employee can do these things. Prosecutors describe in Chapter 5 how they find themselves at the intersection of incredible autonomy and complete monopoly over their prosecution function, while simultaneously chafing at administrative controls imposed by their organization life. Their choices are more complex than just forming an interest group, however. We will see later how they must work diligently to define and preserve a rationale for a body that represents their collective interests.

What do Crown prosecutors seek in their collective bargaining struggle? Why do they seek "unionized" status? The three key interests (Offe & Wiesenthal, 1980) of

wages, continued employment and working conditions are relevant in the Crown prosecutor case. The application of an arbitrary salary scale that ignored any evaluation or assessment of prosecutors' market position significantly affected the actual and perceived earning promise of the profession. Salary management was a perceived injustice in the workplace which Kelly (1998) says is necessary to mobilize workers. The struggle over wages was one of principle not just amount. Barling et al (1992) describe motivation to unionize through a model of collective action based on collective interests. These issues can encompass protection from arbitrary treatment, voice on the job and a say in how the work is done. In the context of professionals, the profession determines most of the dimensions of these issues but the employer may command resources in the workplace to facilitate the execution of the work. The employer can effectively fetter professional discretion through structural control. The power of the profession loses force (Raelin, 1989) in a heterogeneous organization – a circumstance that can lead professional workers to unionize. Crown prosecutors are situated in an employment context with the features just described. Their response to these pressures is to seek collective bargaining. This dissertation uses the example of Crown prosecutors to illustrate how employment context affects choice and effectiveness of strategies of collective action.

While professions may once have been construed as virtual organizations that served members' interests they have been redefined by a professional body, a tangible organization that serves the public interest by supervising (the monopoly of) licensing. Associations have assumed the role of individual interest representation, but these do not

and cannot meet the specific needs of the *employed* professional. Thus, Crown prosecutors have formed a body for purposes of collective bargaining. This is a consistent approach when examined from an interest representation perspective. The fragmentation of interests that occurred as the profession became more established and bureaucratized has led to what seems inevitable. Many of the classic reasons that people join unions were features of prosecutors' workplaces. We cannot examine Crown prosecutors as one or the other, employee or professional, in pursuit of exclusionary closure or usurpatory closure. We must reconcile the distinct theoretical frameworks that define their interests as complementary strategies in an effort to control their labour process. The sociology of professions can extend its relationship with labour process theory to a new point, where strategies of collective action in pursuit of workplace goals are complementary to those that meet the goals of the profession. In fact, the profession can come to be defined to some extent in terms of the place of employment, and not the other way round.

Why did the Crown prosecutors form a separate collective bargaining association and pursue collective bargaining and not leave the organization, using exit as a strategy of resistance (Freeman & Medoff, 1984; Hirschman, 1970)? Likewise, they could have developed alternate forms of organization to control the labour market for prosecution services. For example, why is there an association bargaining with the employer rather than a force within the profession pushing the "special status" of the Crown prosecutor within the criminal bar? Why is exclusionary closure not pushed to its logical protectionist extreme? If a Crown can say "I won't work to rule, it's not professional, but

I will withdraw my services completely in a strike that is not sanctioned in statute or agreement” is he not blending the profession and the union-type collective in a novel way? To explore these issues fully it is helpful to examine the impact of dependent employment on the professionalization project and particularly on the notion of professional discretion.

Professional Discretion

A key concept in the quest for professional status is “mystique” (Larson, 1977). As well as commanding a body of knowledge, professions purport to be an unknowable “art.” To practice their art, professionals seek wide, and preferably unfettered, discretion. Professional discretion is manifest in the interpretation of core knowledge (the science) and the exercise of tacit knowledge (the art) in the execution of work functions. The application of this tacit knowledge and discretion is inherently entwined within the process of becoming a professional, and in reproducing one’s professional identity over time in each work undertaking. Discretion and the ability to exercise it lie at the heart of professional control.

In bureaucratic workplaces work processes become more carefully detailed and specified and process steps are committed to written form. This routinization of work, often rationalized as a quest for better public accountability and quality control, threatens to strip professions of their discretion. Several professions, such as nursing, medicine, and engineering have experienced a continual differentiation into specialties as they mature and as technological and scientific advances become embodied in professional

practice (Evetts, 2004; Gawande, 2007b) As a result, employers or engagers have the potential to exercise greater control over those documented processes. Thus the routinization of much professional work jeopardizes professional identities in the contemporary workplace, particularly in the case of publicly employed professionals (Dent & Whitehead, 2002; Misztal, 2002). The symbol of prosecution control is the policy manual. Although there is an argument that says policy protects the public interest by ensuring accountability and consistency (Davis, 1969), prosecutors take issue with this position. In Chapter 5 we will see how they frame an opposing argument.

Professions respond to the incursion into discretionary power by exercising greater or different closure strategies. The professions may make efforts to use different elements of Krause's model, enlarging their market monopoly, or they may attempt to organize more members within and beyond their profession. The goal is to more clearly define the boundaries of the profession, and thus exert control over access through that boundary. In some cases, these professions have turned to the usurpatory closure strategy of collective bargaining.

Lawyers in private practice interviewed in this study indicate the labour process of professional lawyers is comparable across all forms of employment: self-employment, large and small private practice in professional service firms. Even civil lawyers (non-prosecutors) in the public sector find much in common with their private sector peers. They decry the long hours spent building a practice and the absence of control over work when they take "whatever comes through the door" in order to build their practice. If careers of both private and public lawyers are built in much the same way, by taking up

challenges as they present themselves, then something must have occurred with Crown prosecutors to lead to collective bargaining. Is it the lack of career progression to an ownership like role? Do associates in private practice not mobilize because they hope to be partners one day? There are promotion opportunities for Crown prosecutors that come with increased status and earning power; some opportunities come with management responsibilities. On the surface, it might seem more likely that associates in very large law firms represent a greater critical mass for collective mobilization than the numbers of provincial prosecutors. Prosecutors are a very small group in their place of employment, where there are thousands of civil servants. Private law firms are managed democratically to some extent; managing partners are elected. Public service employment creates supervision that aims to extract effort from subordinates. This structure removes one of the key motivators of professional groups – economic gain and direct effort-outcome mechanisms. It is not that Crown prosecutors are no longer professionals, but they have a different component mix on the closure continuum and substitute collective bargaining mechanisms for professional ones when necessary.

Dependent employment sets up a managerial dichotomy within the profession where some are superior to others, and hold disciplinary power over others, outside the role of the professional. This hierarchy undermines the profession's exclusive control over the application of its expertise, and introduces a managerial role with allegiance to a structure and values outside the profession. This managerial class, however, is bound to the profession in the same way the Crown prosecutors are bound to it, and defined by it. Yet there is no ownership status and less directional control than the managing partner in

a private law firm. Therefore, the labour process for Crown prosecutors is markedly different from other lawyers. Prosecutors' experience is different from that of other members of the civil service who are supervised by professional managers, and not individuals with expertise in the field of those they supervise. The profession remains the means to deliver prosecution services, but its cachet has been devalued through dependent employment. Just as the labour process of the prosecutor becomes subordinated in form first, and then in reality through structure, rules, and public exposure, so too has the *status* of prosecutor fallen in form, by being subject to dependent employment, and then in reality through structure and as rules eroded power. At present, there are no alternatives to prosecution other than by lawyers. In this sense, the profession still has monopoly control. However, the career path of prosecutors may indicate that specialization in the profession precludes movement between its branches after a certain point in time. Specialization of the legal profession is a theme that dominates the exploratory research and description of the legal profession in Chapter 4. Prosecutors draw strength from their specialization, which helps them to reconcile their completing logics of collective action.

A Continuum of Closure Strategies

With the forgoing broad discussion of characteristics and theories of a profession it is possible to conceive of individual professions along a continuum of forms, using different combinations of strategies and achieving different degrees of control at different stages. Krause's (1996) model of guild power (precursors of modern professions) contributes a dynamic framework through which we can view professions and

professionals beyond a static institutional lens. The model's four elements of membership, work conditions, market domination, and relations with the state are notionally present across all professions. Each instance of exclusionary closure may combine the four elements differently, reflecting the specific context of market centralization, economic models, and the relative power of pressure groups (Krause, 1996). A guild-like group may use membership rules and relations with the state in differing ways, for example, depending on the economic model and the mobility of labour. Krause extends Larson's discussion of power to describe the interplay of these four elements. In his model, Krause argues that the traditional sources of professional power are eroded by the growth of capitalism and the modern state, which might be partially offset by the specialization described earlier. Gains in one or more of the elements of the model may be offset by retreats in other areas. For example, gains in the status of credentials may occur simultaneously with increased regulation and competition from new market entrants.

Krause and continuum: A New Level of Development

Campbell and Haiven (2008) elaborate Krause's work as a continuum to give us an indication of the multidimensional aspect of professionalism. This encourages us to be mindful of the complexity inherent in professions' attempts to sustain the scope of their practice and their roles in society and the world of work. In their discussion of professional control over work conditions, Campbell and Haiven describe how a profession or other guild-like body can be positioned at any point along a progression of increasing organization and formalization. The further one moves along the continuum

the greater power a professional body has, to the point of a fully realized professional project with market monopoly and self determination, which often extends to influencing the demand for services as well (Freidson, 1986; Larson, 1977). In this way, the authors link the strategies of exclusionary and usurpatory closure in a single model. This extends the work of Witz on processes of social power, and makes possible a discussion of both forms of closure in a single instance of professionalization. The continuum is illustrated below in Figure 1.

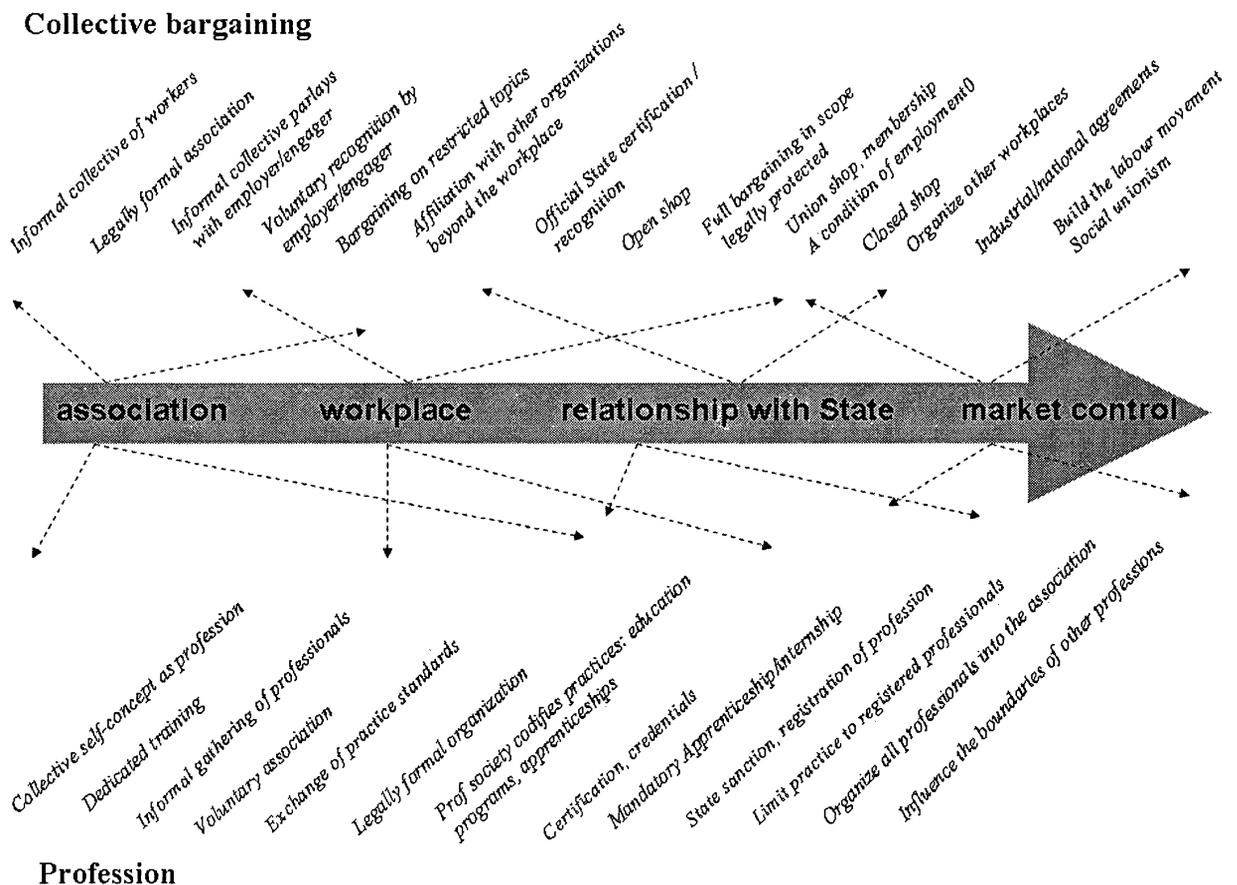


Figure 1 Closure Continuum (Campbell & Haiven 2008)

The idea of a continuum to represent progress towards full professionalization is not new. It is also clear that some occupations are further along the path to achieving the professional project than others. Greenwood (1957) and Hickson and Thomas (1969) have addressed the gradual nature of increasing professionalization and they suggest continua. MacDonald (1985) describes such a framework in his discussion of the accounting profession and its use of multiple strategies to achieve social closure without a full legal monopoly in the marketplace. Campbell and Haiven (2008) propose that a more finely graded continuum is warranted, with several additional points to describe fully the stages of professional closure. Furthermore, a comparable model can also apply to collective bargaining and frames a comparison of these two closure strategies (Campbell & Haiven, 2008). Finally, consideration of Krause's dimensions of guild power broadens the professional continuum beyond issues of social closure and class to explore relationships with state and other parties that are not dependent on capital and property. However, a continuum does not explain how a group shifts its thinking from one strategy to another. Heavy socialization of professionals is not undone in a moment, and cannot be undone and redone without effort.

Campbell and Haiven show that collective bargaining among professionals is a strategy to reclaim professional power from the state. The strategies of collective bargaining and professional monopoly are both used to achieve the closure and control goals of professions. The Crown prosecutors move back and forth across the continuum using strategies from both exclusionary and usurpatory closure.

Conflicting Ideologies

Control over the professional labour process is based on the exercise of specialized knowledge in an applied setting; professionals solve problems by discretionary application of expertise. Discretion and knowledge are at the heart of labour process struggles for all employees, not just professionals (Braverman, 1998). What differentiates professionals from the blue-collar worker, the craft union member, or the highly skilled technician is their monopoly on the knowledge and its exercise. They are typically not subject to any authority higher than their own profession's governing council. Thus on its face there is no contradiction between the ideology of profession and collective bargaining as both strategies seek control over use of discretion and application of specialized knowledge (Illich, 1977). However, collective bargaining traditionally raises issues of class power that do not resonate in a discussion of self-employed professionals. The self-employed may exert real control over their labour process by assuming the values of the profession, but they do not "oppress" themselves in a class sense. When professionals are employed in bureaucracies collective bargaining becomes a relevant choice as a traditional form of association embraced by those with less control. There remains, however, a stigma attached to labour and labour issues voiced in this way. There is also a tension between subordination and autonomy that must be addressed if professionals are to bargain collectively.

Kay (2004) distinguishes between professionalism, the characteristics of individuals and groups exhibited through behaviour, and the structure and traits of professions as more immobile entities. Furthermore, professionalism is depicted as an

ideology, a striving for some broader higher goals beyond individual and financial interests. When we examine the stories told by Crown prosecutors, just such an ideology emerges. In Chapter 5 this ideology, expressed as an ethos of fairness, is explored in greater depth. The ideology supersedes the pursuit of rewards that usually flow to members of the legal profession working in partnership settings and it emerges within a subspeciality of the profession.

Specialization within the practice of law is cited as a further detriment to an overarching sense of professionalism (Abel, 2004). Specialization leads to segmentation in the profession which detracts from the solidarity of the professional community. This erosion of solidarity is problematic because the collective nature in question is attributed to an entity that is joined only in ethos, and not in organization. These traces of relationships between multiple parties lead to an assessment that the profession of law is in serious decline and jeopardy (Abel, 2004). If the nature of the legal profession as a monopoly is under attack or in decline alternate forms of collective action might well emerge. Institution theory would indicate that the most suitable form of organization will survive when an institutional field is faced with sudden shock or gradual change (Hinings, 2005). This very clearly echoes Abbott's (1988) conclusions when he states that in inter-profession disputes over professional boundaries the most appropriate professional body will emerge to represent the work and workers. Crown prosecutors developed an alternate form of organization in response to organization change. In Chapter 4 we will see how this move led to collective bargaining. In Chapter 5 I will discuss the impact of collective bargaining on closure for Crown prosecutors compared

with the status quo membership in their professional regulatory body and subject matter interest groups.

An Example of Conflicting Ideologies

The right and role of the employer in disciplining employees is well known and documented. It is a fundamental management right in law and explicitly recognized in collective agreements with the balancing proviso that employees have the right to grieve discipline and discharge. Professions carry a double jeopardy because discipline by the employer over professional conduct is usually reported to the governing body of the profession. This triggers a second disciplinary process the final step of which is a disciplinary hearing. This path to discipline is in contrast to the (possibly) mutual problem solving approach in the employment setting. The risk to the practitioner is loss of license and thus ability to work in the profession anywhere, not just for the current employer (whereas discipline by one employer does not preclude working for another at a later date.) My preliminary research into discipline focused on the role of different bodies and organizations. Speaking with focus groups of nurses, one study participant mentioned that there is a professional obligation upon each individual licensed nurse to report suspected lapses in any co-worker's professional conduct or integrity. Lawyers have a similar obligation regarding their professional peers. This individualism and individual support for the professional ideal is in marked contrast to the individual support of the collective through a union. In fact, this participant indicated she has come into conflict with her union colleagues on this point. Reporting on a colleague for misconduct, particularly to the employer, directly undermines solidarity within the union.

The repercussion is that the event may also be reported to the professional body. On the other hand, reporting directly to the professional body may also require reporting to the employer on an ethical basis in addition to code of conduct requirements set out in practice standards (e.g. nursing). There is a tension built into the relationship between employer-union-profession.

The Crown prosecutor represents an interesting paradox – membership in multiple forms of collective with differing logics of action and yet these apparently are not just compatible but mutually reinforcing. The broad generalizations of professional projects as they might apply to all members of a profession are insufficient in explaining the developments among criminal prosecutors as a particular speciality. It is not a case of splitting an individual's identity among several groups, and weakening each or forcing one to dominate in an allocation of finite resources. Crown prosecutors seem to move between two strong institutional forms, collective bargaining and professional membership, at will and fluidly. How is this development affected by the relationship of prosecutors to their broader profession? To their political masters? Their management bosses? The existence of an occupational community within prosecution may provide insight into these questions.

Theme 3: Occupational Communities

Occupational communities are groups of people who affiliate on the basis of their occupation, and develop relationships that extend beyond the content of daily tasks. These relationships touch members' personal lives and the multifaceted reinforcement of

the occupation across different life interactions in turn helps to forge an identity uniquely based in the occupational community (Salaman, 1971a; Van Maanen & Barley, 1984). Although members in occupations will draw on their interaction with others informing their identity and their occupational community (Sandiford & Seymour, 2007), at the same time the community is “to some extent separate from society” (p. 211).

Occupational communities link members together through a number of distinct elements: the intensity of involvement in the work, extended relationships with coworkers that bridge home and work life, identification and socialization to the work identity (Salaman, 1971a). Marginalization, a diminished sense of status, plays a part in forming occupational communities as well; members of marginalized groups share a common view of the importance of their profession and tend to highlight the occupation’s worthiness (Salaman, 1971a). Salaman also says that occupational communities arise out of loneliness, particularly the loneliness that derives from working asocial hours. Finally, members of an occupational community share values and norms (Van Maanen & Barley, 1984) and tend to be satisfied with their work (Elliott & Scacchi, 2008; Salaman, 1971a).

Occupational communities have certain characteristics:

- The job is pervasive and sets norms for activities outside the workplace
- The tasks set limits over non-work activities influencing friendship patters, non-work norms and values
- The organization controls activities outside work directly like sleeping, eating and recreation

- Jobs tend to be of short duration which may cause cultural norms and values constructed outside the workplace to be “imported”
- Essential to maintain the “mystery” of certain jobs by unclear communication of knowledge descriptions and “know how”. The community thereby retains ultimate control of knowledge and work. Once tasks are understood and codified, self-control of the group is reduced.
- All friends, interests, and hobbies are work-based. (Lee-Ross, 2008, p. 470)

Research on occupational communities may deal with just one or two of these characteristics (Lee-Ross, 2008) or may entail an investigation of a range of these characteristics within an occupation (Marschall, 2002; Sandiford & Seymour, 2007), often in a quest to determine whether a group of workers form an occupational community. Research in occupational communities has often dealt with leisure activities (Gerstl, 1961b; Salaman, 1971a). This is partly because hours of work have such a significant impact on available leisure hours. Salaman noted the particular power of irregular working hours and extended hours of work beyond the social norm to foster occupational community among railway workers; their colleagues were home at the same times they were and had available the same types of activities during those hours (Salaman, 1971a). The leisure activities were outside of work hours and often beyond the scope of the occupational content of work. However, underpinning the leisure activities is what Gerstl (1961a) describes as the “convergence of informal friendship patterns and colleague relationships” (p.38). If we focus on the colleague relationships then the nature of the activities is perhaps of lesser importance than the bonds that form and the

mobilization that is enabled by strong occupational community, which Gerstl attempts to measure. The key indicators of occupational community are reflected in the relationship measures such as the number of colleagues among a worker's ten best friends (Gerstl, 1961a). In Cannon's (1967) study of composers he notes that a characteristic of occupational community is also task-based and that OC is stronger among those workers who frequently seek the help of others in the execution of their daily tasks. This aspect of work is especially true for Nova Scotia prosecutors who work largely independently in the court room, but rely to a great extent on advice and input from their colleagues before and during pauses in court proceedings.

Some occupational communities reflect Lee-Ross's list of characteristics to a greater extent than others, depending on circumstances. A number of studies cited here address the occupational community within established professions, such as dentistry and medicine (Salaman, 1971a). Much of the mystique and normative aspects of OC are addressed in the professional project. The use of specialized language is another example of a characteristic of OC (Cannon, 1967) that is an acknowledged aspect of the legal profession. This leads to the question are professions any different from occupational communities? Although the two concepts have much in common and seek similar goals, professions and occupational communities are manifest in different ways. The emphasis in the professional project is on the power of a collective to establish a market and a mental space for individuals to perform their work. A body of members exists, but does not operate in a collective sense in the daily execution of workers' tasks. A professional project relies on the elements of institutionalism for success. An occupational

community is beyond the scope of the profession, particularly when it exhibits Cannon's dependence on others for assistance and the social/leisure overlap with workmates. Yet OC contributes to the professional identity of its members as Van Maanen and Barley have discussed. There are aspects of professional workers' lives that contribute to their work practices and work identities that are only adequately explained by occupational community. Furthermore, the marginalization of an occupation contributes to development of a strong occupational community, and the division of a profession into subspecialties can lead to differential status and marginalization across the ranks of its members.

The literature on occupational communities describes two ways they can form: on the basis of a workplace or an occupation. The latter spans a broader geographic area, and in fact its members seldom work closely together, but form their relationships outside of the workplace. Research on occupational communities is divided among employees of a specific organization and those in various organizations who are members of the same occupation. Van Maanen and Barley (1984) state that occupational communities "transcend organizational settings" yet they are also "bounded work cultures" (p. 314). The development of a work culture occurs first through the work itself (Lawrence, 1998) and this connection to the occupation can be enhanced when the occupation is marginalized (Van Maanen & Barley, 1984). Salaman (1971b) compares two forms of OC when he contrasts railway workers with architects; the former employed by a single organization and the latter in multiple organizations but united through their professional

training and practice. There is a trend in research on occupational communities to favour a structural approach (Salaman, 1974).

Occupational communities are often precursors to professionalization. The OC helps to forge commitment and identity within an occupation, and the strength of relationships and norms within the community (Lee-Ross, 2008; Van Maanen & Barley, 1984) can enable its members to mobilize for lobby, accreditation, education and other elements of professional projects. Success in establishing some level of control over these elements of the occupation in turn reinforces the occupational community. However, it may also be possible that the characteristics and operation of an occupational community may exist in any work setting, in any organization, and among any group of employees. Marschall (2002), for example, addresses the existence of subcultures within an occupation that develop in a specific employment site. Elliott and Scacchi (2008) describe subcultures within an occupational community that spans an industry. The potential for distinct occupational communities to exist within a single employer or as a sub culture of an existing profession is of particular interest in the case of lawyers. The profession of lawyer is heavily structured through training and apprenticeships, social norming, control of knowledge, and self governance. At the same time, there is a trend toward employment of large numbers of lawyers in single firms (Susskind, 2008) while the profession is subdividing into specialities across a variety of employment settings. The possibility thus exists that occupational communities may form within the profession based on some aspects of its evolving nature. In particular an occupational community

may exist within a subspecialty of the profession, within a specific employing organization, or both.

Prosecutors seem to be second class lawyers, in the sense they have held few posts in the lawyers' professional society, earn less money on average than their private sector peers, and suffer increases to workloads without recourse. Prosecutors share these characteristics with Legal Aid lawyers and criminal defence lawyers to some extent. In Chapter 4 I relate my finding of how members of the legal profession describe themselves and their work. They do not express a hierarchy explicitly as this would undermine the solidarity of the profession. It is difficult to find explicit acknowledgement of this isolation among lawyers generally. The stories of prosecutors in Chapter 5 are much more forthright in this regard. Prosecutors also seem to be second-class civil servants, especially when compared to other lawyers in government. Some aspect of this may be attributed to the conditions in which they work. Much has been written about the marginalizing effects of "dirty work" and its power to unite an occupation (Ashforth & Kreiner, 1999; Bolton, 2005). Prosecutors certainly deal with unsavoury individuals and circumstances in the regular performance of their work. They meet individuals in police stations and jails; they are dealing with hurtful, often violent actions that emerge from the baser aspects of humanity. This bonds the prosecutors' occupational community closely together but also isolates it. Evidence of this isolation exists in the code of ethics of the Barristers' Society. Prosecutors have special rules which apply to them, and which exempt them from the application of certain portions of the code due to their unique circumstance of practice. Prosecutors are also isolated by the

requirement for confidentiality and the fact that they often cannot share the details of their work as it progresses.

Prosecutors represent a third variation on OC. Prosecutors are members of a profession in which the workers are usually independent practitioners whether in solo or group practice. Prosecutors, however, are grouped together in a single employing organization. They are members of the broad occupation of lawyer and the specific subset of those who practice criminal law. The criminal speciality is subdivided further into those who prosecute and those who defend. Virtually all prosecutors are found in one of two single organizations, the provincial prosecution service / branch of the provincial Department of Justice or its federal counterpart. In the Crown prosecutor we see united the power of occupational community based on location and profession. Adler and Kwon (2008) explore community among professionals and they address medicine and law as characteristic autonomous professions that are moving to community-like structures and practices. However, the notion of occupational community in fully realized professional projects within a single dependent employment setting is largely unexplored in the literature, particularly in the case of the legal profession.

This study creates an opportunity to examine whether and how the characteristics of an occupational community are present among professionals in dependent employment. Furthermore, we can examine how the conditions of dependent employment may undermine some aspects of professional control, and lead workers to search for additional control strategies that are supported by the occupational community. The case of Crown prosecutors is more than just an instance of independent practitioners

becoming dependent employees; it is a question of the governance of the profession, and how the governed exert control over their labour process and the exercise of discretion so essential to the professional project.

Olson's (1977) work on the logic of collective action indicates that small groups will be more successful, and more motivated by greater returns, in achieving collective action than larger groups. This explains to some extent why the Crown prosecutors, a very small group in terms of a profession, have been successful in mobilizing. They have achieved bargaining and a mechanism that results in an arbitrated salary settlement, though they have never reached agreement by bargaining alone and have had to proceed to interest arbitration in each round of contract talks.

Olson describes the provision of public goods, and the failure of a pure instrumental market logic to do so. Those with ample resources bear a greater burden in providing the good and others in the market become free riders. Under this model, the provision of prosecution as a public good would fall to lawyers with greater resources. This model may have applied in times when all prosecution was contracted out (Arthurs, Weisman, & Zemans, 1986; Stager & Arthurs, 1990). However, it may also be that those with many resources declined to provide this lower paying service, those with few resources could not afford to take the work, and so a captive section of the professional labour market was devised as dependent employees to provide the service at all times. This is one explanation for the public employment of prosecutors, and the small size of this legal specialty.

Not all of the characteristics of occupational communities are relevant to the legal profession and the Crown prosecutor. However, there are aspects of each characteristic noted above that do resonate with the members of this occupation, to an extent that it is worthwhile inquiring further into the existence of an occupation community as a subgroup of the profession. There are elements of marginalization, intense working conditions, irregular hours, and common values systems, to name a few, that tend to unite prosecutors, and that are not as powerful across the Bar in general. In addition, some of these characteristics emerge through the nature of professional work and some through the nature of dependent employment. The presence of an occupational community among prosecutors is a valuable heuristic that bridges the profession and the employing organization.

Theorizing Collective Action Among Professionals: The Research Questions

Edwards and Wajcman (2005) state that one needs to be able to explain why forces in society contain contradictions and what their effects are on the politics of working life. This rationale prompts my exploration of a paradox. On the one hand prosecutors struggle for collective bargaining, a usurpatory strategy that stems from a position of subordination. On the other hand they occupy positions in a elite profession, protected in Nova Scotia by special regulation of their governing body that secures their social closure. Professions and unions have a similar struggle over the control of discretion, and research has shown that both move along a continuum of strategies as they seek greater control over their labour process, markets, and social relationships.

The research question for this study asks: how is it possible for professionals to move back and forth from usurpatory to exclusionary strategies of closure, using both versions of the collective action continuum, and still maintain full membership and support for both forms of collective to which they belong: the profession and the collective bargaining unit?

Hypotheses

Occupational Community Among Prosecutors

An important function of the professional project is to control the labour process and labour market for professional services (Larson, 1977). The focus of the study is to understand the role of closure in achieving goals of professionals – examining closure theory and how it operates in situations where professionals are employed permanently in heterogeneous organizations. Collective bargaining can achieve some measure of similar control and Nova Scotia Crown prosecutors selected bargaining as a supplementary strategy when their professional project faltered. The answer to why the professional project failed to achieve the goals of prosecutors and how collective bargaining came to resolve those issues lies in the development of a distinct occupational community within the Nova Scotia Public Prosecution Service and among other prosecutors across Canada. Some say the prospects of professions are diminished (Dussault, 1985; Susskind, 2008) but the presence and strength of occupational community suggests otherwise.

The characteristics of an occupational community emerge or are highlighted when a profession is segmented into a speciality. In this case criminal prosecution is a speciality within the legal profession. The profession is further segmented when individual practitioners are grouped according to their employment relations, in this case as employed public servants. I thus hypothesize that:

An occupational community exists among Crown prosecutors in Nova Scotia. The characteristics of occupational community are uniquely available to lawyers in dependent employment with the Public Prosecution Service.

An occupational community enables prosecutors to move between strategies of usurpationary closure and exclusionary closure to maintain their professional identity and vigorously pursue bargaining rights.

Muzio and Ackroyd (2005) limit their discussion to occupational closure, and illustrate how closure moves from the broader societal forum to an internal form of protectionist exclusion. Through this transition they conclude that the legal profession is not in permanent decline, but is taking on a new form. Greenwood et al (2002) come to similar conclusions, though through institutional change. Through a discussion of the legal labour process, Muzio and Ackroyd challenge the deprofessionalization and managerialization thesis by revealing the adaptation of exclusionary closure to the internal workings of the professional services firm. This dissertation moves the discussion forward and examines both exclusionary and usurpationary forms of closure in the legal profession. Through a detailed case study, I explore the role of both forms of

closure in a prosecution service comprised of lawyer prosecutors and lawyer managers. I will demonstrate how relations between these two groups over control of the labour process affect the professional project of lawyer and prosecutor. The study will highlight how occupational community plays an important role when professionals seek collective bargaining over terms and conditions of employment.

On the issue of occupational community, specific questions this study will address include:

Which elements of occupational community are important to professionals?

How are these different elements manifest in the case of Crown Attorneys?

How does the prosecutors' occupational community form?

How does the existence of a strong occupational community impact the struggle for collective bargaining?

Ideological Conflict Among Closure Strategies

The study explores how Crown prosecutors reconcile the exclusionary closure strategies of the elite profession of law with usurpatory closure strategy of collective bargaining. In pursuit of this I asked:

What use do prosecutors make of the progressive strategies from the closure continuum?

How do prosecutors talk about unions and collective bargaining relative to professional associations?

How do prosecutors move back and forth between exclusionary and usurpatory strategies; professional forms of representation and collective bargaining?

Nature of the Work and the Labour Process

The Crown prosecutors' struggle over collective bargaining reflects a deeper struggle between management seeking administrative control, the public demand for transparency, the broader legal profession protecting its domain and workers themselves in an occupational community as they vie for control of the labour process. Prosecutors strive to be connected in relationship to each group, and still control their own economic gains and prestige as members of their profession. The independence and discretionary powers recognized and upheld by the Nova Scotia Barristers' Society, and which derive from the authority of the Attorney General, are constrained by the employment relationship and are a source of frustration for Crown prosecutors when they compare their situation with that of other lawyers. Resistance in the form of collective bargaining and collective action in new forms outside the Barristers' Society and Criminal Lawyers' Association is necessary for lawyers to meet professional goals and needs. Prosecutors' degree of discretion and autonomy at work is improved through collective bargaining.

I hypothesize that the tightening controls of bureaucratic and direct personal resistance (Hodson, 1995) lead to worker isolation from the profession and means a new

Association is the most effective vehicle to achieve their goals. The power inherent in the professional project is diminished when lawyers are employed in a dependent employment relationship. They describe their profession in terms of segmentation and division of interests between management and rank and file prosecutors. The unity of the profession thus diminished results in an uneven distribution of status, financial security, and security of tenure across the profession. Specific questions in this domain include:

Did the labour process of Crown prosecutors change as a result of forming a new organization - the Nova Scotia Public Prosecution Service?

What does collective bargaining achieve for Crown prosecutors?

Does criminal prosecution rank low in a professional hierarchy and as a result is there a proletarianization within the profession, or somehow a subordination of the speciality? Does this lower status give rise to a different labour process for prosecutors?

Professional Project of Prosecutors

I further hypothesize that the practice of prosecution is not “de-professionalized” (Haug, 1975) as a result of collective bargaining. Collective bargaining by Crown prosecutors strengthens the sub section of the profession dealing with criminal matters by defining boundaries, specifying membership and controlling access to representation and the benefits of bargaining. The practice of prosecution exhibits characteristics of an occupational community (Van Maanen & Barley, 1984) which have been heightened if

not created by organization and statutory forces and reinforced by the governance of the broader profession.

How do prosecutors reconcile their collective bargaining project with their professional project?

Once bargaining was achieved, did professionals redefine their professional project to accommodate changes in workplace relationships?

This chapter outlines the theoretical framework that guides this research study. The next chapter describes the methodology I used to design the study, and to collect and analyse data from lawyers across Canada and from Crown prosecutors in Nova Scotia.

Chapter 3 Methodology: Collected Voices

The goal of Chapter 3 is to describe my chosen methodological approach to data collection and analysis and to explain why this approach is the best suited to this project. I present the case study as my research design and discuss why narrative analysis lends itself to this particular research project. The chapter describes the literature on the narrative method of data collection and analysis and my chosen approach to this type of analysis. I detail the study implementation and conclude with a review of the advantages and limitations of narrative analysis in this specific project. The discussion addresses the rationale for my methodological approach as a project in organizational studies and the unique characteristics of my research topic and study participants.

A methodology is a combination of theoretical assumptions and data gathering techniques framed by analytical approach (Silverman, 2005). This dissertation project is based on a single case examining the labour process of professionals in dependent employment. My analysis of participants' workplace experiences follows an interpretivist approach (Alvesson & Deetz, 2000). I have chosen narrative analysis for its iterative nature that lends itself to an examination of the empowerment/constraint aspects of labour theory. Narrative analysis allows several different readings of the same material within the context of a single analysis, as I will describe below. My discussion of the results takes a critical perspective on the organization and workplace relations (Willmott, 1997). This is accomplished by using narrative analysis of accounts of the Crown prosecutors' struggle for collective bargaining rights.

Narrative analysis is a rich approach to analysis because room exists for the researcher's reading of the stories and this is acknowledged as an inherent component of the method. The voice of the storyteller is present, along with voices of the network of relations within the labour process. The reader's interpretation and reflexive analysis of the narrative, built on a theoretical framework, becomes part of the data as the analysis progresses. The researcher's reading becomes integral to the analysis; what she chooses to include, to omit, to classify under specific constructs, etc., all becomes part of the broader telling of the *research* story (Lieblich, Tuval-Mashiach, & Zilber, 1998). This research project is rooted in my personal experience in the Nova Scotia civil service, which I describe in the following section. Narrative analysis solves two issues in this dissertation project: the rigor of an established methodology will help to establish my credibility as a researcher; and moving from specific experience to broader commentary through the analytic process will contribute insights relevant to my academic field.

Methodological Approach

The following section develops a methodological framework for examining the experiences of professionals who seek collective bargaining. The research is based on a case study of public sector professionals in Canada and draws on archival materials, focus groups and semi-structured interviews with thirty seven individuals. Sixteen of those individuals are or have been Crown prosecutors. I asked focus group participants to tell the story of their careers and to reflect on forms of representation in their profession. In some focus groups I asked participants to describe the story of collective bargaining in their profession. These focus groups were comprised of lawyers, nurses,

and librarians. I applied narrative analysis to this preliminary data. This analysis generated a framework then used to analyze the experiences of Crown prosecutors. I spoke with prosecutors in three provinces, British Columbia, Ontario and Nova Scotia and developed a case study of Nova Scotia.

Many Options

Quantitative/Qualitative

I faced many methodological choices when starting this project. The first significant choice was between qualitative and quantitative methods. The industrial relations literature, like much of business and management research (Johnson, P. & Duberley, 2000), is dominated by quantitative studies as any review of major academic journals will attest. Studies of the legal profession also draw on quantitative methods (Ackroyd & Muzio, 2007; Kay, 2004). The design options for quantitative studies are numerous and include surveys, experiments and quasi-experimental design, as well as archival research and numerous applications of content analysis, to name only a few. Although these approaches generate compelling results, and I am interested in aspects of causal relationships between the structure of professions and the behaviour of their members, I was drawn to an approach that would uncover meaning within the experiences of my study participants. I sought a methodology that would not only test theory, but also help to uncover aspects of the theoretical framework that have not yet been specified.

Qualitative research is more common in the social sciences than the business milieu (Denzin & Lincoln, 2005; Hodson, 2005). Pinnington and Suseno (2008) use qualitative methods to explore aspects of change in the legal profession. Qualitative research is also notable in studies of the professions as social movements, for example (Bucher, 1962). Bucher's qualitative work on professions and segmentation provides some important insights for the analysis of the legal profession in Chapter 4. A qualitative approach seemed indicated based on my research questions and the early investigation I conducted into the legal profession which also uncovered change and segmentation.

My motivation to choose a qualitative approach is firstly academic because it answers the demands of my research questions. However, this choice is also partly due to my firsthand experience with Nova Scotia Crown prosecutors and their struggle for collective bargaining. I worked for a period during the later 1990s and early 2000s with the central human resource agency of the Nova Scotia provincial government. In the course of my tenure I handled major corporate files that either introduced significant change to personnel management practices or posed human resource challenges of various sorts to Government. The Public Prosecution Service was one such file, and I was directly involved in several stages of consultation and later in negotiations that lead to voluntary recognition⁵ of the Nova Scotia Crown Attorneys' Association. I personally

⁵ At the time the labour legislation in Nova Scotia prevented lawyers from applying for union certification as a first step towards collective bargaining. This restriction can be avoided if the employer voluntarily recognizes a group for the purposes of bargaining ("Trade Union Act," 1989).

witnessed the events that lead to the negotiation of a salary setting mechanism and I know the core facts in the case. During my employment I also had access to individuals and information about the working conditions of Crown prosecutors in the Province. As a result, an objective type of data gathering that collected facts and events without scope for interpretation and elaboration by Crown prosecutors would add little to enhance my understanding of the research problems. I needed richer and more detailed data than many quantitative methods could provide. From the outset of this project I was very familiar with the history and the analysis of the Nova Scotia Public Prosecution Service that had been conducted by several independent parties. What this study demanded was a more intimate view of the experiences of the prosecutors themselves; a view that could only be obtained by gathering detailed data that allowed the study participants to reflect broadly on the events and relationships under examination.

Case Study

A case study is a single instance of a phenomenon, examined in detail for insights that it brings to the broader experience of the researcher and the field (Yin, 1981). By choosing Nova Scotia as a case study of the Crown prosecutors experience, I am able to explore in depth the context and the detailed experiences of the individuals who are working in their profession while they struggle for collective bargaining. In a broader sense, the occupation of Crown prosecutor is also a case, and I have drawn data from two other provinces whose prosecutors also bargain collectively. The complexity of social action and the dynamics of concurrent membership in collectives that hold differing ideologies and goals demand a robust methodological approach such as case study offers.

A single case is not a limit on the ability to transfer and compare findings to another context (Chreim et al., 2007), it is a richly detailed exposition of a phenomenon.

The phenomena of professionalization and collective bargaining could be studied in numerous ways. One could examine cross sections of various professions, located at different points along the closure continuum, for example. Comparative research across different legal jurisdictions is another possible way to study the legal profession. Studies of occupational community have taken a comparative approach as well. (Gerstl, 1961a; Salaman, 1971b). However, the research design must follow from the research questions (Silverman, 2005) and so to understand how a profession endures the move to dependent employment and embraces supplementary strategies of closure, a detailed examination of one case is appropriate. I have rejected a tiered case study of all provincial jurisdictions across Canada for the weakness Abbott (1992) describes in the population/analytic approach to cases. He states that they “lose their complexity and narrative order” (p. 83) in the quest to reduce all variables and attributes to simplest form and generalize across all instances of a phenomenon with core traits. As I rejected the trait theory of professions in Chapter 2, I cannot embrace a research design that would end with a trait-based result.

Case studies are built over time through direct observation and experience with the research site, personal contact with operations and extended reflection and revision of descriptions and interpretations of findings (Stake, 2005). This is the process I followed in conducting this study. I had direct experience as an employee of the Nova Scotia provincial government, responsible for human resources strategy for non-unionized staff

in the mid 1990s until 2003. My role was that of chief negotiator for management in the extended discussions that led to collective bargaining for Crown prosecutors in Nova Scotia. The story of those negotiations is developed in Chapter 4. My direct experience provided me with numerous insights into the context and regulation of employment in the civil service and my direct work experience with Crown prosecutors in Nova Scotia gave me some insight into their challenges and concerns. However, it was only by extending this experience in a structured research project, using in-depth interviews with key informants, and collecting comparative data in other provinces and across other professions that I have been able to achieve the level of analysis that has the potential to provide insights into the broader experience of professionals who bargain collectively.

Research Design

Choice of Case

While some authors address the legal profession in a very general sense (Bell, 2009; Kritzer, 1999; Paton, 2008; Pue, 2009), and include educational institutions and the courts in their studies, most data and examples are drawn from professional service firms (see Chapter 2). This may be due to the fact that most lawyers are employed in this type of large firm. The profession is built upon a model of self employment and some studies do differentiate respondents on this basis (Kay, 2004) but few studies have examined the change in employment relationship over time (Muzio & Ackroyd, 2005). Professionals are growing as a proportion of the public service, and the public service accounts for much of Canadian union density (Kumar & Schenk, 2006). There is a notable silence in

the literature on public sector lawyers, and I could identify no literature on institutional theory or the sociology of the profession that includes specific examination of public sector lawyers and prosecutors. This is an important gap which this dissertation addresses.

The idea that the profession protects the public interest (Krause, 1996) takes on a more powerful meaning when we discuss public prosecution. There is both a sense of protection of the public from offenders and a requirement that prosecution duties be executed in an excellent, competent manner. This latter requirement demands that justice be done, and to be seen to be done, in order to ensure the principles of fairness and innocence are safeguarded. This is particularly salient in Nova Scotia with its legacy of the wrongful conviction of Donald Marshall Jr. and subsequent Royal Commission of Inquiry into that conviction which cast shadows of doubt on the actions of political figures and prosecutors.

The public sector is an important site for research into professionals for three significant reasons. First, employment in this sector is often regularized around duties rather than around clients, as is the case with private sector lawyers. Second, the number of professionals as a proportion of the public sector workforce is rising (White, 1993). Third, the literature on professions has not dealt with public sector employment in any major way. In addition, the public sector has a single payor for most employment: government and it is under close fiscal scrutiny. These features combine to place significant pressure on professional employees. Their work results are often difficult to quantify due to the intangible nature of much of their decision-making and this conflicts

with the emphasis on accountability and measurement in current public management. A study of the lawyers in a public sector organization is an opportunity to examine the impact of changes on the professional labour process and illustrates workers' response to these pressures.

Not only has the legal profession changed in terms of the employment status of lawyers, but the nature and organization of prosecution has also changed over time. In Chapter 4 I describe the evolution of public prosecution from fee-for-case prosecutor to public employees who make a career of this work (Stager & Arthurs, 1990). Unlike the private sector lawyers who can build a practice across a variety of work, the public sector prosecutor does not "drum up business" but rather waits for it to come through the door. All prosecution is now conducted by the state. The delegation of this activity to professionals within a dependent employment relationship shifts the control of terms and conditions of employment from the purview of the professional to the bureaucracy of the civil service. The autonomy to define one's work and apply one's tools (in this case specialized knowledge) can potentially be fettered by an employer. Although the lawyer in a professional service firm can also be viewed as a dependent employee, the employing organization is comprised of professionals, and ownership of the firm rests with partners who are themselves members of the profession. This is not the case in a heterogeneous organization like the civil service. Therefore, a case study of public prosecutors offers a window into a profession that has undergone significant change. The organization of work and the relationship of prosecutors to the rest of their profession

have been impacted. A detailed study of the way prosecutors adjust to these changes is the optimum approach to the research questions posed by this study.

Interpretive Approach

Qualitative research allows for the subjective interpretation of events (Denzin & Lincoln, 2005; Silverman, 2005) by participants. My research objective was to link the experiences of my research subjects, Crown prosecutors, to the context of their profession and their status as dependent employees. This objective suggests an interpretive approach (Alvesson & Deetz, 2000; Prasad, 2005) in order to link the *context* of work to the active agency of workers' lived experience. This approach regards the social context of work not as a given structure but rather as an work in progress, constructed by the participants (Prasad, 2005). In particular, the way that prosecutors experience their profession is not only given to them through the socialization process of law school and articles, but is also socially constructed by prosecutors themselves as they live their experience. This research project explores not only the material motivations behind relations of production, but also the ways that social structures are created and recreated by social actors. The stresses and strains of the organization, the Public Prosecution Service, are relevant factors to consider in the analysis. This project explores the participants' own view of events and uses their interpretations as data. In this approach I can explore where latent power lies dormant compared to where it is exercised in the organization, and how the actors interpret their situation.

Collecting narratives, or long stretches of storytelling (Reissman, 1993) to accomplish my research goals further supports the interpretive approach; narrative creation by the storyteller is an action itself. We can learn much from the content of the stories, but also from the way in which the stories are told. Stories are developed and recounted in specific ways to meet the needs of not just the researcher, but the study participant as well. As Reissman (1993) says, the telling of the stories reflects the teller's interpretation in addition to relating events.

Stories and Narratives

Individual stories lie within the long narratives. These stories are episodes in a longer tale. Pulling stories out of Crown prosecutors' narratives reveals how they understand the social relations that define their employment, their labour, and their profession at key points in time. Prosecutors' stories can be analyzed to uncover how power is latent or manifest in these relations. Stories can reveal the motivations behind Crown prosecutors' choice of closure strategy. One of the primary goals of this research is to explore how Crown prosecutors reconcile their participation in their profession with collective bargaining. The analysis of personal stories is a way to show how these professionals reconcile competing logics of collective action.

Narrative analysis does not presume a fixed social structure at the outset and thus fits well with an interpretivist approach to labour theory. For example, the researcher assumes some external perhaps non-empirical real construct of power exists, and yet allows that this is perceived quite distinctly by different social actors and in different

space-time contexts. As a result, the methodological approach of narrative analysis permits us to begin with the observed and interpreted actions in order to explore a problem and to uncover deeper structures, meanings, or themes in data analysis. We begin with professionals, and an established profession. By allowing prosecutors to describe their career and their profession in their own terms a distinct picture of social relations between prosecutors, their professional peers, and their employer emerges.

Why Stories?

Narrative gives us ordered stories of events, experiences and impressions in a historical recreation to serve a purpose (Lieblich et al., 1998). I have suggested in the opening section of this chapter why such data is particularly useful for addresses the problems posed in this research. In addition, prosecutors are storytellers almost by definition. They take the facts and evidence of a case and present these in a particular way to convey to a judge a compelling picture of events, motivations, and outcomes from some past incident. Prosecutors are sifters of data and extractors of critical events. As research subjects it follows that an effective way to approach their personal experiences is to ask them to tell their own stories and to draw on the richness of their experience in as unrestricted a way as possible, while guiding them to address this study's research questions. Storytellers present their stories to an audience, and I am aware that the study participants craft their stories specifically for me. As I possess my own view of the "facts" in this case, the way prosecutors present their stories is a very important part of my analysis. Items they emphasize, episodes they downplay or omit all construct a view of the struggle for collective bargaining that makes sense for the tellers. This is the goal

of my research project – to understand how it is that prosecutors negotiate both sides of the closure continuum in a way that is meaningful and consistent for them. Asking for narratives provides rich data, with layers of nuance that are not available in a more positivistic research approach.

“For scholars who analyze personal narratives, it is important to recognize that stories that people tell about their lives are never simply individual, but are told in historically specific times and settings and draw on the rules and models in circulation that govern how story elements link together in narrative logics.” (Maynes, Pierce, & Laslett, 2008, p. 3)

Because stories are entrenched in the social relationships and structures of the storytellers, a careful reading of these stories can provide insight into how the individual experience ties to the broader collective and institutional forces (Maynes et al., 2008). Stories situate prosecutors within their profession, their workplace, and within the struggle for control they experienced. One of the weaknesses of theoretical development in industrial relations and the sociology of the professions, noted in Chapter 2, is the dominance of structural forms with little regard for individual agency. The capacity for action and its effects can be uncovered through individual accounts of ordered life stories. These accounts are subjective, reflect the context in which individual action takes place and are thus a methodological bridge between the theoretical foundation of this study and the seemingly contradictory experience of Crown prosecutors.

Narrative Analysis

“Narrative analysis assumes a multitude of theoretical forms, unfolds in a variety of specific analytic practices, and is grounded in diverse disciplines. ...the theoretical complexity and methodological diversity in narrative modes of inquiry are its major

strengths... particularly useful for addressing the unmet challenge of integrating culture, person, and change” (Daiute & Lightfoot, 2004, p. viii)

Taking a narrative analysis approach to research means not fitting and testing a theory to circumstances, but exploring circumstances to allow theory to emerge (Freeman, M., 2004). This type of analysis is an iterative process that allows a researcher to explore data more deeply by referring back to theory and circumstance repeatedly, and exploring different aspects of the same material. Marsden (1999) suggests a similar approach in his development of a critical analysis of the labour process. Freeman (2004) suggests that narrative is structured, and thus is read backwards from the ending to the source in an expository way that is helpful in understanding the latent dimensions of social production. In this study I read the results of the preliminary focus groups which led to a question framework for subsequent in-depth interviews. My interview questions asked for the story of events that have already taken place. I read and reread those interviews, allowing the role of occupational community to emerge as an explanation of the circumstances prosecutors faced in their professional lives and workplace relations.

Forms of Narrative

A story necessarily has a teller and an audience, even if these are the same individual, as in autobiographical private storytelling. The analysis brings at a minimum the researcher into the story as audience and there may be several audiences for a given story. Given this diversity, we find that narratives, their constituent stories, take on different forms. These forms include anticipatory, habitual, hypothetical, topic centred, and thematic/episodic accounts (Riessman, 1993). These accounts are not all stories in a

chronological sense, though they share specific elements. Labov and Waletzky (2003) specify the following components of narratives: abstract, orientation, complicating action, evaluation, resolution, and coda. There are different forms of stories and they are built in a particular way, of specific components. Each story will contain some or all of the Labov and Waletzky's 6 elements. A variety of materials in addition to oral stories can be treated as narrative, including archival material from organizations and records of public events, for example.

Narratives, though often individual, can also be collective and organizational (Czarniawska, 1998). Narratives are a source of information about how individuals and organizations construct themselves, particularly for a public audience (Czarniawska, 1998) and we come to know an organization through these narratives. Organization narratives can be found in archival material as well as in the verbal accounts of key informants. Organizational narratives are particularly relevant to the proposed dissertation research as they are a tangible production of underlying social structures. We can understand the notion of worker power in a collective or a profession, through a study of organization narratives that come from the collective body or that are in opposition it. Gabriel (2004) says that narratives do not sit on top of the organization as an afterthought or an additional descriptive device. Instead, narratives are part of the essence of the organization and a reader will be able to see in the narrative the teller's way of enacting the relationships within the organization itself. In the collective bargaining project, this is an ideal tool to explore the nature of the social relations of production and social closure.

Narratives are deliberate and conscious rather than merely serendipitous descriptive accounts. Every story has a purpose its teller wishes to convey (Riessman, 1990). Each storyteller makes a series of strategic decisions in constructing and telling a story (Riessman, 1993). A story reflects not only the history of an organization in terms of experienced events and actors decision, but also the current context, and the values and future intended direction of the organization. Tellers will situate themselves and their experiences in the context in a unique way. For example, they will reflect how they negotiate between material causes of power and other levels of the labour process model. As a result, the form cannot be separated from the content of narratives. I sought the thematic/episodic form of narrative in my study because it reflects the positioning of the teller in relation to their context and experiences. Analysis of narrative moves beyond the surface of experiences to a broader commentary (Riessman, 2008).

Flexibility

Narrative analysis is incredibly flexible as a methodological approach. It was founded in the literary tradition (Onega & Landa, 1996) and lends itself, for example, to psychology (Lieblich et al., 1998), positivist research in content analysis (Mir & Rahaman, 2006), grounded theory (Beech, 2000), interpretivist rhetoric analysis (Feldman et al., 2004), organization studies (Czarniawska, 1998), and labour relations (Cullum, 2003). Because there is a variety of narrative form and content, there is little limiting the researcher who proceeds without a priori theoretical assumptions and as a result, narrative *analysis* also takes a number of forms. Narratives reveal the “practices of power” (Riessman, 1993, p. 5) and “distill political and social relations” (Feldman et

al., 2004, p. 3) in story form, which are elements of my research problem. Storied accounts can then be analyzed for themes where the emphasis is on the content - what is said, what is not said. Structural analysis focuses on how a story is told: its components and ordering. To explore how respondents impose order on the flow of their experiences (Riessman, 1993) researchers analyze the tellers' stories. A close analysis of stories, Riessman argues, reveals how individuals understand their role in the realization of their goals. The approach is very well suited to a study of closure strategies which are overt attempts to manipulate social relations in pursuit of personal and group goals.

Boje (1991) distinguishes between narrative and story in terms of time. He classifies narratives as tales that are concerned with the past while stories are tales of an emerging present. There is a great deal of inconsistency in defining narrative and story in organization studies (Hyde, 2008; Rindfleish, Sheridan, & Kjeldal, 2009; Whittle, Mueller, & Mangan, 2009), but Boje's point allows this study to embrace both the past and emerging work experiences in the form of tales told by participants. This flexibility lets me explore events and impressions from the past that are part of an ongoing life and organization. Prosecutors have not achieved collective bargaining in its fullest form and their struggle continues. Their stories provide insight into their past achievements and also their way forward.

Narrative analysis accomplishes an important function in labour relations research; it provides an order of events and a coherence from the storyteller's point of view that reflects the way in which the teller positions herself in a socially constructed world (Berger & Luckmann, 1966). There is a coherence of structure and text in a

narrative that eliminates the need to reconcile these two elements because they are presented simultaneously to the researcher. The interplay of form and content in narrative analysis (Czarniawska-Joerges, 2004) makes it an appropriate tool to capture the action, motivation and deeper social structures that are of interest in light of the theoretical framework for this project. By examining the narratives of Crown prosecutors I explore the social construction of the professional within the context of dependent employment. My approach to this study combines the detailed analysis of individual experiences of the participants on the frontier of the struggle with a small archival component. The archival research captured an historical aspect of the struggle through the institutional and personal narratives of actors otherwise inaccessible to this researcher. Archival data also gave a voice to the government employer as a social actor in this struggle.

Narrative Analysis of the Labour Process

The narrative approach has the potential to capture the tension between empowerment (telling one's own story, creating one's own truth) and constraint (by the form of storytelling and the relations within the story itself). This mirrors the dialectic of empowerment and constraint in the struggle for collective bargaining. The dialectic of the labour process that enables and constrains labour emerges in narrative; participants describe aspects of this dialectic and also reveal it in the structure and style of the narrative itself. In narrative the teller reveals conduct as well as intention, and situates the action in a context that reveals the social structures which generate that action (Czarniawska, 1998). The context includes the history and organization of relations, and

so reflects the underlying relational networks of the labour process of professionals so germane to this project. Czarniawska (1998) also states that narrative “renders the unexpected intelligible” (p.6) which is of particular relevance in the case of professionals who change their closure strategies.

Poveda (2004) illustrates the value of narrative analysis as a tool for understanding closure. In his study of a discussion of a group outing he reveals the ability of the tellers to recreate not only the social dimensions of the experience itself but also to continually define the relationships within the group through their narratives of the outing. The tellers use strategies that are inclusive or exclusive of group members who were not present at the outing. They also use affiliative and resistance strategies in their storytelling to position themselves within the group after the event, irrespective of the institutional norms of the group or the outing (Poveda, 2004). This analytic approach has much to offer an exploration of the struggle for Crown prosecutors’ bargaining rights. When conceived or recounted as an event that took place in the past, the struggle can be narrated by those who took active part as well as by those who did not. The relationships within the profession and the employee group can be examined through the narrative devices and conventions the tellers use. The latent characteristics of relationships can be revealed through positioning strategies of storytellers. The presence of an occupational community and its characteristics can be explored in this way. There is also no study that explores unionization and professionalization from the participants’ own perspective. Van Maanen and Barley (1984) base their recommendations for empirical data gathering on the premise that a community is defined by those within it. Thus, collecting data

directly from participants on the nature and scope of the boundaries of their community is the most appropriate way to understand the occupational community.

Silverman (2005) recommends finding a model for one's research method.

Bertaux & Bertaux-Wiame's (1981) work on artisanal bakeries in France provides such a model. These authors conducted a narrative analysis of the labour process of the artisanal bakery. Rather than limit their study to a materialist analysis of the relations of capital to physical labour, they examine the "psychic structure" (p. 174) of the social relations in the immediate production of a bakery and in the network of relations that sustains the artisanal movement. Their study is an exploration of how this network sustains and reproduces its labour capacity. They begin with a social phenomenon, the continued production and consumption of artisanal bread throughout France. Their conclusions are the reverse of their original supposition, that idiosyncratic taste drives the production. Industrialization of the bread process changed the bread product in many western nations, but this is not the case in France. The authors discover that nature of production literally and figuratively feeds consumption, which is contrary to a contemporary interpretation of consumption in a monopoly capital context. The authors are guided in their study not by a strict hypothesis testing and scientific method but by a spirit of exploration as they gather narratives from regional artisanal bakers. They do not abandon theory, but use a theoretical base as a point of departure as they discover the strength and latent power that lies in the social contract of bakers' marriages, apprenticeships, and family ownership. They interpret these as the foundation of the relations of production.

The phenomenon that catches my attention in this research project is a variation of the Bertaux & Bertaux-Wiame study. I pursue how the independent artisanal prosecutor, if you will, experiences a change in the relations of production from an independent, craft type of work to a dependent employee subject to administrative control over his professional discretion. Like the artisanal bakers, the prosecutors could have been subsumed in an industrialization equivalent of the bakery model. Prosecutors' work could have possibly been de-professionalized to some extent. However, I find that prosecutors maintain membership in their profession and develop a specialized niche therein. The "psychic structure" of prosecutor's occupational community protects and sustains their control over their labour process. The network of social relations in prosecution work lies at the heart of the answers to my research questions as it did in Bertaux & Bertaux-Wiame's study. Prosecutors did not seek collective bargaining simply because they became dependent employees, subject to management control. They sought collective bargaining as the full expression of their professional project as specialized lawyers, with a unique ideology based in their occupational community. Below I will describe the methods used to gather empirical material and the application of narrative analysis to this project. The chapter will conclude with a summary of possible strengths and weakness of this approach to my dissertation topic.

Implementation of the Study

Data Gathering

I approached the data for this project using Riessman's (1993) five levels of representation in research: attending, telling, transcribing, analysis and reading . In *attending* to the primary experiences of Crown prosecutors, my research was conducted in the field to gather as much narrative as possible from the milieu in which it is produced. *Telling* the experience included semi-structured interviews (McCracken, 1988) at the workplace. Semi-structured interviews with Crown prosecutors, based on elaboration of the research question, generated personal narratives for further study. Archival research at the Nova Scotia Crown Attorneys' Association and in publically available media produced additional material that contains narratives of individual members, of the association as an organization, and of the employer (Czarniawska, 1998).

Reviewing Archival Data

There is a body of literature that recounts the history of the legal profession in Canada. I draw upon this work to position the Crown prosecutors in their profession and the prosecutor within the employment context of the civil service. There is additional literature that takes an international perspective; Susskind (2008), for example, explores the legal profession in the UK and draws conclusions for an international audience. The Nova Scotia provincial government publications, such as press releases and web sites,

policy manuals, and legislation with its accompanying regulations, as well as contracts and settlement awards contributed background for this study.

As an organization of public sector lawyers that has evolved over time, the Nova Scotia Crown Attorneys' Association is a rich source of narratives on collective bargaining as well as non-bargaining professional employees. These are located in notes, files and briefs prepared by members of the Association. The public record generated narratives in the transcripts of public accounts committee meetings and Hansard record of provincial legislature debates. Stager & Arthurs' (1990) history of lawyers in Canada is another valuable source of archival narrative. Finally, the many public reports that recount investigations of various aspects of the Nova Scotia public prosecutions provide an external perspective on the historical basis for the Crown prosecutors' struggle. This variety of material takes into consideration Riessman's (Riessman, 1993) admonition that representations of experience captured in narrative are limited by being selective and thus imperfect. The inclusion of archival material also introduces additional voices in an attempt to overcome this possible limitation.

Transcribing Interviews

Personal narratives were transcribed in a conventional oral-to-text method with electronic aids. I transcribed half of the data myself and engaged assistance from two professional transcriptionists for the balance of the interviews and focus groups. I reviewed each transcript thoroughly for accuracy before analysis began. The archival

narratives were reproduced from Web sites and media coverage as well as by reproducing electronic documents. *Analysis* and *reading* are described below.

Data Analysis

An important analytical challenge is to regard each story as a whole for its purpose and overarching teller's problem (Riessman, 1990) and to take it apart to reveal its components. The components are studied for the way they are organized, linked, and structured into a coherent ensemble, including those elements that are absent or differ from one teller to another. To accomplish this analysis thematic and structural analysis of the personal narratives was necessary. The archival material was analyzed primarily using a thematic approach.

Lieblich et al. (1998) suggest narratives be analyzed using a Cartesian framework based on holistic/categorical and content/form dimensions. This framework keeps the base social relations in mind while considering the specific experiences at the surface of production. I considered this approach, but found structure inflexible for the nature of the data provided in the narratives. I did retain the idea of base and superstructure of social relations as I read the narratives, however I depended upon Riessman's (2008) approach to themes in my analysis. For example, I looked for categories within the content that reflected the material, agency, and motivational causes of power. I also compared narratives as I read them. Narratives of Crown prosecutors who were present but not directly engaged in negotiation were compared with Crown prosecutors who sat at the bargaining table or those who have been employed since collective bargaining was

established. Differences in tone and themes were noted, and similarities in content were also important findings that reflected the presence of an occupational community. I also explored the idea of poetic trope (Gabriel, 2004) in a third reading of the narratives. The epic story was particularly notable in the stories dealing with collective bargaining. Structural analysis can also extend to the examination of rhetorical devices. The use of metaphors, labelling others in the story, and the suppression of aspects of experience all revealed insights into the research problem.

In both phases of the study, each interview was analyzed in three distinct waves. The first wave reviewed each transcript holistically with the project research questions in mind and several themes emerged. The second wave review sought specific stories in each transcript that corresponded to the themes from the first wave and reflected critical events in the participants' experiences. The third wave of analysis examined the stories in more detail, noting tone and perspective, actors and roles, and the use of specific language to describe critical events.

Critical Incidents

I regrouped the narratives into critical incidents for another level of analysis. Critical incidents are key determinants in recall of life experience (Webster & Mertova, 2007). Memory is a strategy of adaptation and most important occurrences are transmitted to the listener. The criticality of events is determined by the teller, as they chose what to relay (Webster & Mertova, 2007, p. 83). Critical incidents are also change events (Strauss et al., 1973; Webster & Mertova, 2007) which shed some light on the way people cope with conflict and the ensuing transitions that may be required. The critical

incident approach is popular in industrial psychology, developed in 1954 by J.C. Flanagan, (Webster & Mertova, 2007) but it is also an important qualitative analysis tool. Webster and Mertova note the importance of situating the events in context but also highlight the importance of time lapse in determining criticality. It is necessary for time to elapse after an event in order for its importance to be perceived and understood. Thus, the historical aspect of this study, talking to people several years after they experienced the events that lead to collective bargaining, is necessary in order to uncover important aspects of the data. A critical incident approach highlights the stories most important to the teller.

I identified critical incidents by the tone and the language tellers used to introduce these particular stories. I also identified them through the thematic analysis that preceded this stage. They were not always complete stories, with a full resolution (Labov & Waletzky, 2003) but they held significance for the teller and usually given as examples introduced by a general comment. Sometimes the critical incidents emerged from the teller's natural narrative, and sometimes these were the result of a prompt from the interviewer (McCracken, 1988). I grouped together incidents that related to particular themes from the earlier stages of analysis and reread these together to explore patterns in the data. The critical incidents I identified helped to explain more fully the themes in the data and the way that themes related to the research question.

In the critical incidents I examined the circumstances, behaviour and outcomes (Catano & Smithers, 2002) experienced by Crown Prosecutors in order to explore how they define and redefine their professional and employment roles. A description of

circumstances helps to frame the experience, which is important for interpretation of the actors' behaviour. The actual behaviour, which I define broadly and can include emotional response and idea generation as well as physical action, provides further insight. Tellers describe the creation and adaptation of roles and event outcomes. They provide a self-assessment of personal effectiveness, power (or powerlessness), and position relative to other actors in the organization and the profession. In effect, the outcomes of critical events help us to see the changes achieved through the behaviour, and also how the changes are perceived. A thematic approach, supported by deeper analysis of critical events is in keeping with an interpretive approach to my research problem.

Reading

Finally, the *reading* level of Riessman's (1993) model includes the many passes taken with the data. The first stage of reading is of the original transcripts and archives, to determine a story line. A second stage looked for the tone and role of the storyteller. Finally, the critical incident reading took place. I selected specific stories and regrouped them by themes. I reread these thematic stories to develop an analysis of collective interpretations that were common to prosecutors as a group, and individual reflections not shared by others in the study. Reading also took place in the dissertation committee structure. My dissertation supervisor read the analysis of the stories in various forms, and the whole committee read the material as it developed into its final form. I also shared the results in an abbreviated format with members of the prosecution community at their semi-annual national conference in Vancouver in 2009 and in Ottawa in the fall of 2010.

Preliminary Study

I conducted a series of focus groups and interviews with lawyers, nurses, and librarians to explore some of the key components of sociological theory on professions and themes that I identified through my reading: concepts of knowledge and expertise, regulation, specialization, and career. These three professions were not only accessible to me, but represented different articulations of the professional project and the collective bargaining project. The nurses are a long-established occupation that still struggles with concerns of legitimacy and control (Haiven & Haiven, 2007a, 2007b). University librarians are more recent participants in collective bargaining and to professionalization (Carson, 2002). It was important to speak with a variety of lawyers for comparative purposes. All three groups are public sector employees, an element of the research design noted above. These three professions pursue both professionalization and collective bargaining but each is at a different stage on the closure continuum described in Chapter 2. Each profession uses different elements of that continuum to achieve their workplace and professional goals.

I wanted to gauge the focus group participants' reaction to several of my research questions and I was interested in how they described the current state of their profession. I was asked what members thought about the governing body, regulation, their social status and working conditions, as well as how closure strategies contributed to their personal sense of being professionals. In sessions held with lawyers I aimed to gather specific information regarding the legal profession in Nova Scotia, however comparisons

were offered about the profession in other provinces as well as the United States and the United Kingdom. The list of questions for these focus groups is attached as Appendix B.

Focus group sessions ranged from one to one and a half hours in length and all were recorded and transcribed. I asked participants in these sessions to reflect on the statement “(Law, nursing, librarianship) is a profession.” As they discussed their opinions and insights, I probed with questions about how the profession was changing, the relationship among the differing bodies that provide representation to professionals, whether this was a regulatory College, a special interest Association, an Employer, or a Union. I also inquired into the relationship of the individual professional to these bodies. Through this preliminary study, I was able to refine the research questions which guided the principal study to focus more specifically on closure and occupational community. I returned to this preliminary study data repeatedly through the rest of the project as themes emerged or repeated in the principal study. I compared the non-prosecuting lawyers’ stories to those of Crown prosecutors, the unionized employee to non-unionized stories.

Participants in the preliminary study focus groups came from the Halifax community. I identified these individuals through personal contacts and public information on the structure of various professional bodies. I approached the Nova Scotia Barristers’ Society, the Nova Scotia Nurses’ Union, members of the Nova Scotia General and Government Employees Union, and the library staff at Saint Mary’s University as well as numerous contacts in the legal profession, the civil service, and the academic community. The preliminary study took place over six months, from January 2009 to July 2009 and I spoke with 21 individuals (14 women and 7 men) in five focus

groups and four individual interviews. The lawyers I interviewed came from large, medium, and small private firms with a range of specialties. Participants included federal and provincial government employees and members of academia. Seven participants held governance positions with their regulatory body. Only two participants of the preliminary study had experience with prosecutions, but it was clear from the data gathered from all participants that prosecution is a unique specialization in the legal profession. The way in which collective bargaining is included in the employment and professional experience of prosecutors sets them apart from other professionals and from other lawyers whether they were be in private practice, in-house counsel, or non-prosecution public servants.

Sample

For the principal study, I contacted the Nova Scotia Crown Attorneys Association and requested interviews with members of the executive as well as general members of the Association. Some individuals I knew personally from my work in government and some I did not know until I contacted them for this study. I was able to contact and interview individuals who had been members of the Association during the late 1990s and were still employed by the Public Prosecution Service. I interviewed former members who have gone on to work in different capacities in the criminal justice system and I interviewed current prosecutors who joined the PPS after the onset of collective bargaining. Several individuals referred me to additional participants and in all I interviewed 11 individuals with experience in the Nova Scotia Public Prosecution Service (either past or present). I interviewed 5 prosecutors from other Canadian provinces

(Ontario and British Columbia)⁶. I also interviewed one member of the private bar in the principal study. Five of the participants were women, 12 were men. All participants were career lawyers and career prosecutors with the exception of 2: the person in private practice and a legal aid lawyer. Although some spent a few years in other aspects of law, most prosecutors had spent the bulk of their careers in prosecution. Two individuals had prosecution experience with the federal government in addition to the provincial government, three participants are now members of the judiciary, and five individuals had management experience in prosecutions. Although these ratios were not designed as proportional to the population, the snowball approach continued to broaden the reach of the study until each aspect of prosecution experience was covered.

McCracken (1988) recommends eight interviews and Lincoln and Guba (1985, p. 234) suggest a sample of a dozen interviews “will exhaust most available information”. I contacted participants as they became available to me or as they were recommended by existing study participants. I continued until I reached a saturation point, in which the stories were consistent and no new themes, concepts, or issues emerged. The eleven prosecutors from Nova Scotia therefore form a reasonable sample size for a case study. Any additional participants and the volume of data analysis quickly becomes unmanageable. A weakness of this approach of course is that additional interviews might reveal nuances that have not been exhausted. However, this weakness is mitigated by the analysis I conducted on the preliminary study data as well as the ongoing transcription

⁶ Appendix E contains a demographic analysis of prosecutor respondents.

and review of texts throughout the data collection phase which brought me back to each interview repeatedly.

Reluctant Respondents

I contacted two individuals I thought would be key informants based on their membership in the Nova Scotia Crown Attorneys Association and their tenure during the struggle for collective bargaining during the late 1990s. However, I was unsuccessful in interviewing these individuals. This aspect of the interview process extended beyond what Dundon and Ryan (2010) describe in their work with reluctant respondents. I did not have a chance to use any of the recommended interview tactics despite the two individuals' initial enthusiasm about the project. Both were quite forthcoming initially; each expressed interest in the project, spoke with me by telephone or met in person informally and indicated they would be able to participate. However, both individuals eventually became more and more difficult to contact. One participant requested a number of approvals with various levels of his organization, citing these as reasons to delay our meeting. I moved on to gather data from more willing participants, allowing my contact with these reluctant participants to lapse. Both these participants had moved from staff positions in prosecution and prominent roles in the struggle for bargaining rights into management roles subsequent to the onset collective bargaining. This aspect of their personal experience may have caused them some conflict in terms of organizational loyalty and may account for their unwillingness to participate in an interview. These were isolated instances of resistance. I did contact a number of other

individuals who had similar experience with the NSCAA and who held management roles, so there is no significant gap in the study data.

Conducting Interviews

I began each interview in the principal study with a brief overview of my research project and invited the participants to tell me the story of their career and then to tell me the story of the struggle for collective bargaining. I developed a list of detailed probing questions (McCracken, 1988), included as Appendix A, to cover the theoretical dimensions of my study. These questions were based on my review of the literature. I refined the questions during the preliminary study. In most cases, the participants covered the areas targeted by the probing questions. However, in a few instances I did need to use the questionnaire to gather the desired information and complete the interview. For the most part simple nonverbal prompts and the use of “why do you say that?” and “can you tell me more about that?” were sufficient to elicit detailed stories from participants.

I met with the executive of the national umbrella body for public service lawyers, the Canadian Association of Crown Counsel, in October of 2009. My aim was to provide a summary of the project and preliminary results along with the theoretical framework and to solicit feedback from members of the researched community. I asked them about the appropriateness of my framework. I was also eager to hear whether my preliminary findings resounded with this audience. The meeting was successful in gathering feedback, the executive indicated their support, and further study participants were

referred for in depth interviews as well. I committed to return to the CACC's semi annual meeting in October 2010 with my final results.

Ethical Considerations

The narratives shared in this study were of a very personal nature. Participants were asked for the story of their careers and of a significant struggle in their lives. They revealed personal details both directly and obliquely in their stories. Each participant was provided with the opportunity to review the research goals and to decline participation at any time. No participant declined to provide data for the study past this point and no participants withdrew after the interview. The interviews were conducted in person or else over the telephone following a personal contact. Thus, as researcher I knew each participant beyond the context of the study and was able to identify all the data with a specific participant. This resulted in a heavy burden on the researcher to preserve the anonymity of the study participants. Gender has not been disguised in the study because it reveals a division in the profession and work experiences of study participants. However, all identifying characteristics in the transcripts have been disguised or omitted in order to present the findings in a way that protects the identity of participants. Individual quotations are identified by letter, as in Lawyer A, Lawyer B, etc. The administrative records and data from the study are stored on a secure server at Saint Mary's University and only the researcher has access to the data. Printed copies are kept locked in an office on the university campus and will be retained in accordance with the Tri-council Policy on Ethical Treatment of Human Subjects (Panel on Research Ethics, 2005) for as long as the research project remains active.

Reflexivity

In Chapter 1 and earlier in this chapter I explained my role in the story of the Crown prosecutors' struggle for bargaining rights, their strike, and the negotiation of the framework agreement. This experience presented both an opportunity and a problem. There was a risk to my objectivity in collecting and analyzing data for this study because I am very familiar with the events and participants. I also had to manage the tension of my own version of events when recording and analyzing the accounts of people who sat across from me at the negotiating table or shared experiences with me. My recollection of the order and content of events as well as my interpretation of events and social dynamics was not always shared by study participants. An interview schedule helped to keep my intrusion into the storytelling to a minimum, and prevented me from adding any commentary to the data gathering itself. I also separated the history of the Public Prosecution Service and the organization events from the career and collective bargaining stories, in order to present those as a separate chapter, Chapter 4. This allowed me to focus on the Crown prosecutors' stories without any reference to my own interpretation of events. Finally, I had two other transcriptionists work with the data to ensure faithful records of the interviews. I was able to compare these transcripts with my own, and found no significant differences in the conduct and recording of the interviews.

McCracken (1988) notes that the investigator is an instrument in the research process and must draw on the "broad range of his or her own experience... in ways that are various and unpredictable" (p. 18). This warning offers some comfort in a case study such as the one described here. My personal experiences enabled me to identify key

informants and develop relationships. These relationships promoted access to the community under study. This opportunity perhaps would not have been available to another researcher. I also was able to direct questions and interviews quickly on the aspects of the legal profession and the struggle for collective bargaining that were most relevant to the research project. When I spoke with people who knew me from my work in government, I was able to get straight to the point of the interview without subterfuge. I feel this enhanced the quality of the data collected, rather than diminishing it. Finally, the fact that I have not been employed by government for over seven years helped to allay participants' concerns regarding my objectivity or the confidentiality of the study results. The ethics review process further assured participants of confidentiality.

McCracken (1988) also encourages scholars to “manufacture distance” in order to preserve a spirit of critical inquiry. I deliberately chose to explore the Crown prosecutor experience from the point of view of the sociology of the professions, which was new territory for me. As I am not a member of the legal profession myself, the exploration of lawyers' perspectives on their profession enabled me to maintain a distance and objectivity in my inquiry. I also took advantage of the control I held in the interview to establish a neutral perspective as a student interested in narrative, the profession, and collective bargaining. I did not reveal my employment history with the Province nor my role in negotiations with the Crown Attorneys' Association to my study participants at the outset of each interview. I did reveal my past employment and in some cases, my role in bargaining if this appeared to be helpful to elicit the confidence of the interview participants. Revealing my past role also saved time and avoided participant's lengthy

explanation details not relevant to the study. In one instance revealing my background did appear to dampen the enthusiasm of the interview respondent, though I cannot be sure if that was due to his sense that I was biased or because his train of thought and storytelling was interrupted.

Strengths and Limitations of the Methodological Approach

As described above, stories involve both the storyteller and the listener in the telling/listening experience. As a listener, the researcher may fill in gaps in a story based on her own experience. I addressed this risk in the reflexivity section of this chapter. From a methodological viewpoint, the interviewer is liable to transmit subconscious cues to the storyteller as well, with prompts, open or closed body language and facial expressions (Boje, 1991). The story told may in fact be partly a reaction to the listener (Hyde, 2008). Awareness of this risk and comparison of different interviews highlighted instances where this may have posed a problem.

The snowball sampling approach I used also posed a risk that all respondents share characteristics and perspectives, skewing the data and under-representing differing views. The Nova Scotia Public Prosecution Service employs approximately ninety lawyers, and during the late 1990s employed approximately 65 full time lawyers. I gauged that the likelihood of finding only one viewpoint in a sample representing a ratio of one in six members of the target organization was low. Furthermore, when people recommended snowball participants, they usually identified clear reasons for their choice of referral and outlined the expected contribution to my research. I found that in all

cases, those expectations on the part of the referrer were incompatible with the perspectives shared by the subsequent participant. Referrals did not result in common perspectives. This finding helped to maintain my objectivity as each interview held an element of surprise!

Although narrative analysis provides the potential to probe deeply to uncover a great deal of insight into the actions and interpretations of participants, the narratives may not produce rich enough material to do so. The skills of the researcher may be insufficient to elicit the material in oral form, or to access the textual archives that illustrate relevant features of the research site. The counterpoint to this concern lies in the holistic, multi-level and multi-voice nature of personal accounts. Narrative complexity may make it difficult to identify links among elements of the narratives. This complexity may also present a challenge to interpret narrative components relation to a theoretical framework. If successful, however, the approach has the potential to bring to the surface the complexity of organization meanings constructed by participants (Beech, 2000).

One strength of the interview method is its personal contact. It is easier to explain the goals of the study, the purpose of individual reflections, and to reassure participants of confidentiality in a face-to-face interview. Written accounts lack the spontaneity of an interview and reveal, particularly with lawyers, a studied representation of a position on a topic, particularly a contested topic. The complex treatment of language which narrative analysis entails might be made even more so because lawyers' dialogue is often complex in its own right. This aspect of the research subject's professional training makes it

necessary to have personal contact with research subjects to gather their stories. However, personal sensitivity, emotion, and personal consequences of providing narrative may result in material that is out of bounds for the researcher's use.

A significant strength of narrative analysis lies in the periodicity of stories. Probing for additional examples or instances in the interview may enable tellers to tell multiple stories and reflect mutable identities through the course of a story. This may reveal ways in which professional and collective bargaining closure strategies are mobilized and balanced over time. On a very practical level, narrative analysis has the advantage of being based on a small number of subjects. This is quite important in a project where some key informants have left the region and may not be accessible to the researcher. The population is limited to begin with, and some people who appear repeatedly in others' narratives may not be in a position to contribute their own particular perspectives in personal narrative.

Validation is one of the limits of narrative that Riessman describes (1993). Tied to the notion of validation is trustworthiness and implied comparison: valid as compared to what? The benchmarks would appear to be positivist empirical research based on statistical methods. A more relevant notion might be 'well done' in the sense that the process of collecting and analyzing narratives adheres to a rigor in the field and a coherence of analysis that follows the theoretical assumptions of the researcher. Riessman further encourages making the method visible in the research report and making data available to other readers. This is accomplished by including transcripts within the report itself, for example. The statistical notion of validity is challenged in

qualitative research (Webster & Mertova, 2007) on the basis that statistical study results are based on chance: reaching and eliciting responses from individuals on a given day, missing others, and using quantity as a substitute for quality. As opposed to taking the view that statistical significance indicates what is important, I believe that the choice by study participants themselves of the stories that are important to tell reveals what is significant.

One challenge to narrative analysis is determining the scope of the narrative. For example, in the case of the Nova Scotia Public Prosecution Service, the Donald Marshall Inquiry report (Nova Scotia, 1989) describe the prosecution of Donald Marshall as well as the operation of the prosecution service, the Attorney General's office, the civil service and the broader judicial system. A decision was needed regarding how much of this material is relevant to identify the narrative of the PPS. Just the fact that an external, independent inquiry took place becomes part of the narrative; let alone what the content of that document revealed. What of the press releases surrounding the issue of the Inquiry final report, the recommendations list, and the resulting legislation to establish an independent PPS? Then there is the glancing or direct reference to these contextual and organizational events in the individual narratives of the people in and around the organization. For this reason, I began with those individual narratives and turned to documents afterward, especially as individuals referred to events or other aspects that might be reflected in documents or related to documents. I acknowledge that the narratives are influenced by the existence of the documents and my reading of documents was influenced by the narratives I had collected. However, this approach builds a sense

of the organization narrative from the individual narrative in keeping with my goal to examine the individual agency in relation to larger social structures.

Narrative analysis addresses the complexity of the human condition. It is an approach well suited to exploring the type of research problem I have identified, where two different paradigms or stances are held concurrently in one person or group. Finally, narrative analysis is not an approach commonly found in the labour relations field, especially in Canada, and may open a broader discussion in the field (Mrozowicki, Pulignano, & Hootegem, 2010).

Conclusion

The experiences of Crown prosecutors in their struggle for collective bargaining rights are reflected in their personal narratives. Analysis of those narratives enables the researcher to move beyond the surface descriptive power of the story. Thematic, structural, and critical incident analysis help to explore how relations of production are bound up in the material sources of power of the profession and labour. Narrative analysis is an effective way to study the relationship between professionalization and social closure as two forms of collective action because in narratives “people distill and reflect a particular understanding of political and social relations” (Feldman et al., 2004, p. 148). My aim in this study is use narrative analysis to examine the social relations of the profession and employment, and how Crown prosecutors perceive and act upon their inherent power.

This is a story of change within an organization taken from the point of view that the people themselves constitute the organization in a real way. Participants' stories are an important manifestation of the organization, the actions that create change, and the underlying social relations that reproduce the actors and generate their capacity for action. The purpose of the study is to generate insights into the relationship between professions and collective bargaining in order to inform the theoretical frameworks surrounding labour process and social closure.

Various themes emerged through narrative analysis of the Crown prosecutors' stories. There were also structural insights gathered from the way stories are ordered. The stories presented histories and events from the past; they reflected choices in specific instances and described underlying motivations. Some stories were anticipatory and some reflected a strict chronology. All the stories were selective: they are comprised of specific actors, situations and outcomes which intentionally place the actors on a certain path toward achieving certain goals (Riessman, 1990). Examining the themes and structures that emerge in these stories illustrates how Crown prosecutors balance the pressure of professionalism with the need to bargain over terms and conditions of employment. Chapter 4 sets the background before we turn to the stories themselves in Chapter 5.

Chapter 4 The Evolving Legal Profession: Specialization and Subordination of Nova Scotia Crown Prosecutors

The goal of this chapter is to examine the legal profession in Canada and prosecution in Nova Scotia in particular, using the analysis of closure introduced in Chapter 2. I draw upon the results of my preliminary study with lawyers as well as my interviews with prosecutors to illustrate how the profession in Canada is in a period of transition that includes increased specialization. I explore the impact of this specialization on the way prosecution work is organized. I examine the historical context of prosecution in Nova Scotia in order to illustrate the convergence of professionalization strategies and collective bargaining in a specific organizational context. This discussion leads into an outline of the struggle for collective bargaining in the Nova Scotia Public Prosecution Service. The stories of individuals across the profession and those directly involved in the struggle highlight aspects of public prosecution that prepare the way for the discussion of occupational community in the next chapter.

The story of Nova Scotia Crown prosecutors demonstrates the way workers use usurpatory closure in an attempt to achieve greater control over working conditions. Parkin (1979) says that the use of both exclusionary closure and usurpatory closure, which he calls dual closure, is incompatible with the elite social position of professions. He positions dual closure as a strategy used by marginalized and oppressed groups of workers. This view of closure does not take into account the increased specialization of professionals and the impact such complexity has on professionalization strategies. It

also does not consider the growing number of professionals in dependent employment. Professions form smaller and smaller subsets of their profession in an attempt to define the boundaries of specialized expert knowledge. These subsets protect specialized practice from incursions by the unqualified and can be arranged in a hierarchy, opening up the possibility of marginalization for some specialties. Marginalization can lead a group of workers to adopt usurpatory strategies, such as collective bargaining. Within subsets of a profession lies the potential for an occupational community to develop, a community unique to the specialty. When an occupational community is located in a formal organization structure like the Nova Scotia Public Prosecution Service, we find a potential explanation for how professionals reconcile what may be considered competing logics of action. On the one hand, prosecutors pursue heightened professionalization through specialization and on the other hand, they pursue collective bargaining in their employment setting. An occupational community is the instrument that enables this reconciliation. Chapter 5 pursues a deeper examination of the occupational community itself; this chapter sets the stage.

The Legal Profession

The evolution of the legal profession along the Krause-inspired (Campbell & Haiven, 2008; Krause, 1996) closure continuum is ongoing. In countries modeled on British common law, like Canada, the profession has enjoyed independence, self-governance, and autonomy; it may be tempting to say that exclusionary closure is complete. The professional body controls apprenticeship opportunities, requires membership in order to be licensed, sets licensing and discipline standards, influences the

educational standards of entrants, controls forms of association by requiring membership, enjoys state delegation of governance and members enjoy a market monopoly on legal services. However, evidence indicates the profession has retreated along the closure continuum in recent years. The profession's relationship with the state has shifted with greater government intervention (Abel, 2004) in the United Kingdom and Australia. The profession has lost control over legal education (Bell, 2009) in Canada, and my preliminary study indicates employment of lawyers in the public sector has increased with more lawyers than ever practicing outside the self-employment model (Pink, D., 2009). The growth of large public service firms has also segmented the profession (Girard & Haylock, 2009; Heinz et al., 2005). Large firms control certain segments of the market, leaving smaller firms and individual practitioners with a limited range, and often less lucrative practice opportunities (Heinz et al., 2005). Processes for controlling professionalization and the institutional forms that result are changing. Lawyers themselves feel this change, as one lawyer notes:

I think one of the more striking changes in the profile of the profession over the past couple of decades is that I think people used to think of the legal profession as basically private enterprise; lawyers who ran law offices and those were businesses. But we're seeing now a dramatic increase in the numbers of lawyers in the public sector. (Lawyer A)

Canada's Nascent Legal Profession

In Canada's days as a British colony, colonial governors licensed lawyers. They used a hybrid of French and English legal systems to control litigation and ensure a monopoly over legal services. This approach also presumably protected the interests of the Crown (Stager & Arthurs, 1990). Law societies gradually took control of the

regulation of practitioners and colonial governments enacted various controls over the profession; examination of candidates was first done by judges and existing barristers (Stager & Arthurs, 1990), in contrast to the university education and bar exam of contemporary times. The Nova Scotia population in its early days was too small to support a bar modeled on the British, with separate barristers and solicitors and a system of Inns of Court where only members were heard by the bench. There were simply too few individuals to handle the growing volume of work. Thus, separate roles for advice and pleading in court collapsed into a single occupation. Central regulation of the profession was established in a Barristers' Society, and gradually the profession emerged as we know it today. The pattern varied across Canada in terms of educational requirements (Bell, 2009) and discipline in its initial years but became more homogeneous over time (Stager & Arthurs, 1990). Issues like specialization and advertising have meant there is some differentiation across Canadian provinces, but recent mobility agreements counter this in favour of a more national perspective on legal practice (Ceballos, 2009b). A lawyer can be licensed in Nova Scotia and practice in another jurisdiction for many months without any impact on their license or status (Pink, D., 2009).

The contemporary legal profession in Canada is comprised of three main groups: lawyers in private practice, lawyers in public practice and in-house or corporate counsel (Pink, D., 2009). Private practitioners are further divided into those who practice independently, in the traditional model of self-employment, and those who are either partners with an ownership stake or else employees of large professional service firms.

As indicated earlier, the number of lawyers in public practice with government agencies and departments of government has grown considerably over time. Public lawyers now hold governance positions in the regulatory body, the barristers' societies and law societies across Canada, as this exchange from a focus group with members of the Nova Scotia Barristers' Society governing council indicates:

25 years ago... I can't remember anyone from any of the *public sector* legal organizations who had a representative on Bar Council. But *now* if you look at the composition of Bar Council, we have a lot a lot of public sector lawyers who are involved in governance work. (Lawyer A)

I never thought of it, when you look around the table...[at Bar Council members] (Lawyer B)

We're [private practice lawyers] the minority. (Lawyer C)

The organization of work in the legal profession and the division of duties across its members has changed with time and circumstance. This profession continues to evolve. The next section of this chapter examines the structure of the profession and the forms of interest representation. From there I draw upon stories of lawyers themselves to explore the relationship of closure to changes in the profession in Canada. A second theme that emerges from lawyers' stories involves career choice and specialization in the profession.

Institutional Forms and Ideologies

The terms 'profession' and 'professionalism' in the literature can be distinguished as structure on the one hand and capacity to act on the other (Kay, 2004; Nelson & Trubeck, 1992). When we talk about the profession, we refer to the institutional forms

and the practices and rules that govern becoming a professional. To a lesser extent, the term profession describes the standardized work of those who practice the profession. Professionalism is a characteristic of individuals and refers to both outward demeanour and internal identity. When a person embraces the ideology of their profession and appears to put the public interest before personal interests, when she addresses her tasks with care and attention to detail, we often say she has a sense of professionalism. Professionalism is a conscious action that can be controlled by the individual as well as the institutional forms that surround her (Nelson & Trubeck, 1992). Abel (2004) distinguishes between these two concepts when he writes that professionalism in English law is in decline but the profession itself may continue.

Abel (2004) predicts that the legal profession will be reconstituted with new ideologies to support the public interest over individual interests of lawyers. For example, burgeoning ranks of lawyers and competition for business coupled with commoditization of some legal functions has affected law firms' financial security. Non-lawyers and foreign providers of legal services threaten legal monopolies. These changes are in response to the globalization and specialization pressures of the contemporary marketplace (Abel, 2004). Government intervention in the governance mechanisms of the profession in the UK and has made Canadian lawyers anxious for the future of their profession (Ceballos, 2009a). While most writers argue the profession will continue to exist, the fee for service model, education requirements, and practice norms will be under pressure to change, both in Canada (Leclair, 2009; Moulton, 2009a, 2009b) and beyond (Susskind, 2008). How members will define the profession, its relations with consumers

of legal services, and the social reproduction of the legal profession during this period of change are all uncertain. Exclusionary closure mechanisms of the past may also need to change to keep pace.

This period of transition frames my investigation of the labour process of law that I described in Chapter 2. Crown prosecutors are a subset of the legal profession and they have redefined labour relations and labour process control to some extent in their struggle for collective bargaining. Prosecutors' experience can provide several insights into the broader profession. On the one hand there is a sense of a continuing profession. Prosecution enjoys a protected, enduring role; crime will always be with us and with it the need to prosecute on behalf of the public. However, Crown prosecutors' professionalism has been challenged broadly and locally, and has been redefined in the process of seeking and achieving collective bargaining.

Interest Representation and Professional Closure

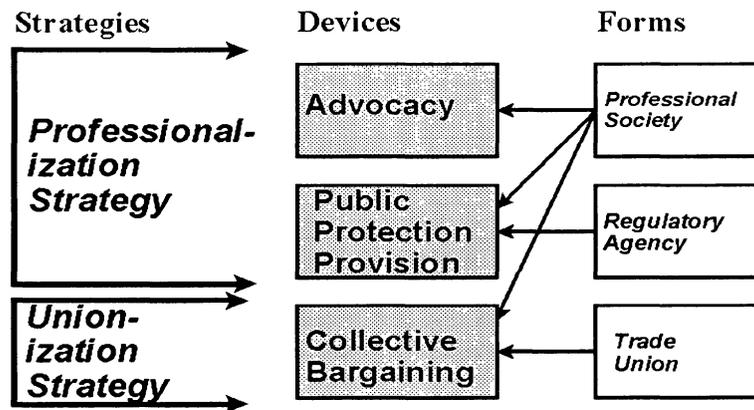
Professionals' interests are represented by three distinct devices (Haiven 1999): public protection, advocacy, and collective bargaining. Three institutional forms exist to address these interests: a licensing and disciplinary body, speciality associations, and trade unions. There is a correspondence between devices and their institutional form and I will address each one in turn. The licensing and disciplinary body of a profession purports to protect the public interest. Lawyers belong to a Barristers' Society or a Law Society that fulfills this role. These actions are deemed to protect the public by ensuring quality service and triggering repercussions for those who fail to comply with

professional standards (Nova Scotia Barristers' Society, 2010). The actions of the governing body also meet the needs of members. Members effectively secure control over access to the profession because they administer the licensing process themselves. I have noted in interviews lawyers seldom acknowledge this aspect of the professional society's role. In recent times, the Nova Scotia Barristers' Society has also taken on a role to educate the members in certain core compliance areas, such as civil procedure. Other professions have a similar structure. Colleges of Nursing, for example, license and discipline registered nurses.

A number of interest- or specialty-based associations regroup professionals in particular types of practice, such as the association of oncology nurses or the criminal law association. The goal of these special interest groups is advocacy on behalf of their members. These associations may also support education programs and exchange among members with closely similar practices. The associations often provide a forum for exchange and advice. Larger national associations exist for most Canadian professions as well; for lawyers it is the Canadian Bar Association with corresponding provincial chapters. These national professional associations provide similar advocacy and education services on behalf of lawyers' interests. In most provinces membership in the bar association is voluntary.

Finally, there are unions, which represent the interests of workers in specific bargaining units. Provincial labour boards define bargaining units that are in turn subject to provincial labour legislation. Federal labour legislation covers employees of the federal government and its agencies, and workers in designated industries. Most

provincial labour legislation prohibits lawyers from collective bargaining with their employers. Other professionalized occupations, such as teachers and nurses, have existed in structured permanent employment relationships with a public sector employer for much longer than the public prosecutors. These other professions have developed collective bargaining over terms and conditions of employment, but statutory exclusion prevented lawyers from unionizing under labour legislation. As mentioned in Chapter 1, *BC Health Services* had the effect of removing this limitation although provincial statutes have not yet been amended to permit unionization among lawyers. There is nothing to prevent groups of employees from forming an association and attempting to engage their employer in collective bargaining. In half of the jurisdictions in Canada public prosecutors have successfully formed bargaining associations, achieved recognition from their employers, and engage in collective bargaining. In some instances the civil-side public sector lawyers also bargain. In most of these cases, the employer has voluntarily recognized the prosecutors' bargaining association, without recourse to legislation. However, there is no statutory protection of strike or striking workers, and nothing compels the employer to recognize the association or to bargain in good faith. In British Columbia, the *Crown Counsel Act* recognizes the BC Association of Crown Counsel as the bargaining agent for Crown prosecutors in that province. Otherwise collective bargaining among private sector lawyers is rare (Chaffe, 2009). Haiven (1999) represents the relationship between these instruments of closure and institutional forms in this way:



Organizational Strategies, Devices and Forms for Professionalized Workers

Figure 2 Interest Representation
from Haiven, 1999

Some professions do not use all three devices of interest representation; they may not bargain, for instance. In addition, some professions will attempt to use one institutional form for more than one function, such as combining advocacy and bargaining, or advocacy and public protection. Some teachers unions combine all three devices in one institutional form. Lawyers do not make systematic use of all three forms of interest representation. The legal profession, with the exception of university law professors, some public prosecutors and public sector civil lawyers, has not embraced collective bargaining. Crown prosecutors follow the one to one correspondence of representation as I have outlined it.

It is clear that prosecutors are distinct among lawyers in their choice of collective bargaining to represent their interests and that they have overcome significant institutional barriers to achieve bargaining. Later I will explore why collective

bargaining is an appealing instrument for Crown prosecutors. For the moment, I will demonstrate that lawyers as a professional group have a distant relationship with their governing body. Distance in the relationship also distances lawyers from the protection of the public interest. Although the Barristers' Society exists to protect the public interest, involvement with the Society is driven by individual interest, a finding echoed by Nelson and Trubeck (1992). The distinction between individual and public interest will become important when we look at why the Crown prosecutors in Nova Scotia were able to mobilize for collective action.

One member of the legal profession, with over twenty years of prosecution experience, describes his involvement with the Barristers' Society like this:

[E]arly in my career I felt that it was important to get involved in the Bar Society because I thought that it would be a great opportunity to meet people and broaden my perspective of the practice of law and issues. Eventually I ended up becoming the elected council member for [my region]. (Lawyer D)

A former President of the Nova Scotia Barristers' Society offers this comment:

During the past two years I have had the opportunity to travel the province and discuss issues with lawyers whom I met. I am amazed to learn how little our members know about our Society. (Pink, J., 2008, p. 5)

Another lawyer with public, private, and academic sector experience explains the status of governance like this:

I would say that I think the organized legal profession, the body that has that responsibility, is just one more institution that is increasingly seen to be of less relevance and as having clay feet, just like all other institutions... [T]here's a core of lawyers who... tend disproportionately to be the more successful lawyers and maybe the sort of big firm lawyers, pay a lot of attention to the Barristers' Society; they get themselves elected and what have you. (Lawyer E)

These reflections from members of the profession indicate they feel a distance between their own practice and the protection of the public interest. Protection of the public interest is a core element of defining a professional project and essential to obtaining the freedom to self regulate. However, lawyers in Nova Scotia do not feel a strong personal connection to their regulating body. They see participation in formal roles in the Barristers' Society as furthering a personal interest; career building perhaps. The professional regulatory body does not engender a sense of "professionalism" among lawyers. The Barristers' Society safeguards the profession as these comments about discipline indicate: "...and you have to maintain this designation and you can lose it if they find you're a screw up" (Researcher: who is they?) Oh, that would be us [Barristers' Society]! (Lawyer B)

But by and large, I don't think it [Barristers' Society] impinges very much on what many lawyers do as long as you don't get in trouble. And I don't think many lawyers feel that they're personally implicated in what the Barristers' Society does or does not stand for (Lawyer E)

The regulatory body maintains discipline in the legal profession through its rules of conduct (Nova Scotia Barristers' Society, 2007) and its control over access to practice. The barriers to entry and the certification processes are so significant in the legal profession that they render the final governing stages, the monitoring of individual practice, somewhat ineffectual and unimportant in the eyes of members. Even the peer aspect of governance is separate from daily practice as shown by the comment "them" is actually "us". In this case, the participant was describing his role as a member of a self-regulating profession and also his role on the governing council of the professional regulatory body.

Professionalism

Although members may be blasé towards their Society, the profession is well protected, from a closure standpoint, to afford this nonchalance. The strength of the profession's norms is significant and inculcated from admission to law school onwards. This normative power of the profession influences the behaviour of individuals in their practice of the occupation as well as the way they describe themselves as professionals. The following exchange came from the focus group with lawyers:

In my life I think that my wife and kids would say that it's not so much a question of what I *do* for a living, it's what I *am*. I *am* a lawyer. (Lawyer B)

even if you weren't practicing you would *be* a lawyer (Lawyer C)

These lawyers illustrate that they fully embrace a sense of professionalism. Their professionalism is a product of their individual actions and not overtly linked to the institutional forms of the profession. They develop an identity as lawyers that they maintain almost independent of the profession's regulatory body. Though the two elements, institutional structure and individual action, are necessary to maintain a professional project, the distinction lawyers make between the two is important. This separation prepares the way for us to consider the profession not as a monolith but as comprised of quite distinct elements serving different purposes. There is room in the legal professional project for new instruments of closure, which can be used to further specific interests of the members. I will show in the sections that follow how the profession is also not a singular basket of practices, but is segmented into various specialty practices. The creation and maintenance of the profession is heavily dependent

on the agency of individual members. In Chapter 5 we will see how prosecutors in particular formulate an ideology of their profession that enables them to embrace an additional form of interest representation, collective bargaining that enhances their professionalism. Before we turn to that discussion, the following sections will describe how lawyers perceive their changing profession. They speak about the organization of their work into a labour process, and the organization of the profession into specialties. Based on these two themes the discussion examines in more detail the specialty of prosecution.

The Changing Profession

Susskind (2008) writes that legal matters are becoming business matters with the routinization of legal work. Advances in technology result in a pressure to commoditize certain legal transactions. Increased government intervention in lawyers' market monopoly for legal services may result in a period of significant structural change where the profession's relationship with the state is redefined. These pressures are echoed in Canada. There is an ongoing debate in Canadian legal circles over the principal form of economic security; the discussion over a move from billable hours to fee for service and flat fee structures is gaining momentum (Balbi, 2009). The first university degree granted for the study of law, the LLB, (Moulton, 2009c) is under review; several Canadian universities will be changing the degree to a doctor of jurisprudence, a JD, to indicate a higher status for lawyers who obtained a first degree in another discipline. This change is partly motivated by competition with American lawyers who hold the more prestigious degree. The legal profession in Nova Scotia is considering changes to

its governance structure to align with other Canadian jurisdictions (Pink, D., 2009). These are examples of how the profession as an institutional field shifts over time. The field is subject to contextual pressures and external forces. A model that best advances the interests of the institution emerges as the new institutional paradigm in response to these pressures (Greenwood et al., 2002).

The changes mentioned above are shaping the context for the legal profession. Participants in this study reflected on how these changes also affect the practice of law and their individual choices. In particular they note the way their labour process is organized and the social relations of production, whether in a private practice or in the broader relationship to the State as regulator.

There is kind of an economic or ... organizational imperative that's profit driven... that affects the life of all lawyers [in private law firms]. ... the more senior you get the more you're a partner then you're the person who's sort of managing, making sure that team that's working for you is working at that level of efficiency. Because you have the relationship with the client and they're not going to want a bill for a hundred thousand dollars if it's work worth fifty thousand dollars.
(Lawyer F)

This statement from a lawyer in private practice underscores two themes. The first theme echoes the growth of large, professional service firms and the dependent employment of associates in those firms. Lawyers need to manage the labour process of other lawyers, and sometimes on a long-term basis. Ackroyd and Muzio (2007) examined this phenomenon and highlight occupational closure *within* large legal firms. They illustrate the division and protection exercised by partners against associates in the same profession. However, there are also differences in how practices are organized in the market generally. The billing imperative does not exist for public sector lawyers, for

example. As the profession bifurcates on public/private lines, the imperative described above is only relevant for some lawyers. So what does the profession look like in reality, today?

Well one could take kind of the orthodox definition and say the legal profession is composed of all ... lawyers who are eligible to practice. You could even... say it's composed of all members of the Barristers Society ... both practicing and non-practicing members. But that's the orthodox approach and I don't think that's true anymore. I think we have probably several professions within the broad legal profession. ... two distinct groups within the profession ... are becoming further and further apart: those who practice in the public side and those who practice in the private side. And there is emerging a fairly significant third group which are those who practice for single employers. [O]ne might call them corporate counsel ... they are employed by their client, they have often both a corporate and a legal role in the client [organization], and I think that that is a real challenge for the principles that govern the profession as a whole because of the nature of loyalty to the corporation employer. (Lawyer G)

I think the way to put it that is more inclusive, that is more accurate to the change, is the setting of lawyering has become a whole lot more diffuse and diverse, right? So like there's lots of organizations now that either historically didn't have lawyers or historically didn't exist. (Lawyer E)

These comments by Nova Scotia lawyers clearly state the changing nature of the profession, but also link that change back to the issue of interest representation. As the institutional field changes, it draws different interests into the practice of law. The example of corporate counsel illustrates this point. Lawyer G speaks of a tension lawyers may feel between loyalty to the goals of the profession and loyalty to the goals of the employer. Lawyer E highlights the point that even "corporate employer" is not a tidy category. There is a proliferation of places and ways to practice law, all with potentially conflicting loyalties. In each of these instances there may arise a need for interest representation beyond the Barristers' Society. One lawyer draws a comparison with another profession with well-established exclusionary closure: medicine.

What medicine has going for it as an organized institution in Canada is Medicare, because there's a collective between the medical profession and the state. And therefore that is constantly reinforcing the validity and legitimacy of the medical societies, whatever they may get called. Law is a whole lot more diffuse than that and so the state would have to intervene in some sort of truly exceptional way before you'd get many issues that the Barristers' Society could rally all the troops around the way the medical society can. (Lawyer E)

While some are questioning the value and composition of the legal profession and its relationship with the state regulator, legal work itself continues to become more complex. The criminal code and *Canadian Charter of Rights and Freedoms* has made the first stages of criminal law cases, for example, more complicated.

When I first started I remember the knapsack I had. It was the knapsack like you take to school and... it fit the files in. And now box loads of files, and disclosure's become massive... I mean obviously the Charter was ten, thirteen years in when I started, but you know, just really picking up speed. [T]here's a lot of pre-trial applications before you get to 'did they or did they not commit a crime?' You know the work load has really increased. [W]hen I first started you might have had between 5 and 10 assigned files. People are working now 25 assigned files. So that's 25 sex assaults, attempted murders, manslaughter... The work is getting heavier, more complex. (Lawyer H)

This quote is from a lawyer who deals with special prosecutions. It reflects the pressure on workers from the demands of volume and complexity. Coupled with the earlier comment about economic imperatives, lawyers are feeling pressured in the same way as many workers in today's economy. Prosecutors' work is also divided in a different way. The complex serious crime cases arise more frequently. These complex cases go to regular prosecutors and are not reserved solely for the special prosecutions unit. External social ills put pressure on the labour process though the internal division of work. Regular prosecutors also carry a daily courtroom assignment with a full

complement of lesser crimes in addition to their complex cases. They must manage different bodies of expertise to cope with both loads.

At the same time, the body of knowledge under control of the profession is growing. This growth in special, technical knowledge is offset by the release of other knowledge into the public domain. Some technical expertise previously in the domain of the profession is also being claimed by other professions (Susskind, 2008). In some jurisdictions land specialist firms and not lawyers, for example, do conveyancing. With electronic access to historical files, it is easier to trace titles. Paralegal and administrative staff are taking over many of the labour intensive tasks of lawyers by using powerful databases. Demarcationary closure in the legal profession is being revised to exclude some functions and knowledge and embrace others. The profession is in a period of adjustment in its relationships with other types of workers.

The reason that the Canadian legal profession can be a collection of several professions and yet still retain a sense of unity, is due in part to the uniform education and apprenticeship aspects of lawyer training (Arthurs et al., 1986). The profession presents a unified face to the public and to government when lobbying and addressing matters of regulation. But in fact the profession is a disparate set of segmented specialists, and is becoming increasingly so. This raises the possibility that forms of closure may emerge *within* the profession. The following section looks closely at lawyers' stories of their careers and illustrates how individuals experience the profession, and recreate it through their actions and choices.

Themes from Careers in the Legal Profession

“Hungry enough”

Two themes emerged in discussions of career that reveal how lawyers establish and maintain a practice. One theme addresses the transfer of knowledge between professionals. This transfer is markedly different for Crown prosecutors than it is for lawyers in private practice. The other theme is the serendipitous manner in which lawyers develop their practice specialties. Once lawyers obtain their undergraduate law degree, complete the apprenticeship requirement of articling for a year, and pass the Bar exam, they embark on their careers. Many will stay with their articling firms and pursue a career in the field(s) of the firm’s specialty, but others will seek an opportunity with a firm in a specialty that interests them. For many the development of their career is a very prosaic affair, as these stories about solo practice indicate:

If you’re one of the article clerks this year and you don’t stand a ghost’s hope in hell of getting a job come June... the only hope is to start a small practice of your own and hope to find some files that you don’t know anything [about]. There’s no glamour, there’s no honour, dignity or whatever... I’ve gotta find somebody to get some money out of so I can buy some groceries today. (Lawyer B)

Or it can even be where you end up physically, right? I mean it could be that you had every intention to stay in Halifax but maybe one of your parents fell ill and you had to move home to deal with them. And you gotta pay the bills so that means opening up your own place wherever they are. So if they’re in a smaller community that means you need to branch out. (Lawyer I)

The lawyers in these stories carry their education and their sense of professionalism into the marketplace, and then build their independent careers according to the circumstances they face. This is the traditional model of a professional career. The

lawyers in these stories express some disenchantment, however, with the career building process. Although they do not state this frustration blatantly, and I interpret this as professional solidarity, lawyers do work the tone of disenchantment into their career stories. Lawyer I describes her career as a series of steps that surprise her as she looks back, but also frustrate her:

There are three things I said I would never practice coming out of law school – securities, family and tax and I've done all three. In focus, too... I was at a family boutique, I'm doing securities regulation, and I did tax for the feds. So I mean... you're hungry enough you take what comes your way. I mean there's so many variations; it could be that you started out at a big firm, didn't work out for whatever reason – you hated it they hated you or whatever it was (she laughs) and then you just go out on your own. (Lawyer I)

“Serendipity”

This excerpt from the focus group discussion between two male and two female lawyers summarizes the career development of lawyers:

Lawyer J: you've got a hungry article clerk looking for a job and all of a sudden he or she who wanted to be the corporate securities lawyer is now going to be an insolvency lawyer ... that's the spot you're plunked into and that's the path that you go down.

Lawyer I: can you imagine coming out of law school and saying I'd really like to do insolvency work? (group laughter)

Lawyer C: how do you know?

Lawyer J: but there's people like [Lawyer B] who say that, right?

Lawyer B: (he laughs) nobody came out that way. It's all serendipitous. You bump into something you do it or don't; you do it well or you do it badly; you get some more of it or you don't. And that's it, that's a career.

The focus group jokes that Lawyer B fits a stereotype of lawyer who knows from the start of his career what he wants to practice, and that practice is dull: insolvency work. The reality for most lawyers in private practice is a circuitous route to a speciality that takes along period of time.

“A long slog”

There is no glamour or prestige associated with the first steps in building a legal career. Many lawyers describe long hours of “grunt” work learning the culture and technique of legal practice, and paying ones dues to older members of the profession. The relationship with older members of the profession, described in more detail below in the discussion of knowledge transfer, is a key instrument for maintaining closure in the profession. The hierarchy of lawyers from junior to senior is one way of transferring professional norms to incoming generations of lawyers. The career building process is also a long one, and is described this way in both private practice and public sector employment.

A lot of people I talk to say that the first ten years of the profession is extremely difficult because you’re still climbing that learning curve and it’s a really steep learning curve. Oftentimes it’s not even until the very end of that first 10 years that you’re really starting to remotely focus because the first big part is when you’re getting all the dog files from all the senior lawyers that they don’t want . Or if you’re in the government then you’re just junioring on files or you’re getting anything that they throw at you that they think you can even remotely handle. They’re just throwing it on your desk and saying “have a good time” and running out of the office... you definitely feel like you’re all over the place and it’s not a fun feeling whatsoever. (Lawyer I)

And then when the work gets to be a certain point, you have enough work then you can choose the type of work you want to a certain extent. If you’re fortunate as you get further on in your career you get more choice. (Lawyer C)

“Knowledge transfer”

When I asked study participants about the knowledge they acquire in law school, and their readiness to practice law upon graduation, those in private practice reiterate the learning curve theme. These stories have an overtone of maintaining the profession’s mystique. The mystique arises from the way professionals apply their specialized knowledge. Technical knowledge of the law may be very current in the minds of law school graduates but new lawyers do not know “anything about practicing law”. A long process of mentorship is necessary in order to mould the lawyer into a fully formed professional, and I would argue, to protect the mystery and exclusiveness of the profession as well.

I know I remember the first three years of my practice I don’t think I ever did anything twice so everything was stressful in terms of, it wasn’t that I didn’t know the law – just the judgments right, making those decisions and trying to figure out... once I knew where I was heading it was ok. (Lawyer C)

This male lawyer in a medium sized firm of approximately 20 lawyers describes his work mentoring a junior lawyer, an approach several others echoed in the course of this research:

I would say that process is very experiential and the teaching part of it is very Socratic. Because what you have to do is say to the younger lawyer go, go out and experience something and then come in and tell [me] before we risk the whole client’s future existence on what you’ve accomplished so far. Come and share that with me and then you trim it up and shine it around or say no you’re completely flawed go back out, experience some more and come back in and show that to me again. ...so you’re trimming them, guiding them, shaping them, but ... it’s still an experiential process for the learner. (Lawyer B)

This mentoring approach endures through the changing profession:

The world that my mentors lived in is a really different world than the one that my juniors are going to live in... there are some things that remain static: the ability to identify your assumptions and be critical in your analysis and arrive at a logical conclusion and those are core; that's a core legal ability that remains ... human relationships, human dynamics doesn't [sic] change. [I]t just seems that everything else is a different world for the generation below me. (Lawyer B)

Lawyers in this study reflect a strong sense of professionalism; they have internalized an identity as well as specialized knowledge in order to fill a specific role as lawyer. This identity persists through changes to institutional forms and market contexts. The mechanisms lawyers actively use to perpetuate their profession are focused, in part, on knowledge transfer. The theme of gradual build up is present in the career stories and the mentoring stories of lawyers in private practice. This theme is in marked contrast to the Crown prosecutors' experience, which I discuss in more detail in the following chapter. Prosecutors tend to know what type of law they want to practice and actively pursue it. They take up criminal law very early in their careers as a focused specialty and are not generally assigned a formal mentor. Prosecutors work independently, in court, from their earliest weeks on the job and they enjoy a strong peer support group which emerges as a function of their labour process. The peer group functions in lieu of formal mentoring and is an important instrument in the formation of occupational community and collective action. These important differences within the profession support the idea that it is really a collection of several different professions, with different paths and processes.

Gender

There are personal stresses in the profession, beyond the market situation and institutional changes. Certainly, lawyers feel the need to make wise financial decisions, but they are also attuned to the intrinsic rewards of their work:

I was a sole practitioner, I worked in a medium sized firm, now I work with Nova Scotia Legal Aid, and for me the absolute pinnacle has been with Legal Aid . I've just really enjoyed practice. Not the most financially rewarding but nevertheless, in the grand balance of things, it's been the best. (Lawyer K)

A significant subtheme for lawyers in private practice is the distinction between women's experience of the profession compared with that of their male counterparts. I take a moment to examine this aspect of the profession because it highlights another contrast with prosecutors. A male lawyer made the preceding comment. There is an unspoken flexibility in the way male lawyers describe their careers and choices. One of his peers summarizes the profession this way:

[the legal profession has] been designed for me. ... there've been times that I've struggled in it, ... mightily, but it's actually been designed for your middle class white guy... not an awful lot of caregiver responsibilities and so I can go to breakfast meetings and I can join committees and I can be involved in all kinds of client development things and somehow make it all work. And that's not like classic, normal available to everybody. I've just been lucky to fit. (Lawyer B)

Female lawyers are much more explicit in tying the challenges their gender presents with specific phases of their career.

During that first ten years for women we're starting a family. You take a whole year out now. I mean how can I take, I don't know how you do it. It's wonderful to be able to do it but to take a whole year out of your practice when you've only been practicing two or three years? ... that would have been very difficult for me. (Lawyer C)

We get a hint from Lawyer C of an important difference related to employment status and which will be a major focus in the discussion of Crown prosecutors.

It's different too if you're an employed lawyer; we have a young lawyer going off on maternity leave for a year ... my second child I was a partner and I got two and half months because that was all I could really squeeze given my circumstances at the time and the firm's circumstances. ... in private practice you're set up as... the associate who's an employee and the partner who's self employed; that tends to make a... big distinction (Lawyer C)

Lawyer C's story reveals the choice that is at the heart of her gender dilemma. She feels that one must choose the lifestyle the profession offers and that makes you a real lawyer. She trades back and forth in her story between the term "want" and "don't". She indicates there is a choice for women to make yet there is an undertone in her maternity leave story that says real lawyers put up with the structure of the labour process. Newcomers are somehow different when they resist. She does not say new lawyers are less qualified, but she almost says this new breed of lawyer does not want to be a *real* lawyer.

Well then you have a lot of women who leave the profession ... I mean people who just don't want that lifestyle basically... they can do the work, they can understand the concepts, they've gone through the training, they don't want to be, to live the law. They don't find that welcoming and therefore they choose not to do it. (Lawyer C)

In addition to gender, there is a work-life balance issue in the profession that is being felt in most workplaces and it appears to be based on age. Newcomers to the profession are markedly different from their older peers.

... up until about 1990 you could assume fairly comfortably that new lawyers would come in, they would ... ascribe to the norms of the profession and would very much behave like the clones that they were seen to be. So law firms hired

people that they thought would perpetuate their image... so the structures of law firms, the structures of law practices going back several generations changed little up until the 1990s. And then in the 1990s we did truly begin to see the impact of generational change... even those of us who grew up in the 60s ... we didn't really change the way practice was then. We still worked incredibly hard and we still did all those things. That's changed in the last 15, 18, 20 years. [W]e're beginning to see some fundamental changes and it's not played itself out yet. (Lawyer G)

These stories from lawyers reveal that the legal profession in Nova Scotia is similar to that in other jurisdictions described in the literature. The profession is undergoing rapid change as a result of market and regulatory factors. A profession dominated by men for centuries is now under pressure from women and younger workers to change in order to permit better work life balance. Employment status is shifting from self-employment to dependent employment. The profession has become a collection of sub-professions and the notion of 'difference' has been introduced into lawyers' sense of what it means to be professional. There is no longer a unified "professionalism" that lawyers embrace. There is scope for different interpretations of the lawyer identity and we will see how this translates into an occupational community for prosecutors in Chapter 5. Crown prosecutors exhibit different career paths, a slightly different labour process, a different knowledge transfer mechanism, and a markedly different sense of professionalism.

Specialization in the Legal Profession

We also see from these lawyers' accounts of their careers, and their reflections on the career potential of those they mentor, that there is a de facto specialization or limiting of scope of practice that occurs. This specialization is a product of what work "walks in

the door”. Specialization is also a function of what one excels at, what a lawyer chooses to pursue, and what one turns down.

I can do, I’m allowed to do family law and criminal; I am permitted by the Law Society to do all those things and the only thing that will actually prevent me: necessity. If I was hungry enough and I *had* nothing else to do, ...I guess I’d do a criminal law case. (Lawyer B)

I think people develop specialization when they leave law school and they enter a law firm, a major law firm or a government department or wherever. Where people aren’t generalists... and so you end up gravitating by your inclination or your abilities and so on to a particular practice. (Lawyer F)

As lawyers reflected further on the broad implications for the legal profession, they all came to rest on one common message: perhaps the most significant change to the profession is specialization in practice area, and in expertise. With specialization comes an invisible barrier; the closure effect of expertise is felt within the profession as well as beyond it. Lawyers do not move easily between areas of specialty once they have invested their time in building a practice and a specialty in one area. This sentiment was true whether respondents had more than 40 years at the Bar, or less than ten. However, other divisions are also clear: a bifurcation on rural/urban, large/small, public sector/private sector, and along gender lines. This is almost an anthem among lawyers in private practice, and even those in the public sector:

I think it’s changing over time... lawyers are becoming more, are *required* [emphasis added] to become much more focused in their expertise and so ...there aren’t that many general practitioners. You sort of specialize – litigation, corporate ... labour-employment, then within those there are countless sub-specialties (Lawyer L)

I think the most profound change is the growth in the concentration of specialized lawyers in large, in larger firms. Like even my firm is a small firm, 14 lawyers in total, but we’re completely specialized in one or two areas and I think that’s the

biggest change I've seen over my career. There were a lot more generalists 30 years ago. (Lawyer F)

most people in practice are specialized, in fact it's very difficult not to be specialized. (Lawyer K)

But specialization is not without its regulatory challenges. In Nova Scotia, for example, the Barristers' Society does not permit the use of the term 'specialist' in advertising for legal services. The rationale for this restriction is due to the difficulty of measurement.

a special ability in your practice is problematic because how do you measure it? How do you measure an individual lawyer's ability to excel or to do an above average job in a particular field of law when the governing body has no means in place of evaluating or measuring or quantifying your ability? Now the difficulty is that that the consumer of legal services is looking for that information. (Lawyer A)

Consumers start asking for information about specialty at a very early point. Lawyer I says "I remember even when I was in law school everybody would say 'what's your specialization?'" The regulation of professionals is a provincial matter and the rules vary; some provinces permit lawyers to advertise areas of specialization. The "specialist" designation becomes more complicated in light of inter-jurisdiction mobility agreements. A firm or individual lawyer can advertise in their home province and complete work in another. Advertising media, such as national newspapers, extend across provincial boundaries and so the formal, structural restrictions on advertising have little practical impact. In practical terms most lawyers do concentrate their practice in a limited number of practice areas; they do specialize. The real advertising (in the sense of formal versus real control) is by word of mouth and reputation. This is another instance of the agency of individuals superceding the structural limitations of the profession.

Thus the profession appears to be a loose coalition of sub-professions, with very little to bind them together; not financial results, not experience, not practice content, nor even interest in governance. “So I don’t know what we really do have in common other than we’re all lawyers” (Lawyer F). All lawyers in Canada begin at the same point, with a general law degree. They pass through a common socialization process. These processes of acculturation give lawyers a shared sense of professionalism. Despite the differences in the content of their work, the professional project still excludes outsiders effectively.

‘Specialization’ ...is another basis upon which the profession has broken into different segments. Because you have those who are *highly* expert in their areas, they lose the commonality of what the profession historically had, which is that lawyers did everything. [W]hen you actually start to drill down, the knowledge, the aspirations, the way people practice, the financial realities, are all quite different. (Lawyer G)

This concluding comment hints at what we are going to discover among prosecutors. The structure of the labour process as well as the sense of professionalism and the ideology that binds prosecutors together forms a sub- profession unto itself (Podmore, 1980). The varieties of workplaces, their unique cultures and ways of organizing work result in different ideologies and definitions of professionalism across the legal profession (Nelson & Trubeck, 1992). Prosecutors have developed closure strategies based on their specific expertise in order to preserve their professional autonomy. It is difficult for other lawyers to cross into their domain and prosecutors in turn seldom venture beyond their realm of expertise. They are a bounded group within the profession and specialization emerges as a dominant theme in prosecutors’ stories.

The following section details the development of the prosecution function in Canada. The function has evolved from autonomous agents of the Attorney General to dependent employees in bureaucratic structures, governed by policy manuals and layers of managerial supervision. This section includes a discussion of the Nova Scotia Public Prosecution Service. This organization context highlights another element that distinguishes prosecutors: their dependent employment. This discussion sets the stage for the stories of career and collective bargaining that follow in Chapter 5.

Prosecution in Canada

Historically prosecution was a private concept of wrong between two parties. When private vengeance gave way to judicial decisions in law courts, it still required a wronged individual to bring charges. The transition to public prosecution was long and colourful, with folk methods of proof giving way to prosecution of the monarch's interests and ultimately a public office of prosecution (Ma, 2008). The Canadian system of prosecutions is based on the federal responsibility for criminal law and procedure, and the delegation of the administration of those proceedings to individual provinces. The Canadian system is patterned on the British one, where private prosecutors appointed by the Crown are removed from investigatory roles. In Canada, private prosecution was common until the expansion of the public service in the 1960s. Prior to 1966 all prosecutions in Canada were managed by part time prosecutors appointed by the Attorney General and these were often political patronage appointments (Grosman, 1970). Increasing urbanization and consequent crime resulted in greater demand for prosecutorial services. Lawyers in private practice appointed by government as

prosecutors found they had to hire per diem lawyers to conduct prosecutions on their behalf as the volume of work increased. In 1966 the first full time prosecution staff were hired into the civil service marking the forerunner of today's public prosecution units. Employment has since evolved into a permanent complement of civil servants, appointed under the authority and the protocols of the provincial or federal legislation governing the civil service (Stager & Arthurs, 1990). The path to the current state of affairs has not been smooth.

This move to employing permanent Crown prosecutors highlights tensions in the underlying relations of production of legal services and the public good of prosecution. Contemporary Crown Attorneys retain all the rights and privileges of practicing barristers with full membership in the regulatory charter body. At the same time, they are subject to management control. In the case of Nova Scotia prosecutors, there is a tension between professional independence and employment dependence. Employment creates pressure from bureaucratic controls that can reduce the professional's autonomy and interfere with professional discretion, while it binds them to financial benefits and divides their loyalty between profession and employer.

Grosman (1970) describes the evolution of a specialized knowledge relating to prosecutions, despite the fact that lawyers are all trained in the same way (Bull, 1962; Stager & Arthurs, 1990). There still persists in rural areas the independent practitioner who takes on prosecution of files, but these files are prepared by the civil servants and delegated to this external party for the execution of court room activities and related decisions. Bull (1962) is one of the first publications to mention a 'career' as a

prosecutor, and he notes that in urban centers prosecution was becoming more than just a stop on the way to a more prolific career at the criminal bar or a “stage” in developing a rounded independent practice; it is a legitimate career. The fact that gradually all prosecutions are undertaken by a permanent prosecution service of civil servants, means that this type of practice is no longer available to lawyers in private practice.⁷ One impact of specialization is isolation. It is very difficult move back and forth between specialties, as the stories in the preceding section indicate. Permanent employment brings with it golden handcuffs. Crown prosecutors often cite the public sector pension plan as an employment benefit that cannot be duplicated in the private sector. With several years invested in public practice, most prosecutors find it almost impossible to return to private practice.

Pink and Perrier (2007) outline in layman’s terms the criminal law system in Canada. Contributors to this volume are drawn from Nova Scotia for the most part. Almost all of the lawyers who contributed chapters and/or edited chapters are graduates of Dalhousie University’s law school. The book thus gives a good overview of the criminal justice system from the Nova Scotia perspective. The chapter describing the players and roles in a criminal trial emphasizes a neutral, impersonal professional (Hoskins, 2007). Hoskins takes pains to illustrate the relationship between individual lawyers as executors of specific functions in relation to the law and the system of

⁷ Some private sector lawyers do take on “per diem” work prosecuting cases for the prosecution service. In June 1998, when Nova Scotia Crown Prosecutors walked off the job, per diems were retained to ensure a Crown presence in matters that were already scheduled to come before the courts. In many cases those per diem lawyers simply asked for adjournments. Per diems have been greatly reduced in recent years, in favour of funding more permanent positions.

criminal justice, and not as individuals with personalities and opinions. In fact, personal opinion is clearly not to enter into the practice of prosecution nor defence, and though the criminal law system here is an adversarial one, the combativeness is engendered in the process and not the individuals. “The adversarial criminal justice system does not create a contest between the Crown prosecutor and the accused” (Hoskins, 2007, p. 194). The lawyers are pitted not against each other, but against the arguments and the case presented by opposing counsel. The role of the Crown is to present the evidence and ensure a fair trial on its merits (Hoskins, 2007).

Prosecutors as Specialized Lawyers

The role of the prosecutor in Canada is to “bring out impartially all the evidence in their possession (favourable or unfavourable to the prisoner), leaving it to the tribunal of trial to render its decision or verdict” (Common, 1952, p. 4). Common extolled the centralized Canadian system as one where politics have been kept separate from the administration of justice. Moss (1960) calls for a “professional prosecutor”, one with specialized training, professional development at the public’s expense and a national association for prosecutors. In Canada, prosecutors’ initial training remains the same as that of all other lawyers and expertise in prosecution is developed once a lawyer begins prosecuting (Grosman, 1970). This is still the way that prosecutors are prepared for their roles, as every one of the participants in my study attested. However, in contrast to the mentoring that occurs in private practice, described above, prosecutors explain their training as being “thrown right in” to the work. There is also a difference in the prosecutor’s application of expertise compared to lawyers in private practice.

There is a distinction. Prosecutors, [are] governed the same, there's no question, the ethics rules are the same; they're applied a little differently if one of is exercising prosecutorial discretion. And that makes sense because people would make a complaint and hope that someone would not prosecute them. (Lawyer D)

Hoskins (2007, p. 195) speaks directly to the idea of professional discretion when he states "Generally, a Crown prosecutor's discretion is exercised without reference to fixed objective standards. ... The Crown prosecutor exercises a public function involving much discretion and power". Yet at the same time he says "[T]he Crown prosecutor plays a very responsible and respected role in the conduct of criminal trials. The Crown prosecutor ... must act fairly and dispassionately, with an ingrained sense of duty" (Ibid).

Here we see the autonomy and creative aspects of the profession at play along with the norming influences of the profession, influencing the presentation of the self and the Crown prosecutor's behaviour in the trial. Hoskins goes further to say the personal opinions of prosecutors "should never be expressed" (Ibid), leaving the impression that Crown prosecutors are somehow less than human. Personality and personal opinion cannot enter into their work at all. The ideal prosecutor is perhaps interchangeable with any other in the execution of their duties. They do not address other people in their work, but rather challenge positions, arguments, and the adversarial system, ensuring that the system works well. Cast in this light prosecutorial work is disembodied, but not necessarily Taylorized. It is specialized work, but not yet reduced to the status of commodity as Susskind (2008) predicts for other branches of law.

Professional Discretion/Prosecutorial Discretion

Professionals enjoy freedom to use discretion in applying expertise; this is one of the cornerstones of the professions, as discussed in Chapter 2. Such freedom comes from the self-regulation of the profession, but also from the way in which work processes are prescribed. The legal profession is renowned for the extent to which it values individual autonomy; but this autonomy has been closely tied to traditional legal practice and self-employment. As a result, lawyers have been very reluctant to embrace any form of collectivism in the workplace. The legal profession's values are expressed as codes of ethics and a duty to the public interest (Nova Scotia Barristers' Society, 2007). These values are nurtured in students from the earliest days of law school training. Socialization of new lawyers to a common worldview perpetuates the professional norms and upholds individual discretion in decision-making and independence as the profession's highest ideals. All lawyers admitted to the practice of law embrace some form of individual discretion.

Professional discretion takes the form of prosecutorial discretion for Crown prosecutors. The Supreme Court of Canada defines five elements of prosecutorial discretion (Krieger 2002) and summarizes them as “whether a prosecution should be brought, continued or ceased and what the prosecution ought to be for” (Ibid, p. 46, 47). However, Bull (1962) describes the discretion as reaching beyond the decision to prosecute and into the manner in which trials or prosecutions, more broadly, are conducted. Prosecutors make decisions about which witnesses to call and what evidence to present (yet governed by the ideas that all evidence, even that which helps the accused,

needs to come forward and cannot be suppressed). They present for the judge the fullest and fairest case to enable a decision to be made. Discretion then involves not only *if* a case is prosecuted but also *how* it is pursued. In short, discretion is at the heart of the prosecutor's labour process; "the essence of criminal justice lies in the exercise of discretionary power" (Davis, 1969, p. 18).

There is significant literature (Bellemare, 2007; Common, 1952; Grosman, 1970; MacFarlane, 2001; MacNair, 2002; Note, 1955; Whitley, 2004) and case law (*Boucher* 1955; *Krieger* 2002; *Miazga* 2009; *Nelles* 1989) on prosecutorial discretion and the idea that prosecutors must be independent in their supervision and control of the progress of a case. This is especially true in Canada where the Nova Scotia, British Columbia, and now the Federal Prosecution Service have embraced statutory models of independence. I will return to the reasons for separating the Nova Scotia Public Prosecution Service from direct control of a government Minister in a later section. Comparatively little, however, has been written about the limits set on prosecutorial discretion as a result of dependent employment (Gomme & Hall, 1995). Scholarly journals do not address the relationship between employment and prosecutorial independence nor the role of collective action as a means to preserve prosecutorial independence. Yet administrative control of discretionary power is a very real concern in bureaucracies (Davis, 1969).

Two important changes occurred in Nova Scotia between the early 1950s, when the first literature on the career prosecutor emerges, and the late 1990s. Management of the prosecution function was embodied in a management team of Regional Crown Attorneys (Public Prosecution Service, 2010). These prosecutors take on the full range of

bureaucratic supports and expectations as managers in the civil service. The management of prosecutors is general and overarching in nature, compared with the file specific management exercised in private practice. Although prosecutors remain independent in the courtroom, the formal organization structure of a management hierarchy imposes limits on prosecutors' decision-making. Prosecutors describe this limitation in detail in their workplace stories. In addition to organization positions, the Nova Scotia Public Prosecution Service has developed a policy manual of prosecution and administrative guidelines (Public Prosecution Service, 2006). This tool further supports an overall management of the prosecution function rather than a case-by-case, mentor type of supervision. The imposition of organization policies narrows prosecutors' range of discretion.

I turn now to other professions for a moment, in order to demonstrate that lawyers are not unique in their command of expertise and in their insistence upon having discretion to exercise that expertise. Nurses provide an interesting point of comparison to prosecutors because they are also employed professionals, and in Nova Scotia some nurses were also civil servants until the 1990s. Nurses and prosecutors share several occupational traits. Both are held to a high standard of professional care in a duty to protect the public interest. Individual care is also paramount. Nurses give very tangible care; they provide care for the physical and emotional well being of patients. Prosecutors have the accused person's freedom and the rights of alleged victims in their care. The

Nova Scotia Barristers' Society Legal Ethics Handbook contains section 17⁸ that recognizes prosecutors have a special duty to the court as quasi-ministers of justice. Prosecutors are held to a different standard than other lawyers in terms of their duty for fair and ethical conduct; "the ethics rules are the same, they're applied a little differently in the context of one of is exercising prosecutorial discretion" (Lawyer D). Both prosecutors and nurses are subject to administrative rules and control over their job functions.

Control by rules takes similar forms in professional workplaces. Nurses follow protocols for "delegated medical acts" and prosecutors are subject to the Public Prosecution Service policy manual. Each of these documents specifies what the respective professional is to do in certain circumstances. My interviews with nurses and prosecutors revealed that there are members of both professions that embrace these rules and see them as helpful instruments that provide structure and consistency in the workplace; structure without fettering their professional discretion (Davis, 1969). Likewise, there are those who see the rules as a hindrance in the exercise of professional discretion. Many non-professional employees may feel this way. A bank employee, for instance, may feel hampered by workplace rules. However, if a bank employee makes a mistake there are likely personal discipline consequences; if they have acted in good faith and not contrary to disclosure and other ethical guidelines, the bank protects them from personal liability. The standards of nursing practice on self regulation clearly state that

⁸ Section 17 is included as Appendix C

nurses assume *personal* accountability in their practice (College of Registered Nurses of Nova Scotia, 2003). In the case of self-regulated *employed* professionals employers appear to delegate functions away from the institutional level, to the individual level of responsibility. The nurse, for example, accepts responsibility for her actions by accepting delegated functions, and is personally liable for any mistakes as a result. There is an imbalance between the employer's power to impose behaviour, supported by the practice standards of the professional body, and the agency of individuals to accept or reject the delegated function.

This dilemma is deepened when nursing practice standards (College of Registered Nurses of Nova Scotia, 2003 s. 6.4) require nurses to report situations that may be adverse for clients or health care providers including incompetence, incapacity, misconduct on the part of other nurses or other healthcare providers. Not only are nurses personally liable in the case of a mistake, and subject not only to employer discipline, but they are also open to professional censure. Nurses also have a disciplinary responsibility within the profession. They take on a management-like role in policing their peers. This disciplinary role among peers can undermine solidarity in the nurses' union. This role places nurses in the awkward position of breaching solidarity in order to preserve professional integrity. Professional employees are held to a higher standard of performance than other types of employees in exchange for the privilege of self-regulation.

The comparison between nurses and prosecutors illustrates an important difference between professional and non-professional employees in the workplace.

However there is an important contrast as well. Nurses have been dependent employees for as long as they have existed as a professional occupation. Their relationship with management and the rules of their profession are bound up in the structural context of their employment. Their nursing standards refer to the individual, reflection of the atomization of the workforce under large, powerful stakeholders such as the medical profession and state-run hospitals. Prosecutors have only come to dependent employment more recently; the foundations of their profession lie in self-employment and self-determination. And yet the practice standards for prosecutors, as for all lawyers, is framed in terms of the profession (Nova Scotia Barristers' Society, 2007) rather than the individual. There is some safety and shelter in the profession as a collection of peers and its members perhaps do not feel individually threatened or imposed upon in the same way nurses do. Lawyers may feel they have less need for collective protection outside the professional body, such as a union would provide. However, specialization in the profession and evolution to dependent employment in one specialty, prosecution, results in a new setting that the language in the profession's standards and ethical requirements does not address. Language that distinguishes employer/manager functions from individual lawyer functions is necessary either in the profession's practice standards, or in the workplace in the form of policies. Section 17 of the Nova Scotia Barristers' Society Legal Ethics Handbook was added in the early 1990s to recognize the different circumstances of Crown prosecutors. A former managing prosecutor explains it thus:

At the Public Prosecution Service, we had ... an internal review process that was similar to that of the Bar Society, but the Crown prosecutors were subject to both. So, if a complaint would come in,... I would have it investigated and processed, similar to how it was on the Bar side. So you could complain about a Crown

Attorney ...and have parallel investigations. [Prosecutors] are not immune from a peer review, but they're treated differently because of that section [s.17 of the Legal Ethics Handbook]. (Lawyer D)

Legislation governing the Nova Scotia legal profession specifically defines the profession. In addition to a list of tasks that lawyers are permitted to undertake, the Act defines the profession in terms of skill and education (*The Legal Profession Act 2004*). Because the law actually limits what lawyers can and cannot do and because they are officers of the court, Crown prosecutors accept a limit on their professional power. The limitations are achieved through the text of law and the code of conduct of the Barristers' Society. Management and organization pressure, especially public scrutiny of the civil service and the resulting implementation of policy further impedes the exercise of professional discretion. At this level, the prosecutors and nurses seem to be similar in their need for collective representation within the workplace to help them resist the erosion of professional discretion. However, this is more than a matter of the application of bureaucracy theory; management ranks to the very top of the Public Prosecution Service are filled with members of the profession who specialize in prosecution. There are no other professions that wrestle for jurisdiction in the prosecutors' workplace. Although prosecutors operate in a hierarchy of junior and senior peers, this is not the same as the hierarchy of doctors, nurses, technicians, and allied health professionals in medicine (Witz, 1992). Prosecution Services are homogeneous professional workspaces within a larger bureaucracy yet kept at arm's length from centres of power. The overlapping allegiances to profession, organization, and public service are underscored in the paradoxical relationship between management and prosecutor; they are peers in a professional sense, but subordinate/supervisor in employment relations. No single

instrument of closure available to lawyers up to the early 1990s satisfactorily addresses this paradox. They were receptive to supplementary forms of closure to protect their professional discretion, and to resist the rules of emerging from dependent employment.

The Employed Prosecutor

Hodson (1995) states that defence of autonomy is the most common reaction to an incursion of bureaucratic control, and is particularly so for professional employees in bureaucracies. Through the creation of a new organization, several phases of negotiations culminating in collective bargaining, as well as job action and a communications campaign, the message of independence and protection of professional autonomy is a clear and dominant strategy for Crown prosecutors in Nova Scotia, as we shall see in their individual stories. The individualism on which professions are built, and the corresponding accountability for one's own performance over the long term is at odds with the collective and often short run aims of unionism (Raelin, 1989). But when the individual autonomy and goals are jeopardized and injustice is perceived, workers sharing these conditions, even though they are highly professionalized, are mobilized to act in self defence (Kelly, 1998). It is important to note that the Dartmouth office of the PPS was a key physical site of mobilization. In this location management style seems to have played an important role in the success of the prosecutors' struggle for collective bargaining. In the Dartmouth office there were concerns over poor management. These concerns were verbalized and the situation was compared with the conditions in the Halifax office, lending momentum to the Crown prosecutors' fight to redress these injustices. In the regional office it was contact with the leadership of the Prosecution

Service that rankled, particularly when the core role of the prosecutor, to determine whether or not to proceed with a prosecution, was challenged.

I was in [the region] as a trial Crown and there was some case and for some reason I had to write a letter to the director. I put in the letter 'in my view... it's not in the public interest in this case to proceed', which is one of the things the individual trial Crown is supposed to look at; reasonable prospect of conviction, is it in the public interest? [the director]'s in our area having a... regional meeting just coincidentally around the time of that letter had been written. And after the meeting... he says, 'oh yeah, can I talk to you for a minute? ...I got your letter and I just want to be clear about one thing, I'm in charge and don't ever tell me when it's in the public interest to prosecute something.' ... Well, first of all, I had—even at that point—more experience than he ever had, but more importantly, it was just the demeanour. 'Never tell me what to do, just give me facts' or whatever. [T]his is our job though, every day, to decide this. ...and that's just one incident. (Lawyer M)

A senior lawyer in private practice claims the labour process of associates in medium to large private practice firms is similar to that of employed lawyers in the public sector, or anywhere else, but then quickly contradicts that with what he sees first hand when meeting with government lawyers.

Our associates are managed the associates in the firms downtown are managed you have to have management. ...to ensure there's overall quality control in terms of what the work is and ...to ensure that people do enough work to bill what's needed to be billed... and then there's the continuing education which at the third level of management.

I don't imagine an associate here would for example go and do an arbitration on their own, certainly not in the first couple of years. They would always be working in a team with a more senior lawyer and they'd have a lot of responsibility in that team, but they're not the person who's the leader of the team. [T]he idea that any of us are sort of autonomous ... that's not really right. We often work in teams and we work for the same clients and I think it's probably the same in big firms, the same in government.

The government, ironically they, lawyers are more on their own in government. [T]hey get hired, they get a job, they get an assignment, ...and that's it. I know that they call on each other talk to each other... but you ... rarely see a double team of

lawyers coming from government or big organizations, so if anything they're more autonomous than they would be in a regular law firm. (Lawyer F)

This lawyer is referring to government lawyers generally. The employment of lawyers in large heterogeneous organizations such as the public service puts pressure on the labour process. The attention to public sector cost-saving and public accountability results in streamlined labour process, where one task is assigned to one individual rather than the luxury of a team approach as found in private practice. Prosecutorial work is conducted in the public sector environment, but has also traditionally been a solitary undertaking; prosecutors are alone in court for the most part. However, in contrast to many non-professional employees and in contrast to the situation of employed associates in the private law firm Lawyer D describes above, prosecutorial work is not supposed to be subject to measurement and conviction rates. Its quality is supposedly indicated by the fairness of each trial. What does performance appraisal measure in such an organization? What role does management take when the ownership aspect alluded to in the quotation above is absent? The files are scrutinized in a peer review fashion. In fact, much of the management function alluded to above is undertaken by peers.

Well you're on your own but certainly reputations spread quickly because everybody in the criminal bar [gossips]. And also [people see your work] when the files come back. So you do a file, you don't carry your files. You might have 12 different Crowns look at the same file. So certainly if you do something in a file and then someone gets it the next time they'll see any mistakes that you made and that kind of thing. There's sort of the peer file review. Also just I think in this job you learn a lot by talking. I often laugh. People say 'oh you going to coffee?' But you learn more sitting around a table with a bunch of Crowns at coffee than anywhere else because all they do is talk about work and the cases (laughs) and just by them saying 'oh I you know I have this issue and how would you handle it well I handled it this way I had that last week,' and that kind of thing. So I think that's how they [management] get to look at you. (Lawyer H)

In Chapter 2 I discussed proletarianized work. I pause here to consider whether it makes sense to talk about Crown prosecutors as being proletarianized. Hoskin's (2007) disembodied professional prosecutor seems like an automaton, governed by policies and organization structure in the application of his discretion. The tasks of prosecution appear to be broken in small segments with many hands touching them, almost in assembly line fashion, as Lawyer H just described. And yet measurement of effectiveness is difficult. Lawyer F describes managing his employed associates in private practice and tells me in the interview that he reviews their written work and corrects it. This type of management scrutiny does not apply to prosecutors. Lawyer F even draws a distinction between his colleagues and prosecutors when he says "[lawyers] don't appear in court or I mean most lawyers don't anyway". Prosecutors spend a significant amount of time in court, and on their own, so performance appraisal, and control, is challenging. Prosecutors' stories of their work experience probe the nature of their labour process in greater depth in Chapter 5. For now I conclude that there is not enough evidence to support an argument that prosecutors' work is proletarianized, nor is it deskilled in a Taylorized sense:

So you would organize the assembly line for the pop in a way that a person can sit there and watch and see if the machine is doing the job; it's not a very high level of skill. At the same time you'll have a machinist who has to adjust the machines, make sure they work in a certain way. So I don't think that kind of deskilling, [like] that of the pop machine guy, exists in the legal profession. (Lawyer F)

At this point I will summarize the discussion. The legal profession is casually described as though it is a unified institution, but authors and my research participants indicate that this is not the case. Segmentation in the professions, law as a case in point,

is extensive due to pressure from managers, consumer markets, professional regulatory bodies and public scrutiny (Freidson, 2001). The result is distinct, cohesive sub units that may in fact act like competing professions or else range themselves in a hierarchy like subordinated members of the broader profession (Bucher & Strauss, 1961). In a dependent employment relationship, these segmented groups still seek the status and financial security promised by the broader profession, but must seek alternate means in order to obtain these benefits. For example, the Nova Scotia Barristers' Society has declared Crown Prosecutors are affected differently by their public service and relationship to government (Nova Scotia Barristers' Society, 2007) and thus the Nova Scotia Barristers' Society Legal Ethics Handbook restricts the application of professional discipline to prosecutors under section 17 . Nothing further in the Barristers' Society governance instruments sets prosecutors apart from the rest of the profession, so that they have the same training and professionalization with the resulting expectations of prestige and professional power (Larson, 1977). Prosecutors feel the nature of their work and the application of their special expertise sets them apart from the rest of the profession. This distinction is reinforced by institutional rules. Prosecutors even distinguish themselves and hold themselves apart from others in the union movement. Describing the decision of what to call their bargaining association one prosecutor said "Yes there was a big debate. We had a referendum on that. We decided to stay as a little kind of a niche rather than go the union route and perhaps get sucked into a bigger union" (Lawyer N).

The civil service bureaucracy, with its accountability structures and performance measures, is incompatible with the practice of law and the independence of prosecution

(Hinings & Greenwood, 1988). This incompatibility presents an intriguing field of tensions. The extent to which prosecution is only loosely coupled with the broader profession may have enabled changes to some aspects of the institutional form of the profession that in turn nurture collective bargaining. A series of external pressures as well as shocks from within, which will be described below, made prosecutors receptive to redefining their niche in the profession (DiMaggio, 1988).

Collective bargaining has not been part of the tradition of the legal profession, nor have the institutional forces supported it for the most part. An ethos of independence and autonomy, self-employment, and practice codes that use language of public interest rather than focussing on individual rights combine in a way that does not nurture collective action. Forces were brought to bear on prosecution that were more powerful than the professional norms. These forces were tied to the employment situation of prosecutors but sufficiently different from the employment context of their private sector peers that occupational closure begins to look very different for prosecutors (Muzio & Ackroyd, 2005).

In the following section I will examine the way prosecutors moved to dependent employment and the difficulty the employer seemed to have in defining structure and control over prosecutorial discretion. This struggle over control and discretion contributed to an erosion of Crown prosecutor's professional power. Some of the mystique of the profession was undermined and as a result some loss of status was experienced. The extent to which Crown prosecutors could control their work process and the position they held relative to their professional peers within and outside of the

public service were all challenged in a period of organization restructuring and public scrutiny.

The public lost faith in the prosecution function after a series of high profile failures and controversial prosecutions, in particular the Donald Marshall Jr. case and the Westray mine disaster. Royal Commissions and other reviews of the Service (Hickman, Poitras, & Evans, 1989; Kaufman, F., 1999a, 2002) specified the nature of Nova Scotia prosecution's shortcomings. Prosecutors are singled out, almost isolated in the Barristers' Society Legal Ethics Handbook (Nova Scotia Barristers' Society, 2007) as a special type of lawyer. Section 17 of the handbook recognizes the heavy burdens on prosecutors to disclose all relevant evidence in a trial, however they are distanced from the disciplinary aspect of the Barristers' Society by the force of Section 17 and the case law that preceded it. Prosecutors are insulated from challenges of professional misconduct when they exercise prosecutorial discretion. Organizational attempts by the Nova Scotia Public Prosecution Service to quantify the distinct status of prosecutors were not all successful. Prosecutors turned to new means of regaining control over terms of employment that would also enable them fully to realize their professional power.

The Nova Scotia Crown Prosecutors' Struggle for Collective Bargaining.

The work of prosecuting alleged criminals on behalf of the people – public prosecution – has evolved over time in the province of Nova Scotia. The early appointments to prosecution roles were through an Order in Council and were political patronage appointments, not the result of an open job competition. Employees thus

appointed served “at pleasure”, which means they could be dismissed when one government fell and another Attorney General was elected. Over time and with increasing public scrutiny and sophistication in the public service, more and more prosecutors came to positions through a civil service competition and following the proclamation of the *Public Prosecution Act* of 1990, all remaining Order in Council appointees were converted to civil service status. All new full time hires from that point forward have been civil service appointments, through competitive job posting. Crown Attorneys are thus relatively recent civil servants and have enjoyed a regular, permanent employment relationship with their employer as a cohesive group for barely two decades. Other occupations, such as teachers and nurses, have been in structured permanent employment relationships with a public sector employer for much longer periods. While it is of some value to draw inter-profession comparisons, the circumstances of prosecutors are unique in important ways.

In the late 1980s Nova Scotia Crown prosecutors took control of the Government Lawyers Association, renaming it Nova Scotia Crown Attorneys Association (NSCAA). This was a break with traditional forms of professional representation and the NSCAA went on to engage the employer in collective bargaining. Half of the provincial jurisdictions in Canada currently have collective bargaining for Crown prosecutors and the rest are moving towards this status with the support of a strong national association⁹.

⁹ The Canadian Association of Crown Counsel. Membership includes existing public sector civil and prosecution lawyers’ associations from all provinces and the federal government. (Canadian Association of Crown Counsel, 2009)

The story of how the Nova Scotia prosecutors achieved collective bargaining reveals specific characteristics of the working conditions of the employed professional. An analysis of the way that prosecutors framed their concerns and how they describe professional and employment roles will help us to understand the structural aspects of a profession and the nature of the relationships between professionals and their employers.

When a group protects itself and its activities through rules and restrictions on access it practices closure. Some groups both restrict entry to their profession and simultaneously challenge the entry restrictions of other groups. The classic example is trade unionism. The Nova Scotia Crown Attorneys also practice this dual form of restriction, called dual closure. As members of the Nova Scotia Barrister's Society they participate in control over who can enter the profession in general and, as prosecutors, challenge the limits and rules of the employer through collective bargaining.

The increasing tendency to bureaucratize work and to subject the professional labour process to formal control leads prosecutors to rebel like other working class labourers. Prosecutors felt they were initially beyond having to deal with workplace issues like members of the working class. "I thought going to law school meant I would never have to do something like that! I thought going to law school just exempted me from labour issues." (Lawyer P) Prosecutors largely remain autonomous workers in their day-to-day practice, although the range within which they practice their discretion is confined by policy. Crown prosecutors are not seeking a change to the class structure. If pushed, they identify themselves as holders of an elite position, acting as "quasi ministers

of justice". They are conscious of the power they wield in society and of how lives are profoundly affected by the way they conduct their work.

Crown prosecutors are not taking that large a step in their struggle. Their use of collective bargaining is largely instrumental. Part of the motivation for their struggle for collective bargaining rights was an attempt to regain some of the financial and status privileges of their profession lost through dependent employment. Prosecutors' choice of usurpatory closure through bargaining is not an emancipation project (Murphy, 1984) designed to overthrow the class structure. They seek redress in the balance of power in the workplace, but not in society in general. No one I spoke to indicated they were willing or interested in changing the formal alignment of the power of the state to set rules and enforce them through the criminal justice system.

Prosecutors are kind of the reverse of the embourgeoisement of the working class. They are members of a profession that enjoys elite status and the privileges of social class, as well as the economic benefits of private professional practice. However, prosecutors also experience the disenfranchisement of blue-collar workers in their dependent employment. Wage restrictions, codification of work practices, and public scrutiny of the exercise of their professional discretion have led to a move away from the individualism of the professional and the bourgeois, to a collective identity and collective action. Prosecutors have in a sense become the inverse of Goldthorpe's (1966) affluent worker where they continue to embrace the norms and values of their position of privilege and yet use the tools of their new circumstances to further their goals. Goldthorpe found that as workers became more affluent they did not automatically join

the middle class, in ideology or social settings, despite their increased income and potential for change in lifestyle. This study reveals that prosecutors are not de-professionalized nor proletarianized in their move to dependent employment. Rather, they adopt the tools of the working class to achieve their professional goals.

As mentioned in Chapter 2, Parkin (1979) and Wright (1978) offer the suggestion that class introduces a contradiction in the actions of prosecutors. They are caught between two opposing logics of action (Offe & Wiesenhal, 1980) in their simultaneous pursuit of professionalization and collective bargaining. However, if we consider that closure is an evolving process rather than a given state of affairs, these two forms of closure are actually compatible and in some instances mutually reinforcing. A closer examination of the prosecution service in Nova Scotia will illustrate how these competing logics are articulated and then reconciled.

The Nova Scotia Public Prosecution Service

“I think it is fair to say that controversy has plagued this Service on a number of fronts, including its effectiveness, organizational structure, level of resources and public confidence.” (MacFarlane, 2001, pp. 20-21) MacFarlane, in his review of prosecution in Canada, describes the widespread challenges that face the Nova Scotia Public Prosecution Service. This section discusses the history of that Service and the response of prosecutors to those organization challenges. With reference to the preceding discussion of the professions and dependent employment, I conclude that there are two forms of power available to employed professionals – their labour power and their

professional power. The professional power stems from specialized knowledge and is manifest in the license to practice. Labour power stems from the social relations of production, and is realized in the daily application of professional discretion as workers apply their knowledge to unique situations and work challenges. In the private sector, firm ownership is a factor in the power dynamic because owner/partners in a law firm may exert some control over some resources necessary to production, but the principal activities are knowledge and not capital- based. Prosecutors face a different situation. The public service “capital” comes from taxpayers and ownership is a much broader and more nebulous notion. Public servants are not directed to generate profit (at least not overtly) and workplace control is based largely on normative power of professionalism. In fact, the Canadian public service is held up as a model of professionalism. This is a very desirable characteristic of public service because it implies neutrality and freedom from undue influence; policy advice and delivery of programs is based on the merits of evidence. Independence and evidence based decision making is very much in keeping with the prosecutor’s worldview.

In Nova Scotia, changes in both structure and in process of prosecution led to a shift in the workplace power available to Crown prosecutors. Their labour process control was overtly eroded, but their professional power and especially their credibility was severely damaged. In the early 1970s, a young Nova Scotia Mi’kmaw man named Donald Marshall Junior was accused, tried, and convicted of a murder that he did not commit. New evidence came to light in the early 80s, and after spending eleven years in jail, Marshall was freed when his conviction was overturned. The wrongful conviction

of Donald Marshall and the subsequent Royal Commission of Inquiry brought public prosecutions under close scrutiny. The case held significant overtones of bias in police and prosecution handling and highlighted political interference in prosecutions. (Hickman et al., 1989). The result was creation of an arm's length agency of government, the Public Prosecution Service (PPS) (*The Public Prosecutions Act 1990*). The PPS was created to eliminate any political interference that restricted professional discretion and autonomy, particularly in making decisions to prosecute or stay charges. The PPS structure is independent of the Dept of Justice. The Director of Public Prosecutions reports directly to the legislature. The Act requires the Minister of Justice to publish in the Royal Gazette any direction he gives the PPS.

This change in structure was designed to remove the daily operation of prosecution services from the direct influence of an elected official. The problematic prosecution of political figures had highlighted the need for this distance. However, the incumbents in the prosecution service then had to determine what sort of relationships they should forge with their political master, the Attorney General, and with other elements of the public service: the Public Service Commission, which is the employer, and the Department of Justice, which was prosecution's former home. This took a good deal of time, and a number of challenges came forward regarding the structure of the new PPS. For example, at the request of the Director of the PPS in the early 1990s, human resource services initiated a large review of all the job classifications of prosecutors. This review spanned several months, I was directly involved in extensive meetings and informal negotiations between the Department of Justice, the PPS and the Public Service

Commission. It triggered discussion of classifications and rates of pay for all lawyers in government, including Legal Aid lawyers. This file extended in various forms right up to the point of collective bargaining for Crown Attorneys. At several points it was unclear which body held authority and power to control the working conditions of prosecutors. This theme emerges in prosecutors' own stories as we shall see.

While the move to a PPS, modeled on the Australian prosecution service, was an innovation in Canadian public prosecution, it created an organization of professionals that was at once more and less fettered than it had been. The structure was designed to give the Director of Prosecutions more independence in making the fundamental decisions of whether and what to prosecute, which in practice are made by individual prosecutors (Ghiz & Archibald, 1994). This would enhance the professional power of prosecutors through the exercise of professional and prosecutorial discretion. However, the new structure and the need to build new relationships within a bureaucracy meant that the service was treated in some aspects as a junior partner to the Department of Justice, an upstart organization that did not know its own mind. I recall from my experience in government at the time, that the PPS suffered from a reputation of an overinflated ego based on the way prosecutors interpreted Independence in the "independent prosecution service".

The labour power of prosecutors was fettered through a severe lack of resources and an expanding caseload, combined with increasingly complex work post-Charter of Rights and Freedoms. Finally, and ironically, a lack of structure in the form of policies and guidelines meant that individual prosecutors were subject to arbitrary and restrictive

management practices based on the preferences and personalities of individual managers. Lawyer M's story about making decisions about the public interest is a poignant example. The failure of the Westray, Dr. Nancy Morrison and Gerald Regan prosecutions through the 1990s brought the activities of the PPS under scrutiny and criticism again.

The new PPS had the potential to reinforce the professional status and power of prosecutors, while improving the administration of justice in Nova Scotia, and thus raising the value of the public good the Service provided. Structural weaknesses and individual actions prevented this potential from being realized for some time. Bureaucracy grew up around this structure, however. There was a proliferation of management positions, administrative roles, duplication of communications and administrative support, all in support of independence, but not affecting the daily decision making of prosecutors. Limited resources continued to hamper prosecutors. A schism of interests arose between courtroom prosecutors and the Director of Public Prosecutions over pay. The Director's salary is tied to that of the Chief Justice of the Provincial Court while prosecutors remained in the civil service pay plan.

Meanwhile, the new, focused supervisory structure dealing solely with prosecutions brought individual employment relationships into sharp focus. A series of radical changes in management style brought on by a series of short term Directors from outside government (Public Prosecution Service, 1998b, 1998c), followed by long periods of uncertainty with acting management indicated that government had not a clear sense of what it expected of this new service, nor quite how to achieve it. A series of reviews of the PPS continued for some time. A follow up to the Marshall inquiry was

completed in 1994 (Ghiz & Archibald, 1994), then Justice Kaufmann completed a two part review of the PPS operations and human resource management practices in 1999 (Kaufman, F., 1999a, 1999b), which in turn required a follow-up survey of PPS employees. The results of the survey clearly indicated a schism between management and courtroom prosecutors.

The province of Quebec, the federal government and British Columbia achieve a similar level of structural independence from the elected Attorney General. For example, in B.C. the *Crown Counsel Act* designates the Deputy Attorney General to supervise prosecutions. Policy matters must be put in writing and both the Attorney General, who ultimately retains the ability to direct prosecutions in his role as an elected official, and the Deputy AG must publish in the British Columbia Gazette any direction he gives on specific cases (*Crown Counsel Act 1996*). MacFarlane (2001) notes that such direction is seldom given. In Ontario, where such structural transparency is not prescribed in statute, one prosecutor describes the relationship with the senior management of the Attorney General's office as "going downtown to meet with officials and communications people to brief them, give them updates, and respond to 'what are you doing about this case?' particularly in violent crimes." MacFarlane argues that structural measures are not necessary for independence and cites the informal cooperation in other provinces that achieves many of the same ends.

Prosecutors cannot practice prosecution as a full time career in a stable employment relationship unless they are member of the prosecution service. One study participant indicated they did manage a stable income by doing per diem work, but they

invested heavily at first on a pro bono basis and forged a personal relationship with one mentor. This relationship led to an offer of full time employment within months. This approach might not stand up to the scrutiny of today's civil service appointments procedures. In addition, many of the contract and per diem positions have been converted to full time prosecutor positions. This was a goal of the NSCAA in its attempt to ensure employment stability and to reduce the employer's ability to undermine membership in the NSCAA by continuously turning over prosecutors.

Now I have shown that the Public Prosecution Service is a bounded entity in which its member lawyers develop an occupational community. This community is founded on the distinct sense of professionalism that prosecutors develop. They develop this professionalism through the structure of their labour process, the nature of their expertise, the requirements of the Criminal Code, and exigencies of government policy, as well shall see in more detail in the Chapter 5.

Setting the Stage for Collective Action: Working Conditions

Prosecutors expressed dissatisfaction with a number of working conditions. There were no offices, no computers, no digital legal references to assist with research, no paralegal support, and no automated court records. Prosecutors were uncertain of the PPS leadership given its frequent turnover. Workloads were increasing, work itself was becoming more complex and prosecutors needed more and better professional development in order to cope. Human resource practices appeared inconsistent, especially in regards to hiring and salary setting. And prosecutors were extremely

unhappy with pay rates. “Well if you base it on pay rates, the Crown attorneys are at the bottom! Government lawyers are at the bottom. Civil lawyers are at the top, in private practice. The Barristers who go to court. Corporate lawyers would be next.” (Lawyer O)

It was easiest for the NSCAA to rally support and discussion over the pay issue, especially when the comparison, as Lawyer O points out, was with other lawyers who regularly attend court. Their struggle would eventually lead to a negotiated salary setting mechanism (Province of Nova Scotia, 2000) but the course of that struggle was long and challenging. Prosecutors had to overcome a reluctance to embrace a collective approach to wages because collective bargaining goes against many of the professional norms in law. It is also difficult to sustain support for a strategy aimed at higher wages when one is already earning a salary well above the labour market median and when exit is a viable alternative (Hirschman, 1970).

Prosecutors were also dissatisfied with the appointment process, which had been criticized in reviews of prosecution (Archibald, 1989) and with the arbitrary nature of promotions. They took issue with the specific negative treatment of some individuals and with the preferential treatment shown to management favourites. These are the procedural and substantive injustices that triggered dissatisfaction among prosecutors, a necessary condition for collective action (Hannay, 2002; Taras & Copping, 1998). I draw the details of the account that follows from research interviews and participant observation.

The Story Unfolds: Marginalization and Negotiation

Collective action did not build overnight but began in 1988 with the formation of a Government Lawyers Association that was open to all lawyers employed by government. This association included the civil lawyers in the Department of Justice as well as prosecutors and was open to other lawyers in advisory or counsel positions in other departments and agencies. Over time, the civil lawyers withdrew. Prosecutors remained active in the association throughout the organization change that took them out of the criminal division of the Department of Justice and into the PPS. They renamed the association the Nova Scotia Crown Attorneys' Association (NSCAA). This body took up the role of representing the interests of prosecutors and dealt with both the management of the prosecution service and the employer over their concerns. There was much grist for the mill. The variety of appointments meant that prosecutors enjoyed differing levels of job security and some had negotiated pay beyond the salary scales applicable to civil servants. Wages were rolled back 3% across government in the mid 1990s and the Provincial Court judges' salaries that had traditionally been comparable to prosecutors, began to climb with the advent of tribunals to set judicial compensation. Finally, the salary of the Director of Public Prosecutions was set by statute to match that of the Chief Judge of the Provincial Court highlighting the wage gap between prosecutors' salaries and those of judges.

In addition to concern over wages and increasing case loads (Hayes, 2007), the prosecution service came under considerable scrutiny. First the Inquiry into the wrongful conviction of Donald Marshall, Jr. laid much of the blame for that miscarriage of justice

at the door of the prosecution service (Hickman et al., 1989). Part of the Inquiry included a research study of the conditions of employment in the prosecution service (Archibald, 1989) which produced a series of recommendations to address what were deemed significant ills in the administration of personnel and policy. Part of the Archibald report was based on a survey of prosecutors. The recommendations read like a laundry list of working condition woes. Several recommendations relate to the need for clear descriptions of job duties and guidelines for use of prosecutorial discretion. The report recommends a revised organization structure and a review of salary levels and increased physical and research facilities for prosecutors, including significant investments in computerized resources; a system of promotion based on merit; a continuing education program. Finally the report presents an outline for what was to become the Public Prosecutions Act of 1990 (Archibald, 1989).

Several of those recommendations would be implemented, the first and most important being the creation of the PPS with an arm's length relationship to the Attorney General. However it would be ten years before a salary review was undertaken with the full participation of the NSCAA and the PPS management staff. The policy manual was not revised in a comprehensive way until 2002 (Public Prosecution Service, 2002). Three more reviews and audits would be needed, two of which recommended collective bargaining, before collective bargaining was finally achieved. Throughout this period, the NSCAA was an active association. Members paid dues and met regularly to conduct association business. The executive took a lead in communications with outside agencies, such as the Barristers' Society, when needed. Management employees of the

PPS were members, and some had held leadership roles at various points in the association's history.

Frustration at the lack of progress on working conditions and salaries led the NSCAA to organize a two day work stoppage that began on June 1, 1998. A small market adjustment had been made to salaries for lawyers in government. A similar adjustment had been made for Information Technology workers in light of the pressures of the Y2K compliance crisis. The market adjustment for lawyers was developed without NSCAA input and was not a long term solution to the prosecutors' concerns, given the temporary nature of the adjustment and the complete discretion of management in applying or withdrawing the stipend. The structure of this salary intervention replicated the systemic inequities felt by prosecutors.

The prosecutors were careful to place their professional interests first, protecting them, before they staged their collective job action. The NSCAA sought a labour law opinion on their ability to withdraw their labour, and a decision from the Barristers' Society on professional ethics before staging a two day illegal strike. The PPS comprised approximately 80 lawyers at the time, and all but six individuals and the Director of Public Prosecutions walked off the job. Some of the dissenters maintained an individualistic approach to their employment, and believed they could negotiate individually with management. Their stories appear in Chapter 5. The unity of the profession and the shared work between managers and prosecutors forged a solidarity

that resulted in a comprehensive picket at the legislature and brought the court system to a virtual standstill¹⁰.

Following the strike, Cabinet approved a series of working groups. These groups included PPS management and NSCAA participation and were chaired by Department of Human Resources (later to become the Public Service Commission) representing the employer. The groups were tasked with developing a salary setting mechanism and the NSCAA pushed for a comprehensive agreement including a grievance mechanism and a collective agreement that spanned all terms and conditions of employment. I acted as chair for these discussions.

Initially the NSCAA indicated they would be happy with a salary tribunal similar to the judges'; however government was unwilling to allow financial control over civil service wages out of the range of direct control. Inclusion of a grievance mechanism in the agreement became a deal breaking issue in light of the discipline meted out to prosecutors who participated in the walk out in June 1998 (Public Prosecution Service, 1998a). An early tentative agreement met with resistance from the employer and government, and a renewed mandate from Cabinet sent the parties back to the bargaining table. I acted as chief negotiator to broker a new deal in one intensive bargaining session in December 1999. The Memorandum of Agreement that was signed in February and March of 2000 took seven drafts in order to clarify what was negotiated on the December

¹⁰ Steps were taken to ensure coverage of cases already in progress and those with scheduled dates. Prosecutors who had already begun a trial were bound to continue it, and did so. Several per diems were retained to represent the Crown and most charges were dropped in matters that came before the courts on those two days. Four individuals objected to the walkout on philosophical grounds.

day, but all parties signed the final version and the government of the day proceeded to laud the occasion in press releases and congratulatory messages (Public Prosecution Service, 2000; Sullivan-Corney, 2000). Following the work stoppage in June 1998, the Government had commissioned retired Justice Fred Kaufmann to conduct a review of the Prosecution Service (Kaufman, F., 1999b). His recommendations were lengthy, and many echoed those from an earlier review (Ghiz & Archibald, 1994), including a call for collective bargaining for prosecutors. Finally, it seemed, prosecutors achieved collective bargaining.

The record of the 2000 negotiation is the Framework Agreement and it contains three distinct phases. The first phase provides for salary negotiations with recourse to binding arbitration. The second phase is an agreement to conclude a dispute resolution process and finally the third phase sets out an agreement to discuss other non-salary issues (Province of Nova Scotia, 2000). Since 2000, the NSCAA and Public Service Commission have bargained three times over salaries. The parties have never reached a settlement by bargaining and have always resorted to interest arbitration in order to reach agreement. Salary increases have been above the rates negotiated by other civil servants in recognition of the gap in prosecutors' wages compared to their peers across the country (MacLellan, Hayes, & McDougall, 2008). The latest award addresses performance assessments. However, the grievance procedure mentioned in the 2000 Framework agreement took a decade to achieve. Prosecutors achieved all of these gains without statutory protection for collective bargaining rights.

Repeated approaches by the NSCAA to move into the second and third phases of the Framework agreement were frustrated. The employer did not respond to their overtures. The NSCAA hired the Professional Institute of the Public Service on a contract basis to act on their behalf, and PIPS met with similar unresponsiveness. The employer took the position that the framework agreement did not intend for the parties to negotiate a grievance mechanism. The employer had unilaterally revised the dispute resolution process for all civil servants in the meantime, and deemed this process to be adequate for all employees, including prosecutors. A series of intrigues involving management of the PPS and planned and boycotted meetings resulted in a court challenge for breach of contract (*Nova Scotia Crown Attorneys' Association v. The Province of Nova Scotia* 2004). This action, launched by the NSCAA in 2004, was finally resolved in 2009 with an agreement just hours before the action came before the Nova Scotia Supreme Court. The BC Health Services decision (*BC Health Services* 2007) likely influenced the government to accede to bargain a grievance mechanism. Nova Scotia labour legislation (*Trade Union Act* 1989) writes grievance provisions into every collective agreement that is silent on the matter, and if challenged under the Charter, the Prosecutors' agreement would possibly have resulted in these provisions in any event (Tilley, 2009).

Since 2000 the NSCAA has staged a further information picket and launched a Human Rights complaint over the denial of salary progression for those on maternity leave (CBC News, 2006; Woodburn, 2008). They have threatened a walk-out over security and job safety concerns in provincial courtrooms (Bruce, 2009; staff, 2008),

calling for metal detectors and closed prisoner docks (Bruce, 2009; Crowns threaten to walk 2010). They have also boycotted duty phone assignments and a proposed weekend bail court. Many issues are brought before the employer, but others are taken up with management of the Service who are themselves prosecutors, and thus the labour relations for prosecutors is complex; prosecutors' management superiors are also their professional peers. Managers are also still welcome in the NSCAA though they do not participate in automatic dues check off and are not represented by the NSCAA in bargaining.

The story of public prosecutions in Nova Scotia illustrates two distinct aspects of closure, as well the effect of structures and individual agency on workplace relations. The instruments of exclusionary closure, including the Barristers' Society, were used to good effect to shore up lawyers' exclusive domain over prosecutions. As prosecutors moved into dependent employment, the system of patronage appointments undermined the procedural justice in access to prosecution work. The employed prosecutors continued to use their Society to protect their professional interests. The addition of Section 17 to the Code of Conduct after the Marshall Inquiry signalled the profession's recognition that prosecutors were special. Public sector lawyers including prosecutors participated in growing numbers in Society governance roles and liaison roles between the Society and the criminal courts were enhanced (Nova Scotia Barristers' Society, 2009). The promulgation of the *Public Prosecution Act* and the reports calling for improved direction and policy for the exercise of prosecutorial discretion further protected and legitimized the exclusivity of the prosecutor role. The fact that public confidence in the prosecution service waned over the period of the 1980s and 1990s

highlighted the need for these structural protections. The use made by the NSCAA of the arguments of independence and autonomy in their discussions with the employer (MacLellan et al., 2008) and the steps they took to protect their professional integrity during the job action illustrate their individual and collective willingness to act in defence of their exclusionary closure. Of course management has benefitted from the struggle as well. Each time that wages rose, wages for managers were adjusted accordingly, beyond the management scale for other civil servants. The link between the Chief Judge and Director of Public Prosecution's salaries remains intact.

It is also undeniable that the conditions were ripe for usurpatory closure. Although by statute the NSCAA is not a union, it behaves as one, as do all the associations of Crown counsel across the country where bargaining is in place. Some other provincial lawyers' bargaining agents intentionally do not use the label of union, and others see the name as a trivial matter. The prosecutors' terms of employment improved as each public review and report was issued over the past twenty years. They all now have personal computers in their office and access to electronic databases, email and office communication technology to support their research and collaboration with colleagues. Some ground has been lost in recent years with the cancellation of one of the two semi-annual education conferences and the implementation of additional duties through a new bail court (Woodburn, 2009), but their ranks have steadily grown with the conversion of temporary positions to full time, and thus automatic membership in NSCAA through dues check off. The NSCAA is practicing usurpatory closure and at an advanced point along Krause's continuum of closure. The NSCAA is actively

engaged in the broader labour movement as the current president is also the Vice President of the national body, the Canadian Association of Crown Counsel.

The Situation in Other Canadian Provinces

The strains of prosecution work are not unique to Nova Scotia. A study of Newfoundland Crown prosecutors indicates high role overload (Gomme & Hall, 1995). Both Nova Scotia and British Columbia prosecutors have relied on the argument that they are quasi-judicial officers of the court and thus enjoy a measure of independence similar to judges, in a quest for higher wages. Other provinces have also experienced similar discord and collective action among Crown prosecutors. In Ontario, both the civil and criminal government lawyers bargain at a single table, for two separate agreements. In Quebec the negotiated agreement has been suspended along with bargaining in the public sector as part of a broader public sector austerity initiative. The Quebec struggle is landmark in two ways: the prosecutors have lodged a complaint with the International Labour Organization over the government's refusal to bargain, claiming their labour rights have been denied; and the provincial government invested significant resources in a comprehensive review of wages and working conditions across Canada in 2002. This review resulted in a public report that has been widely used in collective bargaining and salary arbitration cases (Vecerina, 2002) in other provincial prosecution services.

In British Columbia, the government had recognized BC Crown Counsel Association and negotiated three agreements between 1992 and 1998, at which point it refused to recognize the Association for bargaining purposes, despite nearly all

prosecutors being members of the Association. Government lawyers in BC did not have statutory protection of their union and of collective bargaining. It would take four years, a change in government, work stoppages, and several rounds of mediation and brinksmanship to finally achieve resolution in 2001, only to begin again with an attempt to renew the agreement in 2003. The matter was settled in 2005 through an arbitration award (Jones, 2005) and the prosecutors in BC now enjoy a twelve year agreement with periods of negotiation on non-monetary issues. All negotiations in BC were under pressure to sign deals to maintain labour stability through the 2010 winter Olympics. BC also sought a tribunal similar to the judges but then pushed for third party binding arbitration because government had rejected recent judicial tribunal recommendations. In BC, Ontario, Manitoba, and Quebec both civil and criminal lawyers who are employed by government bargain over terms of employment. In Nova Scotia only the criminal lawyers do so.

The Ontario criminal defence lawyers, who are not government employees but take public defender work on a certificate basis, recently implemented a work slowdown and withdrawal of services over rates of pay for legal aid cases (Wingrove & Appleby, 2009). Legal aid funding has been a concern in Alberta as well (Sadava, 2010). The Canadian Association of Crown Counsel groups together the provincial associations of prosecutors and civil lawyers to lobby and support collective bargaining strategy and tactics. All provinces are represented in this organization, although Nova Scotia has only a prosecutors' association. The broader criminal bar is also chafing at restricted budgets and funding.

Freeman and Medoff (1984), in describing what unions do, suggest that unions have two faces. On the one hand, unions have monopoly power to force wage increases and on the other hand, they offer collective voice to give weight to worker demands for improved working conditions. Collective voice also provides anonymity for individual workers when expressing discontent with their working conditions. It is clear from the preceding discussion that professionals achieve many of the monopoly goals through their professional project. When professionals become employed, the collective voice face of unionism fulfills their need to balance the power of the employer in setting working conditions. The employer's ability to set working conditions can extend to the way in which professional duties are executed. Certainly, the employer provides some of the tools necessary to do professional work. A major complaint of the lawyers in the Nova Scotia Public Prosecution Service was lack of proper tools to do their jobs, including offices, computers, and electronic data management tools. Beyond this, a collective voice can pressure the employer for effective dispute resolution mechanisms in order to protect the rights of individuals faced with arbitrary management actions. The prosecutor's story of reprimand for determining what was in the public interest is an example of such a situation, and explains the motivation of Nova Scotian prosecutors to seek a grievance mechanism. Beyond the management-employee relationship issues, however, is the employer's response to bargaining by prosecutors. In the absence of statutory bargaining rights negotiated agreements have been arbitrarily reinterpreted and disregarded by governments in Nova Scotia and British Columbia. The government's resistance to bargaining with prosecutors has been ironically and surprisingly

“unprofessional”, considering that all the players involved, except for a few human resources staff, are lawyers!

Discussion

Specialized areas of practice forge collectives among lawyers (Kritzer, 1999). But specialization is one of the three elements (along with loss of exclusivity and the growing use of technology to access information) of what Kritzer describes as post-professionalism in his arguments for a fundamental shift in the legal profession. Prosecutors, however, have been somewhat insulated from this shift in the following ways. Though prosecuting work is segmented as a specialty within the legal profession, the day to day work of prosecutors remains largely unchanged. The individual lawyer takes a file and conducts the work of the day in an autonomous fashion, with complete responsibility for the work. The file as a whole shifts to another individual if a second court date is required, but could easily fall to the same prosecutor in the weekly court rotation. There is also evidence from study participants that an increasing number of files are “assigned” to a specific prosecutor to ensure continuity and because these require extended amounts of preparation and are best completed by a single individual. Prosecutors handle these assigned files with complete autonomy. Thus at the individual level the prosecutor retains significant autonomy, however the organization constraints of management and policy limit the range of discretionary options available.

The PPS has not become post-professional through the loss of exclusivity. The reverse is true with the gradual elimination of per diem prosecutors and contract

employees in favour of increased number of permanent staff. Between 1989 and 2009 the number of permanent prosecutors grew by almost 30%, from 68 to almost 90 (Public Prosecution Service, 2006). Prosecutors demanded increased access to technology to facilitate their research and communication with peers and it does not appear from study participants that the self help and do it yourself approach found in other realms of life and legal practice has extended to criminal prosecution. The practice of prosecution in Nova Scotia cannot be considered post-professional and closure is still a relevant framework for analysis of prosecutors' collective actions.

Wallace and Kay (2008) show that work setting alone is not the sole determinant of lawyers' professionalism; it is not even necessarily the most important factor. These authors found that salaried employment does not erode professionalism among lawyers. Even when specialization and changing organizational and practice setting have eroded professional unity, there is still strong evidence of professionalism among all types of legal practice (Wallace & Kay, 2008). This sense of professionalism counteracts the argument that salaried professionals are proletarianized because their interests as professionals are subsumed in the institutional interests of the state as their employer (Derber, 1982a). Lawyers in public service then may have the potential to hold both very strong professional ideals and at the same time seek a collective voice over working conditions, and thus achieve two forms of closure.

Nelson and Trubeck (1992) challenge the proletarianization thesis on the grounds that it gives inadequate emphasis to ideological motivations of workers. While it may be true that work becomes fragmented and divided among less skilled workers in dependent

employment settings, and professionals become subject to administrative control over the way they work (Archibald, 1989), Braverman's (1974) premise that capital and workers are fundamentally opposed is too simplistic a device for examining professionals' workplaces (Nelson & Trubeck, 1992). The relationship between workers and owners in legal service firms is not as simple as the industrial model on which labour process theory was built. The ideology of professionalism is an important element in the labour process of organizations where legal work is accomplished (Giddens, 1973; Nelson & Trubeck, 1992). The public sector setting is even more challenging to understand the relationship between professional ideals, protecting the public interest, efficient management, peer-based discipline, and quality control. Those workplaces in turn are a basis of social relations from which arise many of the benefits of professional project. Both forms of closure appear to be necessary in order for prosecutors to fully achieve the benefits of professionalization.

Prosecutors use two forms of closure to address the unique nature of their employment. Their exclusionary closure is initially complete and expressed through membership in the Barristers' Society. Part of the justification for closure is the protection of a public good or public interest. Prosecutors have a very powerful cachet in protecting public safety and bringing wrongdoers to justice. Exclusionary closure is incomplete because it does not guarantee benefits to all members; it merely sets a minimum threshold. The benefits of professional practice are eroded when prosecutors become employed and are subject to bureaucratic and managerial control. We can then say that prosecutors' membership in an organization moves them into a different place in

the class structure (Offe & Wiesenhal, 1980). They move from deploying their expertise as autonomous professionals to selling their labour to an employer (although not a capitalist in the classic sense). The forms of association available to employees are different than those available to independent practitioners (Offe & Wiesenhal, 1980), and thus collective bargaining, while contradicting the values expressed by so many lawyers (see Chapter 5), is actually a logical outcome of the structure of social relations in the prosecution service. The particular details of the Nova Scotia experience further mobilized the prosecutors in that province to seek collective bargaining when and how they did.

I position the legal profession within both streams of theory – as a collective of actors striving for goals, embedded in the structure of the medieval guilds and pre-modern society, but evolving to meet the challenges wrought by contemporary markets. The institutional form of the profession achieves much of the initial power and prestige enjoyed by its members. Yet professionals hold the institution at arm's length and minimize its power of discipline and sanction for misbehaviour. You will recall Lawyer B's comment about 'them' being 'us' earlier in this chapter. The exploratory focus groups in my fieldwork indicate this quite clearly. Lawyers describe the professionalization process as a personal exchange and as a mentoring process. Professionalization for lawyers is also an incredible exercise of self-discipline and determination on both the part of the mentor and the student. But it no longer makes sense to speak of the legal profession as a single, uniform entity.

The civil and criminal government lawyers make up a significant part of the legal profession, but a very silent one. Few come into direct contact with government lawyers; their contact is largely with senior management and government officials, persons accused of crimes, and their alleged victims.

The biggest law firm in Nova Scotia is the Federal department of Justice ... they have 80 lawyers in their office [in] downtown Halifax. That's totally invisible to the public ... and the [provincial] government lawyers: there's not just the Crown attorneys there's a whole bunch of solicitors and advocates and so on, and then you have legal aid which is another organization that employ lawyers [in the] public interest. (Lawyer F)

The balance of the legal profession is not unified as a private bar either (Arthurs et al., 1986). They are all lawyers, but:

There's common values, the core values of the legal profession are often referred to. I mean integrity, avoiding conflict of interest, loyalty to client, and so; there are common values... Nova Scotia is a small place, but until I became involved in the Barristers' Society, I didn't know any lawyers outside of Halifax. I knew a lot more lawyers in Fredericton, in Toronto, and that wouldn't be particularly unusual in people who have developed specialties in their work. (Lawyer F)

The foregoing analysis of the legal profession in Nova Scotia illustrates the use of the two parallel streams of the closure continuum. The professional project is underscored by the functioning of the NSBS and its development of special code of conduct guidelines for prosecutors. The development of these guidelines offers recognition and protection of the special role prosecutors play in society. Their status is acknowledged and enhanced through these measures. The various reviews of the prosecution service were conducted by members of the profession. In the case of the Royal Commission on the Donald Marshall, Jr. Prosecution, the Archibald, and the Ghiz-Archibald reports, these reviews were by members of the Nova Scotia Bar and the

Dalhousie Law School. In both subtle and overt ways the boundaries of this professional speciality were redrawn and reinforced. The subset of the legal profession we know as prosecution redefined its relationship with the State, achieved a greater distance and a greater independence from Ministers of the Crown. The market for services was further tightened with the reduction in contract work by members of the Bar and pulling most prosecution work into the civil service permanent staff. Governance of the broader profession drew upon prosecutors in an increased manner, with consultative committees of the NSBS and participation on governance committees (Nova Scotia Barristers' Society, 2009).

Through this same period, the NSCAA exercised usurpatory closure to establish a bargaining unit and negotiate with the employer and with management significant changes to working conditions and wages. The NSCAA moved from an informal group of all government lawyers to a clearly defined association of Crown prosecutors, now part of a national group of prosecutors and Crown counsel with broad aims to support bargaining for lawyers across the public sector (Canadian Association of Crown Counsel, 2009). The NSCAA have achieved a monopoly over prosecution; all permanent prosecutors are required to pay dues to the association (Province of Nova Scotia, 2000). The scope of workplace concerns they bargain has grown, albeit slowly and with many upheavals, over the past decade.

Employment also underscores a need to control the exercise of professional and prosecutorial discretion and the application of skills in the labour process. Collective bargaining by prosecutors achieves a special position for Crown prosecutors within the

civil service; they are able to use the mechanism of collective bargaining available to the majority of government employees, though they remain excluded from legislative protection. It is also a means to differentiate Crown prosecutors from other government lawyers and more generally from other lawyers paid by government for legal services. This last point begs the question: Why does government not contract out this service? There is a significant history and current practice of the per diem Crown prosecutor. Capacity exists in the criminal bar and in the general practice of law in the region to provide independent licensed prosecutors supervised by management employees of the Public Prosecution Service (Hayes, 2007). Contracting out would completely undermine the power of the NSCAA, breaking solidarity and reducing bargaining power to nil. Why did management not follow this route when faced with the collective action of the Crown prosecutors? I contend that the usurpatory strategy was effectively another form of professional project closure, solidifying and enhancing the specific expertise of Crown prosecutors *within the context of employment by the PPS*, a power that the employer could not match.

Clearly, the dual closure projects have been successful for Nova Scotia prosecutors. Both have required considerable time and effort and have drawn upon resources beyond the scope of the six to eight dozen individual Nova Scotia prosecutors. How has this been possible? To respond to this question we must look more closely at the nature of the stratification of the legal profession and the nature of criminal prosecution.

Occupational Community as an enabler of Dual Closure

The discussion in Chapter 2 outlined how an occupational community emerges under specific circumstances. Within a profession and occupational community can emerge due to technical expertise, intense working conditions, and close social interaction. When gathered together in a single place of employment or under shared working conditions, the existence of an occupational community can foster collective action. This is the case for prosecutors.

The legal profession is becoming more and more a collection of specialists and there is little that unites the entire profession . There is rather more that binds specialists together across jurisdictions. Prosecution is a distinct subset of the legal profession and a coherent community of practice.

Crown Attorneys, Legal Aid – they are experts, outstanding people... in court all the time...[they] deal with criminal law all the time. There aren't really any dabblers in private practice... it's changing. There are fewer and fewer dabblers. More are focusing on it. (Lawyer O)

Furthermore, prosecution exhibits characteristics of an occupational community within the broader profession, particularly the intensive nature of the work, the strong social support within the work, and the reach of social bonds beyond the workplace.

It's an area of practice [where] a small group of individuals come together and work together closely and interrelate on a daily basis. And you do develop a little niche; it's a specialty. And you become insulated or isolated from the greater practice of the law. [Y]ou have different issues, you don't have the same issues as the private practitioners would have. So the group [prosecutors] works together much more cohesively and socially are close because of the smaller number. In

Nova Scotia at least. [I]t's a very close, warm bar because of the nature of the business. (Lawyer D)

The work of prosecution predates the organizationally defined job of Crown prosecutor. The occupational community also has a history of its own. Characteristics of prosecution work and not the PPS as an organization initially created and defined the role of prosecutor. The setting of occupational community is not "organizationally limited" (Van Maanen & Barley, 1984, p. 291). Two logics emerge in the profession (Van Maanen & Barley, 1984, p. 292): the independent, individualistic, and competitive practitioner, and then collective community. A new organization, the Nova Scotia Crown Attorneys' Association, emerges as the rational expression of the community, but only after the work culture forged the occupational community to begin with.

Occupational communities arise out of loneliness (Salaman, 1971a). Salaman's study of railway workers reveals an isolating work schedule that was the opposite of to what most members of their towns and villages experienced. The prosecutor's isolation comes from the nature of the work rather than the physical circumstances of the work itself. Prosecutors work day jobs, for the most part, although the profession demands long hours. They have contact with other professionals in their area of specialty: Legal Aid lawyers¹¹ and criminal defence lawyers in private practice. However, Bellemare notes:

It is not easy to be a prosecutor. *It is often a lonely journey.* It tests character. It requires inner strength and self-confidence. It requires personal integrity and

¹¹ In Nova Scotia, employed in the public service

fortitude, and a *solid moral compass*. In the heat of the moment, after a suspect has been arrested, the prosecutor must always be guided by the evidence and *by public interest not by public outcry* [emphasis added]. (Bellemare, 2007, p. 5)

We will see in the following chapter how these characteristics of prosecution supported the drive for collective bargaining.

Conclusion

The lawyers' professional project (Larson, 1977) is as complete as possible in that no one other than a licensed barrister can assume the prosecutorial role (Stager & Arthurs, 1990). Prosecution is different from the rest of the legal profession in structural ways. The task of prosecution is completed only by those in dependent employment with the exception of contracted overload to per diems, whose numbers are dwindling in favour of permanent employees. Those who join the ranks of the prosecution service usually stay there for their careers. Prosecutors describe their career paths less in terms of chance and circumstance and more by choice, as we shall see in Chapter 5.

The PPS is unique as an organization for several reasons. It is operationally independent of the Government, reports to the Assembly, and is under superintendence only of the Attorney General. Its leader is a Deputy Head, serving at pleasure with all the risks and rewards that this has come to represent. The prosecutors and management are all members of the same profession, and all practice in the same realm. As a group they are slightly set apart from a large professional service firm where areas of specialty may be more divisive. Prosecutors closely resemble the boutique law firm and describe themselves this way. However, the ownership aspect of private practice is missing and

management staff are also employed by the State. Thus the Crown prosecutor is located at an interesting intersection of organizational form and interest representation. It is an intersection of the bureaucratic and occupational forms of control (Freidson, 2001) and in this a thoroughly contemporary dilemma, but one which seeks a traditional solution.

Dependent employment of Crown prosecutor highlights their monopoly over competence and practice within the criminal bar. Crown prosecutors could have taken a number of routes – they could have resigned and formed an external organization, contracting back services to the Crown, for example. The privatization of government services is an established trend, as is the whole scale devolution of government departments of arms length agencies. They could have opted for individualized contracts, a form of employment currently available in the civil service. They could also have opted to move strictly to the per diem format of prosecution, as many regions support this form of service delivery now. Each choice would have different implications for Offe and Weisenthal's three principal concerns of workers, and also have implications for the professional project of prosecutors as a specific subsection of the legal profession. By choosing to stay employees in a specialized unit, they in fact reinforce the status of prosecution as a discrete and controlled body of knowledge, and enhance their potential to control their work through the exercise of discretion built upon this specialized knowledge. However, the project is incomplete without the complementary collective action to address the organization reality of being civil servants, employed in a homogeneous division of a heterogeneous organization. They have sought an (old) new way to control their work.

Prosecutors across Canada develop an identity that distinguishes them from other lawyers. Prosecutors cast themselves as “organizable” (Isler, 2007) and become further distanced from the private practice lawyers who hold a negative view of unionized work. They are distanced, in Nova Scotia, from the Department of Justice lawyers who originally did not want collective voice and left the earlier version of the government lawyers’ association. However, prosecutors situate themselves firmly within the profession. As we shall see in Chapter 5, they refer to their employment as “my practice” and they embrace an idealized form of legal practice in the way they protect the public interest. Ironically, the prosecutors are managed less and have greater autonomy than new recruits have in private practice.

Lawyers are the last of the traditional liberal professions to unionize (McHugh & Bodah, 2002). Are they any different from other employees? Prosecutors sought collective bargaining because working conditions were poor, their respect and social status had been eroded, and their earning power diminished. What does the profession do for them or how does being a professional make a difference in their collective action? How is it they were able to achieve bargaining and adopt a usurpationary strategy while still maintaining a strong professionalism and increased participation in Barristers’ Society roles? Prosecutors engage in collective bargaining in order to secure their status and related benefits of their position in a prestigious profession. The following chapter explores how this is achieved through an occupational community.

Chapter 5 Trials and Files: The Role of Occupational Community and the Discourse of Fairness

Chapter 5 takes its title from two prominent ideas that emerged in the stories told by prosecutors: the notion that trial work is “real lawyering” and the movement of the case file from one prosecutor to another, with limited management oversight. The job requirement to do trial work sets the prosecutor apart from much of the rest of the legal profession that does “solicitor” work. This requirement also sets prosecutors apart from managers in the Crown prosecution service, as we will see in the sections that follow. Although civil litigators and labour lawyers, for example, also go to trial, prosecutors perceive such trial work as a minor component of other lawyers’ work. Trial work dominates the Crown prosecutor’s day and identity. The file is a window into the independent autonomous work of the individual. It embodies both the solitary application of professional discretion as well as connection with the community of prosecutors. Connection arises either by working directly on the same file at a later point in time, or else by conferring over coffee on the issues and concerns of a particular case. Finally, the assignment of files and review of the content of files represents the imposition of management control. “Real lawyering” embeds the prosecutors firmly in their profession yet their struggle with management over control of the labour process leads them to embrace collective bargaining as they resist incursions into the application of their professional discretion.

Chapter 2 laid out three different instruments of worker control: professionalization, collective bargaining and occupational community. These instruments are drawn together in the case of Crown prosecutors and revealed in their personal stories. In Chapter three I described narrative analysis and the manner in which I collected the stories of Crown prosecutors. Chapter 4 addressed the professionalization of lawyers in Canada and the evolution of the role of Crown prosecutor. My discussion of the organizational setting for prosecutors in Nova Scotia highlighted the presence of an occupational community among prosecutors. This brief discussion of OC in Chapter 4 left us poised to examine the question of ‘how’. How do prosecutors embrace a strategy of usurpationary closure such as collective bargaining and use it to reinforce their professional status and privilege? Chapter 5 moves forward using the stories of prosecutors to explore how these specialized lawyers interpret the issues raised in the theoretical and chronological discussions of the preceding chapters. This fifth chapter presents a subjective ordering of prosecutors’ experiences of career and collective bargaining. Prosecutors’ own stories give meaning to the events they encountered and my analysis presents these stories in a structured fashion. I begin with a detailed analysis of the characteristics of occupational community among prosecutors and identify unique characteristics of this particular OC. I then look at the stories surrounding collective bargaining that illustrate how occupational community links the other two forms of worker control.

Chapter 4 examined the stories from prosecutors and the broader legal profession that illustrate where the occupational community boundaries lie and how they are formed.

This chapter explores the relationship between occupational community and mobilizing collective action among prosecutors in order to achieve bargaining. Below I set out and discuss the data collected from prosecutors in response to the two primary interview questions: “Tell me the story of your career” and “Tell me the story of the struggle for collective bargaining”. A number of themes emerged in the stories that reveal how prosecutors developed an occupational community. Some of these themes are strong involvement, intensity of work, marginal status, and fairness. The stories also reveal characteristics of narrative structure that provide some insight into how prosecutors use their occupational community in the struggle for collective bargaining. The stories of the struggle for collective bargaining reveal that the theme of independence was crucial to the quest. In addition, an ideology of fairness became evident as the foundation of the prosecutors’ sense of professionalism. The chapter concludes with an examination of how prosecutors used their occupational community to mobilize members for collective bargaining.

Occupational Community Revisited: The Possibility of OC Among Prosecutors

At the outset of this discussion, I turn briefly to Van Maanen and Barley’s (1984) comprehensive review of the literature on occupational community. In their synthesis, the authors reach three conclusions important for this study. Firstly, they reflect that certain kinds of work bind people together; there are identifiable characteristics of that work, which enable researchers to locate occupational communities. The values, norms, and perspectives that arise from the work context extend beyond it in a normative way,

and this encourages members of an occupational community to form social bonds outside the work context.

Van Maanen and Barley (1984) further state that there is compelling evidence to consider the professions as very successful occupational communities and not as a unique phenomenon separate from other occupations. Trait theories (Greenwood, E, 1957) that sought to distinguish professions as a unique form of organizing workers have evolved to processual theories. These latter approaches describe the manner in which professionals organize, and the strategies they use. From a process perspective professions are simply another version of the same mechanism of community solidarity that binds all sorts of workers. They are just located further along the Krause-inspired continuum of closure, with sophisticated market and state relationships. In fact, the distinct boundaries and self-interest elements of occupational communities are also themes in the sociology of the professions. There is nothing inherent in the work of professionals that distinguishes an occupation from a profession. I conclude that the concepts of occupational community apply to the professions, if the criteria defining an OC are found among professionals. Van Maanen and Barley go further, quoting Bucher and Strauss (1961) in their notion of “professions as loose amalgamations of diverse segments pursuing different objectives in different manners and more or less delicately held together under a common name at a particular period of history” (1961, p. 326). Thus I conclude that a profession is not in and of itself an enduring occupational community, but an OC may exist within a profession.

The possibility of occupational community in the legal profession is suggested by the general discussion in Chapter 4. The profession, divided into specialities, creates an environment where the close identification with specialized work may foster an occupational community, though specialization does not guarantee OC. We will see in the case of prosecutors that a number of elements coalesce to support an occupational community, and that distinct characteristics of that community further support the struggle for collective bargaining.

Finally, Van Maanen and Barley(1984) address unionization and professionalization as parallel strategies of self control. They claim the difference is one of means, not ends (p. 318). This echoes the labour process literature, upon which the authors draw to distinguish the way that bureaucratic control limits professional control in dependent workplaces. Unionization is thus a quest for labour process control in addition to a pursuit of economic self-interest. The theoretical framework of occupational community reaches the same conclusions that a review of closure theory does, with the same deficiencies. Unionization and professionalization are juxtaposed as alternate strategies, with a common purpose but differing values and ideologies. The literature does not address why both strategies might be needed to achieve an occupation's desired ends. Nor does the literature discuss how the two strategies can be pursued simultaneously without a loss of the values underpinning both. Furthermore, although occupational community is perhaps a forerunner of a fully realized professional project, the independence and autonomy that accompanies professionalization actually works to isolate individual practitioners. Finally, there are few examples of how

occupational community arising within a profession mobilizes workers to resist bureaucratization and employer domination while reinforcing the professional niche they occupy.

The Data Reveals Occupational Community

This analysis of prosecutors' narrative accounts reveals several key themes. I have organized the themes into those that describe aspects of the occupational community and those that deal with the struggle for collective bargaining. I discuss each theme in turn, below. In addition to the presence of thematic material, each narrative contains one or more critical events. Specific characteristics of occupational community and collective action emerge from an analysis of the setting, complicating action, and resolution of the critical events. These stories deal with power, respect, relationships with management, and government as the employer. The stories address individual motivation and attitudes toward the profession and collective bargaining. From an analysis of critical events I have identified where the solidarity for collective action draws its strength. The selected quotes in this chapter come from critical events within the narratives and each in turn reveals an aspect of the key themes and dimensions of the occupational community. The stories reveal how prosecutors reconcile their instruments of closure. They absorb the usurpatory strategy into their professional project, drawing on an ideology of fairness.

Defining Boundaries of the Occupational Community

Well Understood by Insiders

Occupational communities are well understood by insiders. Lawyers adopt a specific identity through the socialization that occurs in law school and in the articling experience, culminating in their admission to the Bar. Those within the profession share a common understanding of what being a lawyer entails. The *Public Prosecution Act*, changes to the Barristers' Society Legal Ethics Handbook, and the *Legal Profession Act* lay out the role of the prosecutor for all members of the legal profession. Members of the defence bar and broader legal profession know what to expect and how to relate to prosecutors in daily course of business.

We did something very unique in Nova Scotia ... when the *Legal Profession Act* ... was enacted. The practice of law is something done by somebody who has the skills and the education and the training necessary... [and] there's a list of things, whereas the previous *Barristers' Society Act* [had] no conceptual framework for lawyering. Now there are certain things only lawyers can do. It's a combination of education and skills as sort of the defining thing, plus a definite boundary with other people who have overlapping skills. (Lawyer F)

This speaker goes on to say “we work in the same areas... people tend to end up being in practice areas” and this specialization feature is common in large private practices and in the public sector. Even if non-prosecutors do not know the details of what is entailed in prosecution work, they have an awareness of the context and the tools that are used in doing this work, and have some rudimentary exposure to it through their articling experience.

Organization boundaries also define the boundaries of the occupational community for prosecutors. Gathering prosecutors into a single organization established structural boundaries that define who is and who is not a prosecutor. Even in instances where per diem prosecutors are taken on, they are hired under the authority and budget of the Public Prosecution Service and employed within it for the short periods they are required. Prosecution as a function and as a community of practice is well understood by those within the criminal bar and within the civil service. Prosecutors have the structure of workplace, regular meetings, and administrative supports that reinforce their membership in this prosecutorial subset of the legal community; they are also distinguished from other government lawyers. The dependent employment of prosecutors probably did more to isolate the community in a formal sense than any other single structural factor.

Practice norms also contribute to closing off an occupational community for prosecutors. Continuous work in the speciality is important for success as well as credibility, and dependent employment means that the employees of the Public Prosecution get most of that work. One lawyer explains the justification for continuous work in the speciality this way: “I would say 10% is probably just regular, what we call dabblers, who are civil-type lawyers or people who are non-litigators who are in court because... they have a big client that’s got into trouble. They usually make a mess of the courts.” (Lawyer Q)

Well Defined Boundaries Understood by Outsiders

The boundaries of prosecution are also well defined for outsiders, especially following the Marshall Inquiry and subsequent reviews of the Public Prosecution Service. The purpose and status of the Service was well publicized with regular updates on staffing, negotiations and policy development (Public Prosecution Service, 1998a, 1998b, 2002, 2006). These communications emphasize the notion of independence. This emphasis echoes the recommendations of the Marshall Inquiry, reinforcing the message that prosecution needs to be free from political interference. The statutory requirement for the Minister of Justice to publish any direction he gives on prosecutions in the Royal Gazette ensures that elected officials know the boundaries of prosecution. This requirement helps define boundaries of prosecution work; it explains how elected officials might relate to Crown prosecutors and the Director of Public Prosecutions. Prosecutors across the country cite the notion of independence as a critical element of their labour process, saying “we are left alone to do our work” (Lawyer R). Nova Scotia prosecutors use the idea of independence and the quasi-judicial aspect of the prosecution function (Bellemare, 2007; Grosman, 1970) to ground their arguments for autonomous grievance and salary setting mechanisms. Prosecutors compare themselves to judges in their ability to stop a case at any point. They use this comparison to argue for an independent salary setting mechanism similar to the panel that reviews judicial salaries. Prosecutors cite a need to distance decision making in the Prosecution Service from that of Government whether the topic be legal/procedural or administrative. Independence clearly defines the boundaries of prosecution for most stakeholders; however, it comes at

a cost. One prosecutor sums up independence as the isolation of prosecutors from the general public as “the public don’t get what we do” (Lawyer P). Prosecutors and legislators invested their energy in defining a niche within the legal profession at the cost of public misunderstanding. This development is ironic given the public outcry over prosecution’s previous lack of independence.

Determinants and Dimensions of Occupational Community

The structural elements defining the boundaries of the occupational community are in place and well understood by various stakeholders in public prosecutions. Salaman’s (1974) identifies six elements of occupational community. Three of the elements are determinants of OC, necessary for an occupational community to form. The other three elements are components of occupational community, aspects found to be present in OC but not causes of it. Salaman says that strong involvement, marginal status, and inclusiveness of the work situation are the three determinants of OC. He notes that one alone is a necessary but insufficient condition for occupational community. The three components of an occupational community are role perception, reference group, and fusion of work and non work lives. These elements are also present in prosecutors’ stories, although importance of social relations captures inclusiveness of work situation and fusion of work and non-work lives more accurately in this case.

The analysis of critical incidents in these stories reveals several key themes that relate to different elements of OC. The dominant themes tied to strong involvement include career choice, work intensity, and courtroom experience as active and authentic

‘lawyering’. The tone and style of the narratives reveal the social role of prosecutor and a clear set of guiding values as additional subthemes. Marschall (2002) addresses marginalization when he discusses how outsiders become insiders and what instruments they use to give voice to this need, and thereby create belonging. In the case of Crown prosecutors, a subtheme of ‘dirty work’ underlies their marginalization. The structure of the work organization also supports formation of the prosecutors’ occupational community. The following section presents each element of occupational community, illustrated by the themes from the stories.

Strong Involvement

Prosecutors’ strong involvement with their job tasks and the responsibility they feel about their role is the first indication of an occupational community within this specialized niche of the legal profession. Van Maanen and Barley (1984) elaborate on involvement and role perception to note that sharing the same type of work and identifying positively with the work, recognizing common values as well as participating in tasks that have a symbolic significance all support the development of occupational community.

Career Choice

Prosecutors reveal a strong involvement in their work. To a certain extent this involvement has its root in their career choice and personal values. In contrast with the lawyers in private practice discussed in Chapter 4, many prosecutors reveal that they are drawn specifically to criminal law and many directly to prosecution work from the outset

of their careers. Many prosecutors have either known since an early age this was their career choice or else law school and articling revealed that prosecution is the speciality they wanted to pursue. This is in contrast with the focus group of private and public sector lawyers on the civil side. Those stories of career reflected a search for the right niche long after law school. Many lawyers make choices based on market realities, as revealed in this comment made by a Legal Aid lawyer.

I see a lot of people over the years that, and myself in my own experience, get into ... certain practices a lot that just are not part of your niche and often it takes a long time to find your niche in the practice of law. [F]or myself I was a sole practitioner; I worked in a medium sized firm, now I work with Nova Scotia Legal Aid. (Lawyer K)

Whereas prosecutors more consistently told stories that revealed a certainty about criminal law as their career choice from an early point:

When I was probably about eight years old I had decided that I wanted to be a lawyer. It's from family. My uncle was a Supreme Court Judge, so I basically had that background or that will to get there, and I used to walk around the house with his robe, trip all over it... but I knew that's what I wanted to do. ...I wanted to defend criminals. (Lawyer S)

I was called to the bar, and I knew from law school that I was destined for criminal law, there was never any doubt. All my focus was on criminal law. Coming from Saint Mary's [University], then it wasn't the criminology department, but it was sociology with an emphasis on criminology. So when I went to law school, I knew what I wanted to do. (Lawyer D)

One lawyer describes his move from a previous area of academic study to law school as a 'calling'.

This was more of my calling, right? I was really quite excited about it [philosophy] so I wanted to continue on, kind of finish what I started and I knew I was pretty good at it, but I knew my true calling was law, so I went to law

school...I always wanted to be a Crown, always, always wanted to be a Crown attorney. (Lawyer Q)

My interest was in doing defence work and that's what I did. I articulated in a criminal firm and then I worked for the [provincial] Legal Aid program for one year and then I went into private practice. ...exclusively criminal practitioner... I've just always been interested in it and still have no interest in doing anything else. (Lawyer P)

Prosecutors do not explain their careers as a difficult choice, but rather centre themselves as decisive actors in their personal stories.

Work Intensity

Prosecutors are quickly drawn into an intense work environment. Once they chose criminal law, and then prosecution as a subspecialty, prosecutors very quickly embrace it. They are quickly socialized into the prosecution community. Rapid socialization is in part due to the structure of the labour process. Each individual works autonomously from almost their first day on the job, and faces a high volume workload. As a result, prosecutors develop strong involvement in their work, which prepares the way for occupational community to thrive. “Boy, you have to be prepared going into court, and you have 6-7-8 trials a day” (Lawyer O) says one. Another describes her early career as a rapid immersion: “Before I actually got on the per diem list I got a few days in court that she [another prosecutor] helped me with and then she actually went off for maternity leave” (Lawyer H). The speed of socialization in prosecution work build confidence among practitioners as this male lawyer indicates. “As soon as I was in the job after a couple of weeks I thought, ‘I’m gonna be fine’. I was on my own for a jury

trial my first time. My boss asked if I wanted someone to go along ‘no way’ [I said] I was fine” (Lawyer O). Prosecutors consistently describe the impact on the rest of their lives of the high volume and mental intensity of their work. “The best way to be competent was to be well prepared...I put in weekends and evening because I dreaded being unprepared in court” (Lawyer O). This lawyer sums it up eloquently when she says:

And the work so spills over in to your life, like, there’s like, as my daughter would call it, there’s always homework... They [files] physically come home but it’s also it’s in your head because it’s demanding what we do; you’re thinking about the issue and how you’re gonna handle it or what you should have done or the pile of work on your desk you didn’t do. (Lawyer P)

Prosecutors transition to fully autonomous practitioners at a dramatic speed and with remarkable intensity. This transition is also dramatically *different* from the experience private sector lawyers describe. Other aspects of prosecution work also nurture an occupational community.

Prosecutors Practice in Court

One of the appeals of prosecution work seems to be the active nature of both the apprenticeship and the job. Several prosecutors describe their discovery of prosecution work in terms of a courtroom experience during their articling year. All prosecutors described how quickly they were left to work on their own in the courtroom. Some felt this independence before they were even called to the bar. The activity of being in court on a regular basis reinforces the prosecutors’ engagement with their work and their commitment to their occupational community. Prosecutors gain a sense of identity as

“true lawyers” from their court work. Several identify their first independent trial or first jury trial as a defining moment and the point at which they “really felt like a lawyer”.

The engagement with courtroom setting also differentiates prosecutors from other lawyers. One prosecutor described an annual event he has attended with his wife who is a civil litigator involved with the provincial Trial Lawyers’ Association. He draws attention to the irony in the title of the association when most of its members settle matters out of court.

...she used to make me go to this dinner every year and I’d sit there bored out of my mind. And there was a guy there, he’s now a provincial court judge, he was a criminal lawyer and we’d sort of giggle ‘oh trial lawyers’, yeah, ‘they never go to trial’ (laughs). (Lawyer R)

This individual stresses the fact he has nothing in common with other lawyers because they have no courtroom experience; courtroom experience is a defining feature of his practice. Furthermore, the only person he relates to at the event is another criminal lawyer. Lawyers quoted in Chapter 4 also highlighted the fact that many in private practice do not spend much time in court. The true statistics on court time will doubtless vary from province to province, and from practice to practice. The important point is that prosecutors perceive their courtroom experience as a feature that distinguishes them from other lawyers. This effectively is a form of demarcationary closure within the profession. The features of professionalization and occupational community run in close parallel but we will see shortly that these two forms of work control are not interchangeable. Occupational community among prosecutors has features that contribute a unique element to workplace control.

Uniting Paths and Perspectives

It may be tempting to paint prosecutors as professionals who share a common outlook. However, the diversity in career paths and political perspectives indicates otherwise. Certainly, these interviews with prosecutors indicated they are an amazingly diverse group of individuals in terms of their life paths, their interests, their socio-cultural roots, their leisure habits, and educational backgrounds. Some started in defence work, some in legal aid. For those who experienced defence work first, they describe camaraderie across the criminal bar that leads them to job opportunities in prosecution. In another instance, a defence lawyer explained how his defence of a client in a particularly horrific crime turned him away from defence work to prosecution.

Prosecutors embrace different political perspectives, from the conservative to the liberal; “somewhere to the right of Attila the Hun” to “me on the left wing of the continuum”. These different perspectives are highlighted in their stories and are used often to explain their choices, their friendships, and their struggles.

Well there’s a continuum of the way Crowns think. You know, just like how there’s probably, ...if you’re a doctor you must have some people that are brave and out there and try anything and some that are much more conservative in their approaches. Do you know what I mean? Well Crowns are no different than that.
(Lawyer P)

Shared political perspective, then, is not a unifying feature among prosecutors. As one prosecutor said, they cannot be lumped together as a single group and they are “not on the side of angels”. Rather, it is the requirement for fairness in the prosecution process that unites them and the strength of their beliefs.

...people who are in the private bar now, most of them have business degrees, financial degrees, economic degrees, all of that. Where as in social, in criminal law, I can tell you we've got poli-sci, soc, history, geography, music, much more of an arts, liberal arts, kind of background. Which makes things a little bit different when you look at perspective. I'm sure that there are people that have business degrees that are in criminal law but I found that in general, when you start talking to people, the attraction to criminal law is the social justice background. So if you don't have that interest, why would you be in criminal law? (Lawyer S)

As an occupation, prosecutors appear to have less in common than the railway workers (Salaman, 1971b) and dentists (Salaman, 1974) in past studies of occupational community. However, prosecutors' predisposition to seek intense experiences and practical, active work hints that they share underlying characteristics that unite them. The structure of work and the nature of work relationships contribute to the intensity and strong involvement prosecutors feel for their chosen career. Long hours of work reduce the amount of time prosecutors have to socialize with others. They spend the workday in contact with a limited number of individuals and they seldom gather in teams. The difficult content of criminal cases and the need to respect confidentiality through investigations and ensuing prosecutions makes it difficult for prosecutors to share their work with outsiders. This work intensity makes it easy for prosecutors to develop other aspects of occupational community: shared values, a clear reference group, and significant social relations, as we shall see below.

Values and Sense of Social Justice

Many prosecutors talk about being drawn to criminal law because it appeals to their values, morals, or sense of justice. Prosecutors explain many stories about decision-making and career choice with reference to their personal values. Something perhaps just

short of a moral code binds them together; “my ideals of justice” (Lawyer S); “I have a moral compass, value, set of values and it’s been consistent throughout my lifetime in terms of what I’ve chosen“ (Lawyer U).

I took a position with a law firm doing personal injury law. So I completely got out of criminal law...because financially I was looking for stability and I just, I couldn’t make it any more ...for a junior coming in, the challenge of being a business person is almost impossible if you don’t get into a firm. Now, I’m very stubborn and very hard headed, but at some point sometimes you have to admit defeat. So, I went and I took that job *knowing full well that I would come back to criminal law because the personal injury field wasn’t for me* [emphasis added]. So I stayed there six months and then I was finally offered a position with the Government. (Lawyer S)

Many prosecutors allude to a faith community, a family network, or a political affiliation that spurs them to action, or a personal values framework that helps them or has drawn them specifically to prosecution work. These values range from the conservative to the liberal as noted above, but in the critical events, values give a strength and purpose to the storyteller’s career path. Lawyers in my preliminary study focus groups shared occasional ‘lawyer jokes’, poking fun at their profession for its reputation as financially motivated, perhaps slightly amoral. There does not seem to be any such thing as a ‘prosecutor joke’, however. A keen sense of natural justice and procedural justice permeates prosecutors’ career stories. Their work is an expression of the way they feel the world should run, rather than a way to earn a living.

Independence

Prosecutors describe “a completely different mindset” in criminal law. One prosecutor describes this as “thinking outside the box” and using creativity at work.

Salaman claims creativity is necessary for an occupational community to thrive and distinguish itself from surrounding work and community. Prosecutors explain that they view the world differently and they describe a social element that draws them to their work. “I think it takes a particular kind of person or a particular kind of lawyer to practice criminal law. It’s not your “Average Joe” ...very distinct people go into criminal law” (Lawyer S). Describing their personal experiences, male and female prosecutors reflect this same theme.

Articled back here with a midtown firm that did no criminal work ...they did commercial, real estate, civil litigation—really didn’t enjoy it —didn’t suit my personality, didn’t see myself there and so that’s when I said, well, I want that court room experience, I like criminal law. My disposition is more as a prosecutor than a defence lawyer. (Lawyer U)

[prosecution] is not driven by money and I find that makes a big, big difference, because it’s much more of a social situation. Because it’s either the protection of the public or the protection of the rights of an individual. ...you don’t think about how much money you’re going to get for this client or how much you will be rewarded financially. So the mindset is different from the private bar which is much more business oriented and money oriented. (Lawyer S)

The forgoing is an example of what Van Maanen and Barley call “holding a symbolic trust” (1984, p. 303). Protection of the public interest and ensuring a fair criminal justice process are duties beyond what is usual for many other lawyers.

Prosecutors consistently describe themselves as quasi-ministers of justice, and being beyond direct control of any one body. The theme of being similar to judges reappears in prosecutors stories several times. Prosecutors use this idea to stake the boundaries of

their speciality and to build an ideology that binds them together in an occupational community.

In arbitration¹² Crown Attorneys argued that they are making quasi-judicial decisions and should be recognized for that and paid for that. The Crown makes quasi-judicial decisions and can't be influenced by outside bodies such as the Court or the Bar Society. They can't say on the one hand you're independent, we trust you to be independent from political interference, but not from the Bar Society? No! The Krieger¹³ decision says this clearly. (Lawyer O)

Voicing their need for independence further isolates prosecutors from the balance of their profession, from other civil servants, and from society whom they ultimately serve. Prosecutors describe their decision making process as being like no other. Prosecutors share almost complete individual discretion in the exercise of their duties and they say this is a very special type of work. Prosecutorial discretion needs to be exercised independently without a lot of second-guessing, although individual prosecutors need to know where to turn for assistance when needed. One prosecutor says her peers are not that hard to manage and that lawyers do good work if they have a supportive and collegial environment where they know they can come for help, guidance, and suggestions. However, the most significant characteristic of prosecutors is the obligation for disclosure in their work. The Criminal Code sets out the requirement for prosecutors to share all information about the case with defence counsel. A series of Supreme Court of Canada cases have tested aspects of prosecutorial discretion, including

¹² The prosecutor was referring to salary arbitration for Crown prosecutors.

¹³ The Supreme Court of Canada decision in *Krieger* established protection for prosecutors' exercise of their prosecutorial discretion. It states that the Law Society cannot interfere or judge the exercise of prosecutorial discretion.

*Krieger, Nelles*¹⁴ and most recently *Miazga*. The need to disclose information about a case is an important aspect of the prosecutor's role. Prosecutors must be, and must be seen to be, neutral in a case, and free from undue influence. The decision making process regarding whether or not to prosecute define the practice of prosecution work to a great extent. *Boucher* is the oft-cited Supreme Court decision that establishes these principles of prosecution:

“It cannot be overemphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented; it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness, and the justness of judicial proceedings.” (*Boucher* 1955) .

Prosecutors I interviewed take this aspect of the role extremely seriously. They are not subject to Barrister Society discipline over the way they exercise this discretion, but the independence such discretion conveys is at the heart of how prosecutors portray themselves in their stories.

¹⁴ *Nelles* and *Miazga* deal with malicious prosecution and contribute to a legal test for assessing how a prosecutor has applied prosecutorial discretion.

I think if you were to go back 25, 30 years the presumption was if a charge is laid you prosecute it. Well, we understand now that that's just not right. That the job of a Crown attorney is more than just a prosecutor, the job is to see that justice is done. And sometimes that means deciding to stop a prosecution when you know it's not right. ... [T]he fact that Crown attorneys see that as a part of their jobs I think is important because if we were to adopt the perspective that our only job is to take the charge and run it in court, that could have a tremendous negative impact on people's lives and society in general. (Lawyer A)

The other thing is that we have to be fair and objective. So we're always taking the high road, no matter what. Everything is always full-disclosure. ... when we're talking to somebody on the phone, I will tell them everything about the file, leave out nothing... They know everything. Defence lawyers don't have to tell us anything they don't want to. There's no surprises, when I come to the court, for the other side. You can surprise me all you want. You can manipulate, you can do what you want as long as you stay within the ethical boundaries. But we're bound by different rules. (Lawyer Q)

The legislative requirement for disclosure coupled with the culture of independence unites prosecutors and sets them apart from the rest of the profession. They share a strong value in their support of the criminal justice system and a defining motivation to work in criminal law, despite their variations in political perspective.

Role and Reference Group

Lawyers are trained to think in a certain way, and they stick together. They see themselves as the members of society who specialize in the rules governing society. They share a certain understanding of the way contemporary society is built, functions, and is controlled.

but you know every society has a concept of rules or norms which either formally or informally are a law and then with you know with the progression of time there develops a group of people who have specialized expertise in making that work, representing people in reference to it representing it to them, right? (Lawyer E)

Lawyer's high level of social exclusion is underscored by their off-work socialization with others in the legal profession: "it's very difficult to have a conversation, not difficult, but it's easier to have a conversation with a lawyer in a lot of ways than it is to have a conversation with a non-lawyer" (Lawyer C). For prosecutors this off-work socialization occurs with other members of the criminal justice system. Many prosecutors noted their closest friends are drawn from the ranks of prosecution services. Because they work alone in court, prosecutors regularly seek each other out beyond the courtroom and draw on the occupational community for technical support. Lawyer H noted this when she described how much she learned from other Crown prosecutors simply sharing coffee together. Another prosecutor describes her work on the proceeds of crime team, which dealt with organized crime cases:

When I was on the proceeds [of crime] team, which have very specific issues, it was very common to see a question go out to all the proceeds counsel across the country. Or you might know that somebody in Toronto had argued on an issue that was similar to yours and email them or call them up and have a chat.
(Lawyer P)

Prosecutors across the country tend to see themselves as purists in their legal practice. They do not worry about billable hours, administration, or the opinions of their supervisors for the most part. They work very autonomously and focus almost exclusively on the law and its application to specific cases. This prosecutor describes his management experience this way: "Crown Attorneys will come to you for advice, and they will think 'I won't go and ask him he's not been in court for 5 years.'" He goes on to explain that technical skills and knowledge are critical for credibility in a management role, and are easily eroded if one stays out of active practice for any time. This is a theme

that recurs when we examine the stories of collective bargaining later in this chapter. Lawyer O brings the demands of the job back to the identity question for prosecutors when he says “you have to keep up to date and keep your skills up to date. It is important as a professional.”

Those with a significant amount of experience reveal that they can process more of their work quickly as time goes by, and thus contribute to internal committees and policy forums on specific aspects of policing and other matters. Criminal litigation is also markedly different from civil and family litigation, as prosecutors are quick to point out. There is a sense of ‘us versus them’ among prosecutors, where “them” refers to other lawyers, civil lawyers, and members of management in the Prosecution Service who do little if any court work. Only colleagues’ opinions matter because they have the “real view” of prosecution. These colleagues form a strong referent group for prosecutors. The referent group becomes critical in the collective bargaining stories because they share working conditions and perceive similar injustices in their labour process.

Marginal Status

Marginalization, or a diminished sense of status, was noted in Chapter 2 for its role in forming occupational communities (Salaman, 1971a). Members of marginalized groups form a clear definition of their profession and will stress its importance when describing their role (Salaman, 1971a). Marginalization is evident in the way lawyers describe employment status. Lawyers in this study draw a distinction between self-

employment and being employed, even if that employment is in a private practice. “[I]t’s different if you’re an employed lawyer...there’s a big distinction there too in terms of your lifestyle.” (Lawyer C) Lawyers in this study from all types of practice talked about excellence and how the best level of legal work takes more effort than simply working 9 to 5. The implication is that the work product of employed lawyers is perhaps not as good if they are working a forty-hour week.

In the focus group containing lawyers from the public and private sectors, a discussion around maternity leave reflected a similar notion. A year’s leave of absence is readily available to employed and public sector lawyers. This was contrasted with the situation facing private practice lawyers where they cannot take time off for financial reasons as well as for business continuity:

There’s... a lot of pressure on female associates to get back - we’re not going to take care of your files, you know - you’ve got to stay in contact - you’re the one that needs to maintain these, we’ve no one to cover off so you need to keep... stay on top of this stuff while at the same time you’re trying to figure out your life with a new baby. (Lawyer I)

Lawyers in private practice perceive the extra effort required to stay on top of files and in touch with clients as an investment in the practice, whereas among public lawyers, this effort is described as a sacrifice. Self-employed lawyers speak of “building my practice” whereas public sector lawyers use language of conflict and tension. A further distinction between self employed and the employed lawyer relates to risk. The employed (and the public sector lawyer) bears less business risk and enjoys the protection of employment standards law, which further distinguishes them from owners of private firms who feel both the burden and the prestige of owning their practice.

The work pressure in public law is not that different from that in private practice “you still have the same pressures of the work” says one public sector lawyer, but the perception of some study participants is of public law as a second-class type of practice. Private sector lawyers in my study held notions that public sector lawyers faced less strenuous work demands and enjoyed far greater benefits than those in the private sector. Public sector participants in my focus groups quickly point out that this is not in fact the case, but their responses are defensive in tone. Some study participants mention that individuals who may have struggled in the private sector can now realize their professional potential in the public sector. These comments were made in the context of work-life balance discussion with the implication that female lawyers stand a better chance of success in the public sector, as evidenced by their growing numbers in that field. The work hour and extra-curricular demands of legal work clearly discriminate against some workers, notably those with family commitments. Family responsibilities are perceived as a liability in the profession. The presence of parental leave and work life balance initiatives in the public sector contribute to the reputation of public sector law as ‘cushy’ or less demanding than other types of law. Prosecutors are very aware of the marginalization of public sector work, as one commented “you were just considered as ...throw-aways. And if you couldn’t get a job, then you were a Crown attorney; if you couldn’t get a job, then you were government lawyer” (Lawyer Q)

It is also clear from within and outside the profession that public sector lawyers earn markedly less money than lawyers in private practice. Some public sector lawyers in my study compare their earnings with law school classmates and see tens of thousands

of dollars' difference in annual salary. One prosecutor directly attributes the marginalization he feels to financial earning differentials when he says "and frankly, it has to do with money." Though there is a wide range of earnings in private practice, even the solo practitioner I interviewed in a small town with a population under 100,000 made more in private practice than he does now in the public sector. Money is a proxy for status and prestige. One participant put it this way when asked if there is a hierarchy in the profession "Well if you base it on pay rates, the Crown attorneys are at the bottom! Government lawyers are at the bottom" (Lawyer O) Another prosecutor stated "If you're a lawyer and you're making \$30-\$40 000 a year, which [was the case] ten years ago, and other lawyers in private firms are making \$300 000, you're viewed as obviously you can't make a cut in the real world." (Lawyer Q)

Like all public and para-public employees, public sector lawyers were subject to wage freezes and then a 3% rollback in earnings over the early to mid 1990s. The earnings gap between private and public sector workers in general and lawyers in particular increased significantly during this period. Also, Nova Scotia prosecutors' wages were traditionally higher than the provincial court judges, but with the advent of tribunals to set judicial incomes, this gap widened dramatically, even with the suspension of tribunals in 1994-1997 as part of public sector austerity measures. Prosecutors felt themselves at the bottom of the professional hierarchy, marginalized by forces beyond their control.

Dirty Work

As mentioned in Chapter 4, the work in court is 'dirty work'. Prosecutors are dealing with some of the least desirable aspects of human life. Their working conditions may be mostly office and courtroom-based, but they are required to work with the police, the accused, to visit police stations and jails, and to interview victims of crime. "[I]t's hard what we do for a living" Lawyer P says, "Right in the meat grinder courts, you know, where it's really, where it's busy" says Lawyer O. Although courtroom experience is vital to prosecutors' occupational community it is also the attendance in court, the direct confrontation, and the nature of crime that prosecutors describe as unpleasant. They acknowledge that crime has a marginalizing effect on their status in the profession.

Nova Scotia Prosecutors describe their working conditions as below the standard for other civil servants and much poorer than those enjoyed by lawyers in private practice. "We didn't have any support staff. We didn't have computers. We used to have to ...document notice saying you want to admit probation orders and stuff into evidence, and we used to handwrite them" (Lawyer H)

The physical facilities were a problem. And of course that is the largest criminal court house in the province and about a third of the prosecutors would be there. I mean the office space was cramped and inadequate, there weren't enough support staff, there were no computers. The criminal records and the file keeping were all done on a recipe card system with drawers of recipe cards. (Lawyer T)

The infamous recipe card system consisted of index cards kept in a library card catalogue drawer. Each card was inserted into a typewriter and the name of the accused

was recorded along with codes for the criminal charges and the next court appearance date. The cards were photocopied and included in the case file sent to the prosecutor. Each time a new appearance date was set the old date was covered with liquid corrector fluid and a new date was typed in. An accused person could have multiple cards based on clerical error, varying police records of name, and multiple charges. It was virtually impossible to obtain a complete record on an individual's contact with the criminal justice system.

These working conditions deepen the feeling of marginalization, and the fact that such conditions were cited in the reviews of the prosecution service (Archibald, 1989; Ghiz & Archibald, 1994; Kaufman, F., 1999a) give the prosecutors' complaints credibility, but also help to further marginalize them in relation to the rest of the profession. The recipe card record keeping system noted above has become legendary in the service, and several participants highlight this as one of the important stories in their narrative. It is an important story for the way it reflects the ludicrous amount of manual labour and the risk of inaccuracy and delays involved, as well as for the prominence given to it by the Kaufman report and the media.

I was here in the recipe card days. I mean that's even in the Kaufman report and it's in the media, well it's just a filing cabinet for recipe cards. ...if a file came in that was ongoing they'd white it out every time and [type] the new date. You couldn't keep track [of court appearances]. (Lawyer H)

Boje (1991) says that storytellers focus attention on events that have the greatest impact or require the most effort to make sense. The appearance of the file card story in almost every prosecutor's narrative indicates this is a key event in their

work experiences and one that they struggle to understand, to make sense of. The file card story comes to represent the physical limitations prosecutors face in their work lives. Prosecutors explain the persistence of these manual systems through multiple reviews of the Public Prosecution Service as management's failure to act in the prosecutors' interests and Government's failure to accord appropriate resources and status to the prosecution function. The relationship between prosecutors and their management superiors is featured shortly in my discussion of collective bargaining; however, the file story clearly illustrates the prosecutors feel marginalized within their profession and within their organization.

The Importance of Strong Social Networks

Not all prosecutors were extremely focussed in pursuit of their career. A minority indicated that they decided to pursue a law degree as an adult, after an initial university degree. All of these lawyers were strongly drawn to criminal law with the exception of only one who was uncertain what branch of law to pursue. In the stories from this minority of prosecutors, the role of friends and social relations plays an important part in making a decision to pursue a legal career, giving an early hint at the strength of social relations for these individuals. Once they are exposed to it, these lawyers also exhibit a strong commitment to prosecution work. Some of them tell stories of graduating at the top of their class after an inauspicious start, like this individual:

My career, well I certainly didn't have any plans growing up to be any kind of licensed professional. Neither of my parents finished high school. but ...my friends were going to university, I went to university. [I] did my undergraduate degree, and I knew people who were applying or had applied to law school and I

thought I would try it. Thought about quitting early on... I was in the top ten percent in my class when I graduated. (Lawyer T)

Other lawyers who did not initially have a strong motivation to pursue law describe the influence of family and friends.

Yeah. I never had any desire through school to become a lawyer. In fact, I was thinking of going dentistry, medicine, that route. It was almost by default that I got into the profession. [I] had family who were lawyers who I respected and as a result, I think that's why I went towards the law profession. (Lawyer U)

I don't think I had any ambition to be a lawyer starting out but ...surrounded by some friends of mine at university who were studying law ...I applied. [S]o I went to law school and then I graduated ... and again had no real idea what I wanted to do. (Lawyer V)

These stories reveal that future prosecutors are sensitive to a strong support network that includes their peers and family members. Not only is the social network strong at the very outset of the prosecutors' academic pursuit of their profession, but it endures through their career. "Like I say it didn't matter if you were a lawyer or a judge or a police officer or a base officer or a court clerk, there was a real camaraderie here which I really enjoyed. And as a consequence was able to kind of be relaxed and learn the job at the same time" (Lawyer V).

Many studies of occupational community address workers' social relations that extend beyond the workplace. Studies of railwaymen, architects, ship builders, police, fishermen, and jazz musicians described by Salaman (1974) reflect the merger of work and non-work lives. More recently, studies of cruise line workers (Lee-Ross, 2008), hotel workers (Lee-Ross, 2004), pub workers (Sandiford & Seymour, 2007), and computer programmers (Marschall, 2002) describe the *inclusiveness* of work situations

that Salaman (1974) says is a determinant of occupational community. For example, organizational embrace may be so extensive that all life activities involve workers at work. Cruise ships, some jails, and formerly nurses' residences are instances of this inclusive nature of work situations. Pervasiveness of norms and activities may also bind members together and the professions clearly establish this pervasiveness through training and education, testing, and apprenticeships. Restrictive factors such as time or travel can also limit non-work activities, resulting in workers being out of synch with the rest of their social world and thus completing their non-work activities together or in a similar manner.

Prosecutors certainly experience the pervasiveness of the profession; their behaviour in many work activities is influenced by their training and the conduct guidelines of the Barristers' Society. But as the literature (Salaman, 1974; Van Maanen & Barley, 1984) and the preliminary study described in Chapter 4 indicate, pervasive norms alone are insufficient to forge an occupational community. Furthermore, prosecutors do not exhibit any extraordinary restrictive factors beyond the long work hours many professionals experience in the current economy. There are variations in travel requirements depending on rural or urban assignment; however these appear to be neither divisive nor uniting factors.

The organizational embrace of the Prosecution Service does not extend to non-work activities; however it does restrict the practice of prosecution to those who are employed by the service, closing off prosecutors from the rest of the profession by virtue of their employment. Thus gathering prosecutors together in a single place of

employment is an important structural feature of the occupational community; a feature that reinforces the behavioural norms that govern the work of prosecution. Prosecutors share close proximity to others practicing the same speciality and also share working conditions. These commonalities foster a sense of identity among prosecutors that codes of ethics and membership in the profession's regulatory body alone could not achieve. This is an example of Giddens' (1979) structuration, where the structure of the institution and the actions of individuals are mutually reinforcing. The employment structure gathers the prosecutors together, and in so doing they grow a bond based on working conditions and on shared professional circumstances. Employees of the Prosecution Service grow together in their unique experience of prosecution and they turn to one another for support and in-house continuing education. This internal mutual support further reinforces the normative power of criminal prosecution and of the employing organization. Prosecutors begin to develop an organizational culture to accompany their professional practice by virtue of being dependent employees. In contrast to the prosecutors' situation, the civil lawyers in the Department of Justice are dispersed across government, often as single solicitors in a client department. The civil lawyers did not develop an occupational community during this period of struggle.

Prosecutors do not experience *inclusiveness of work situation* in the same way as other occupations cited in the literature; they do not live among their colleagues and are not forced to conduct their non-work activities in unusual times or places. Many contemporary workers find themselves in alternate work arrangements or working extended hours so this dimension of occupational community is much more difficult to

interpret and analyse than has been the case in the past (Lee-Ross, 2004). The impact of social relations on prosecutors' occupational community seems limited to a single aspect of inclusiveness, close friendships. Both qualitative and quantitative studies have been done of the number of friends and the type of contact members of occupational communities have with other members (Cannon, 1967; Gerstl, 1961a; Lee-Ross, 2008; Salaman, 1974). Almost without exception prosecutors interviewed in this study indicate the majority of their five closest friends, and especially their two closest friends, are also prosecutors. These friends are current or former coworkers. In only one instance, that of a very newly appointed prosecutor, the participant's closest friendships were established through her private law practice and her best friend was a lawyer, but not a prosecutor. In general, women appear to draw friends from more diverse members of the criminal justice system, counting police officers among their friends, for example. Women also have friendships built around other life roles than that of prosecutor. The role of parent in particular appears to draw female prosecutors to other women in the criminal justice system, broadening the scope of their closest friendships beyond prosecutors.

Probing the dimension of friendship a little further, we see again the theme of strong values emerge. Prosecutors base their stories of friendship on the idea of a shared set of values in a manner that echoes the way in which they describe their choice of career. Underneath these strong values lies an ideology of justice and fairness that crosses over from the work practices to other aspects of life.

Occupational Community “Plus”: The Presence of a Uniting Ethos of Fairness

The foregoing discussion of the elements of occupational community indicates that OC determinants: strong involvement in job tasks, shared values and norms and marginal status, are present among prosecutors. The components of occupational community, namely a clear role perception, reference group, and, to a limited extent, the fusion of work and non-work lives are also present. I conclude that an occupational community exists and contributes to reinforcing the culture of uniqueness and the social closure of prosecutors. However, there is an additional aspect of the prosecutors’ occupational community that the literature has not extensively explored. The notion of strong core values is hinted at but not explored in any of the studies mentioned above. I have discovered that among prosecutors there is an affinity for intense work situations, coupled with a definitive stance of almost ideological proportions. Not all prosecutors share the same political perspective, but they share a strong dedication to their chosen perspective. Prosecutors’ occupational community is forged through difficult subject matter and strong professional norms. Members of this OC are united in a single organization and subject to administrative control by a bureaucracy perceived to be outsiders. These circumstances present rich ground for an ethos to grow which can further unite the occupational community. The presence of such a unifying force that is sustained by the occupational community explains how prosecutors successfully move between a professional mode of closure and a strategy of collective bargaining. Prosecutors base their identity on the notion of fairness. They unite when this fairness, and with it their professional discretion, is threatened.

Conflict Between Strategies

With the existence of an occupational community thus established, I now turn to examine how this community helps to mobilize members to push for collective bargaining. On a tactical level, prosecutors expressed difficulty in reconciling their professionalism with collective job action. One person interviewed said that he could not agree to a work to rule campaign; doing part of the job was unacceptable from a professional ethics standpoint. Another said she thought that by pursuing a professional degree and career she was leaving behind all notions of labour and labour strife as well as the need for collective action to protect her rights: “I thought law school exempted me from labour issues.” A third said “Hey, McInnis Cooper [a large local law firm] doesn’t have [bargaining], why should we have that here?”

However, prosecutors draw heavily on the fairness argument when they describe their treatment at the hands of government. They express powerlessness and disbelief that members of the civil service community and the legal fraternity could treat them with such disdain, disrespect, and what they claim were outright lies. Prosecutors contrast their Legal Ethics Handbook that demands full disclosure and non-personal, rational review of facts with the targeted, secretive, and unfair treatment by those who manage them and by the employer over working conditions and collective bargaining. Fairness becomes their rallying point, almost their anthem, and unfairness the target and behaviour attributed to the other side.

An Ethos of Fairness

A general sense of unfairness (Kelly, 1998) and discord mobilized the prosecutors to push for collective bargaining over a salary mechanism in 1998. The unfair treatment of specific individuals was used to build solidarity for the collective action campaign that culminated in achieving the second phase of collective bargaining: the grievance procedure. The discovery of a discourse of fairness within the occupational community strong enough to unite the opposing notions of ‘collective’ in unionism and ‘independence’ in professionalism explains this mobilization. My analysis of the stories of collective bargaining highlights this ethos of fairness.

In their stories, prosecutors describe how the occupational community coalesces around staff prosecutors as managers withdraw from regular courtroom work. The stories are filled with prosecutors’ attempts to reconcile their professional norms and beliefs with their work circumstances. They also struggle to reconcile their belief in collective action with the employer’s overwhelming negative response. Prosecutors depend upon an ethos of fairness to reconcile collective bargaining and their professional status and beliefs. The fairness discourse bridges the occupational community of the professional prosecutor and the world of dependent employment, providing both with language and meaning to express their struggle and to situate their role in a broader context. Krause (1971) says “an inevitable part of any group’s action on its own behalf is an ideology which summarizes the meaning of its action and gives reasons why others should support it” (p. 88) Krause goes on to describe ideology as “texts, theories, doctrines, phrases or concepts” (p. 89) that a group uses to unite and focus group

behaviour in relation to other groups. A shared ideology forges an occupational community (Elliott & Scacchi, 2008) and such an ideology, or ethos, exists for prosecutors; it is evident in their stories. The requirement of disclosure and the ethos of fairness permeate prosecution work, especially since the advent of the Charter of Rights and Freedoms imposed on Crown prosecutors a duty to ensure the rights of defendants are protected. Prosecutors are able to shape a notion of fairness to meet both their professional obligations and their workplace goals.

Collective Bargaining Stories

The critical events in prosecutors' stories deal with their work environment and the workload: how work is assigned and how it is managed in small group settings. Management roles and relationships are an important part of these stories. There is a level of middle management between prosecutors and the senior leadership of the Prosecution Service. These managers supervise prosecutors and play a role in assigning major cases. This management group, a dozen in number, are promoted from the ranks of prosecutors. Management control of the labour process forms a unifying theme through the prosecutors' narratives. That is not to say that all the stories are the same nor that all prosecutors have similar experiences with management and their labour process. But the presence and the power over the labour process is a central theme in the stories and in the way story tellers present their tales. Distrust of management and workplace frustration are other themes that emerge in the stories. One story in particular illustrates how these themes coalesce and support an occupational community: the illegal strike of June 1998. Underpinning the stories of career and the stories of collective bargaining is

the theme of fairness. This theme takes on the power of an ideology in the occupational community and is a fundamental force in the struggle for collective bargaining.

Power over the Labour Process

Prosecutors are autonomous, independent professionals in the course of their day-to-day work. “Each Crown prosecutor is assigned to a court. They are one of a court team of two partners. And they are on their own in the court room” (Lawyer O). Prosecutors’ courtroom work is solitary; they individually review files, interview witnesses, conduct discussions with police, and examine evidence without the input or oversight of other lawyers.

Here we’ve been told since the beginning that we’re all equals. So, when you take a file it’s your file and you run it the way you want. If you want other people’s opinions that’s fine, but nobody will second guess you, or tell you that you can’t do things that way, or whatever. (Lawyer S)

This organization of the labour process reinforces the independent nature of the prosecutor. The autonomy of prosecutors contrasts with the private practice lawyers’ description of a mentorship process. It is common in private practice to send a novice lawyer out and then recall them to check their work, shape it, then send them back out to work once again. Senior lawyers express a desire to “put my stamp on it” (Lawyer F.) when referring to their juniors’ work.

Workplace Frustration

Prosecutors express workplace frustration over two major issues. Working conditions were discussed above. Prosecutors are also concerned about work control.

Prosecutors' feel that their autonomy is threatened by the policies of the Prosecution Service and they are frustrated by this lack of power in the labour process. This frustration is particularly evident in their stories about the Prosecution Service policy manual. The manual is perceived to fetter the exercise of professional discretion. Study participants use stories about the policy manual to illustrate a divide between managers and prosecutors. Prosecutors describe the manual as a tool for managers to "cover their back". Managers challenge prosecutors to explain deviance from the manual rather than demonstrate excellence with a reasoned argument and defensible position – which is at the heart of what prosecutors prepare and execute in their daily work. One prosecutor recounts her manager's close scrutiny of case files, another had a direct reprimand over a decision not to prosecute a case. There is a direct contrast here between the professional norm and the organizational requirement, a contrast that seems illogical to prosecutors, and which they cannot resolve within their perceived role. Though this is just one example of many issues in the workplace, prosecutors' frustration with a structure and culture that impedes their ability to function as professionals leads them to resist. When policy directives come from senior management or from the Attorney General, these are noticeable and challenged if they do not conform to the prosecutors' view of their role in the labour process. At the heart of this resistance is the exercise of prosecutorial discretion. If this discretion is infringed, the prosecutors perceive a direct challenge to their labour process. This challenge is particularly evident in the domestic violence policy, which is discussed later in this chapter.

In prosecutors' stories about resisting policy they often describe their need to resolve other illogical issues they see in their labour process. Chief among these issues is salary setting and third party grievance resolution. In turn, this demand for resolution leads them to push for a venue for resolving these complaints. Prosecutors embrace an ethos of fairness and turn it from a normative instrument of control in their labour process into a tool for their own ends. At first fairness is imposed by the institution of the legal profession and the court system, most obviously as the Charter of Rights and Freedoms. The fairness requirement is supported by the case law dealing with disclosure. However, over time the ethos of fairness is appropriated by prosecutors as their own means of reclaiming power over their labour process. They internalize fairness and incorporate it into the identity of prosecutor. As a result, in their stories prosecutors describe the imposition of policy as unfair formal control of their labour process and worthy of resistance.

Policy Manual as an Instrument of Formal Subordination

Many examples in the stories of work and collective bargaining deal with policy. The policy manual for prosecutors features prominently in many of the interviews I conducted, in Nova Scotia as well as in other provinces. As described in Chapter 4, the policy manual in Nova Scotia was revised and enhanced as a direct result of recommendations in the various reviews of the Prosecution Service. The policy manual was both necessary to ensure independence, by making direction and decision making more transparent and uniform. "The policy manual reduces the appearance or the actual unfairness in the process" (Lawyer O). At the same time the manual also represents a

fettering of that independence. The manual provides direction to prosecutors in the conduct of prosecutions (Public Prosecution Service, 2006) as well as ensuring some fairness in the justice systems through uniform handling of issues.

We're all trying to be on the same page because you have so many Crown offices... you get an impaired case in Yarmouth, well, and if you get an impaired case in Truro, you're technically supposed to be on the same wavelength. There shouldn't be such a huge margin or anything. So that's what our manual is supposed to do – keep us all on the same [page]. (Lawyer S)

The Nova Scotia Public Prosecution Service policy manual was re-introduced as a completely revamped and updated tool in 2002. A specific individual was hired from another province to lead a revision of the existing manual, thus finally fulfilling the recommendations of the three reviews and reports on the Prosecution Service. The resulting manual, published on the PPS website, is an example of formal control of the labour process (Salhani & Coulter, 2009), where rules and structures are put in place to control behaviour. The revised policy manual was greeted by prosecutors with mixed reviews. Some prosecutors say that policies are needed, that clear guidelines support independence from political interference and provide transparency to the work of prosecutors. Both features move closer to achieving the organizational independence of the PPS and thus public confidence in the Service. However, at the same time the application of those policies restricts prosecutor's professional discretion. The debate over prosecution policy has been addressed in legal literature (Davis, 1969; Grosman, 1970).

The Domestic Violence instruction appears several times in my interviews as an example of how government sets policy direction on the advice of senior management,

and in response to a series of troubling crimes and public criticism of the prosecution of domestic violence. Lawyer Q gives a summary of how prosecutors feel this action undermines their professional and prosecutorial discretion. The application of discretion is fundamental to prosecutors' work.

I can give you an easy one. Domestic violence. Right? We're to proceed on all domestic violence files, even if the victim is not cooperative. ...every single case is different but they put a blanket over the whole thing, *removing our discretion from that* [emphasis added]. (Lawyer Q)

Management exerts formal control of the labour process in the form of policy and by the government through directives like the Domestic Violence instruction issued by the Attorney General. In such cases, directives are a reflection of public policy. This policy direction from government is detached from actual practice of prosecution, and prosecutors question policy advice from management. Management are not directly involved in prosecution work in many instances, which impacts staff prosecutors' view of the policies that management generates.

The creation of policy by management is considered necessary but also disconnected from the reality of prosecution. Further than engendering a lack of respect of management by prosecutors, the policy forum becomes an arena for prosecutors' resistance. "We're guided by a plethora of policies that, you know, that kind of guide our work, right?, that restrict our movements in some aspects" (Lawyer Q). He goes on to highlight the real and figurative distance between policy makers in management and the working prosecutor.

I mean the Minister of Justice came out a year ago and said, you know, in all cases of violence, we are to ask the person be remanded to jail. *but we don't*. [spoken in a whisper] You know why? Because it's stupid and my common sense trumps what somebody sitting in an office far, far away believes should be going on, and really, you know what? If you don't like it, come down and tell me. (Lawyer Q)

Several prosecutors mention this domestic violence policy and their various means of dealing with the reality of individual cases. It is a complicated area of legal practice, as they indicate in comments like “every case is different” and “this is complex”, however they are consistent in claiming that their professional discretion trumps any policy that comes from a realm removed from daily practice of law. Further than this, prosecutors view the policy as a scapegoat for public officials “because that directive is in place to cover their butts.” Describing a hypothetical case of domestic violence one prosecutor elaborates: “they’ll say, ‘Mr. Prosecutor made a decision contrary to our directive’.” Prosecutors feel quite strongly about the exercise of their professional discretion and act out their resistance daily.

I could stand there and tell them [a panel of inquiry] that the directive should not have applied and I would tell them exactly why. ...they could hail me with questions from wherever they want to and bring in stats, whatever... and I could stand there, straight-face. Part of knowing what I’m doing and doing my job properly. (Lawyer Q)

Prosecutors use dismissive language to describe management’s role. One prosecutor refers to the management function as “all that junk”. Another prosecutor refers to the six regional supervisors this way: “Management really is the Chief Crown and he takes care of all the administration stuff, like travel expenses and vacation days and all that.” Another states “Well, they [management] assign cases, they also do day-to-

day operations, anything operational, they take care of.” Management’s distance from the daily work also affects prosecutors’ perceptions of general management control.

Prosecutors use deprecating language to describe managers’ impact through policy making. One participant describes policies as ‘commandments’ that come from management: “certain commandments come down that we have to do this, we have to do that, depending on whatever. So, management’s responsible for all that.” Another prosecutor reflects on the several months it took management to develop a dress code policy, “give me a break” he says. Language such as “commandments” and “brick wall” strongly indicate the feeling that policy direction imposes a course of action rather than letting prosecutors assess each case using their professional expertise. While the policy manual is a fulcrum around which prosecutors build stories of discretion, fairness, identity and power, the manual also brings into relief the division between courtroom prosecutors and the management ranks of the Service.

The Management Role: Division within the Occupational Community

Management is a function distinctly removed from the practice of prosecution. Managers that I spoke to were very clear to demonstrate how they “keep their hand” in the practice of prosecution, although this is a challenge with their administrative workload. “What changes is you can’t get in the court room as much, that’s what changes!” (Lawyer P) Prosecutors deride the management role because they do not perceived it to be of value or necessary to the work of prosecution. It is ironic that the result of repeated reviews of the Public Prosecution Service is in an increase in the

number of management positions to twelve rather than the recommended decrease to seven. Prosecutors view the management role as somewhat of an unnecessary perquisite, with regular paid trips to Halifax and discussions that do not include the line prosecutors. In fact, the NSCAA now has regular meetings with the leadership of the PPS to address employee issues and concerns in a collective way. These meetings give prosecutors further reason to wonder at the utility of the monthly management gatherings. One prosecutor explained that employees come to the NSCAA with issues rather than deal with management themselves. At best prosecutors feel management fills an administrative role; at worst managers are a hindrance to conducting prosecutions. Somewhere in the middle lies resentment against the free rider syndrome that grants management salary raises each time there is a negotiated increase to prosecutors' wage rates. The comments from prosecutors regarding management are perhaps more polite today than they were at the height of the labour conflict in 1998. The feedback prosecutors offered to the Kaufmann inquiry were quoted as "real or perceived lack of direction, mistrust of leadership, suspicion of favouritism in senior positions, inefficient organization" (Kaufman, F., 1999b)

One prosecutor talks about the 'middle mass' in the Public Prosecution Service. This group is comprised of the half dozen regional managers and slightly fewer head office managers. He describes the feeling of occupational community among the bulk of prosecutors and how prosecutors feel "closer to the middle mass" than the top layer of executive management. The top leadership, it seems, has always been isolated in terms of the occupational community. The middle management ranks were full members of the

Nova Scotia Crown Attorneys' Association in its early days of the mid nineties. However, collective bargaining excludes managers from the collective agreements, although they are welcome to be associate members of the Association. This separation of the management layer from the Association creates a structural division in the community of prosecutors. The structural division is reinforced by the real division of labour in the Service and has an impact on the occupational community as well. The OC is where prosecutors do the "real work" and not the "junk" of managing; where lawyers exercise their professional discretion in legal files and not personnel files (with its attendant claims of arbitrariness); and where gains in terms and conditions of employment are the result of the Association's efforts alone.

The divisive issue for management and prosecutors seems to be one of professional credibility. If managers have remained current in the law and have recent court room experience they retain the prosecutors' respect. Here is a typical comment from the manager's point of view:

It is important to maintain your forensic skills. Crown Attorneys will come to you for advice, and they will think 'I won't go and ask him he's not been in court for 5 years.' [Y]ou have to keep up to date and keep your skills up to date. It is important as a professional. (Lawyer O)

This notion of ongoing practice is echoed by non-manager prosecutors. " X [a manager] has never done a trial, he's only done very few appeals... and the experience was 25 years ago or whatever, so it is a whole different world [now]" (Lawyer M). Another states:

And there was a fellow who had done some appeals in the 70s and I think early 80s, apparently... had never done any trials, criminal trials, and that was all before the charter of rights and that was all under the old juvenile delinquents act of 1906 and then he'd gone into the bureaucracy. (Lawyer T)

Prosecutors are fairly consistent in their claim that lawyers make poor general managers, poor business managers and poor human resource managers as well. The worst case appears to be a single office where one manager went through prosecutors' court files with a red pen, circling items and writing comments directly into the files. This happened to some individuals and not to their court partners, so it was targeted harassment on professional grounds. Furthermore, it was claimed by one informant that senior management was aware of this manager's strict views and management style when the manager was appointed (the position was not competed). Following informal complaints from prosecutors, senior management still took no action to address this problem. Overall, prosecutors criticize managers for their silence and for not using the attraction and retention argument to support better wages and working conditions for the line prosecutor.

Management Control: Informal and Formal Varieties of Subordination

The development and application of policy is only one aspect of the prosecutors' frustrated labour process. Management practice in general and the idea of management as a regulating force in the workplace is contrary to the real practice of day-to-day work in the Nova Scotia Public Prosecution Service. Consultation with others is voluntary, and performance review is ad hoc, with recourse to direct observation through proxies; sometimes managers will ask judges for their informal assessment of a prosecutor's

performance. Although some managers say they review files, this is the exception in prosecutors' stories. Each day in court brings multiple files and the labour process is repeated in the same manner over and over. As a result, prosecutors internalize a discipline of disclosure and behaviour through repeated performance of their duties in court, with little overt external direction. Prosecutors rely almost exclusively on their peers for input and assistance on technical matters. Much of this consultation is conducted electronically, through the email system, and often those who practice in the regions never meet face to face with their advice-giving colleagues. "So I'll pick up the phone and call somebody and say, "What do you do in this case?" (Lawyer S)

The actual practice of management is quite nebulous, and does not appear to have a well-defined set of tasks across the Prosecution Service. For example, the way case files are assigned varies from one office to the next and appears to depend on the personal style of individual managers. In some cases it also depends on the volume of high profile cases coming into a specific office over a specific time period.

I know in our office we simply have a little office caucus every couple of times a week, just review the files that have come in, if there's anyone that would classified as a major file then we would agree amongst ourselves that, 'Okay, this one will go to whomever.' And it is quite informal. (Lawyer A)

Another prosecutor has a very different experience. He says cases "are all assigned through management" in a process that resembles "Wheel of Fortune" (Lawyer Q).

Control over the courtroom work process is partly autonomous and partly achieved through peer review. No management figure is present with the individual

prosecutor in court. Not only is direct supervision impractical but it would affect an individual prosecutor's confidence and ultimately their decision-making ability.

Prosecutors are assigned files based on experience and personal development needs. In the absence of clear guidelines personal relationships between a prosecutor and her manager may also have an impact on file assignment. One manager describes it thus:

I was assessing how they applied their discretion, looking at discretionary decision making, to determine how they made judgment calls. In the end they made those decisions on their own. I would not say no, I don't like the way you are doing this, or no don't do it that way. It is tough to do performance management for prosecutors. (Lawyer O)

The files themselves are all that exist as traces of prosecution work and the decisions that prosecutors make. However, many different prosecutors will touch a file as a case makes its way through the courts, giving each worker a chance to see how others have dealt with the issues and also offering a chance to give feedback in something appears amiss. Such feedback is given in the guise of asking for clarification or raising a point about one's current work in the file that has been affected by some earlier decision or omission. Supervision is loose, and prosecutors describe it as democratic. "So certainly if you do something in a file and then someone gets it the next time they'll see any mistakes that you made. There's sort of the peer file review" (Lawyer H).

Each office achieves a process for handling files through a type of consensus decision making. In some locations a senior person takes all initial court appearances, in others a regional office is managed like a small independent law firm. There are thus few tools available to management for exerting formal control over the labour process. Overt supervision is quickly noticed and severely resented; several prosecutors told stories of

being “micro managed” and how this led to their decision to seek new jobs/employers/work locations. The policy manual is one legitimate tool of managers. Prosecutors tell me that decision making on personnel matters is another tool of formal control. The threats of discipline, dismissal or disadvantageous file assignments in offices where a management employee assigns files are examples of how management exerts power over prosecutors. Hiring, promotion, and performance decisions with pay implications are other examples. Collective bargaining reclaims some measure of protection from management’s arbitrary exercise of this power.

Where a formal management role exists, these managers might take on the role of delegating cases to prosecutors. Sometimes they will take an overview, as noted above, handling every charge that comes in and sending each case to a specific prosecutor. The management role of delegating and controlling work is not consistent across the Service. In one office where the manager closely oversaw the work and reviewed the files, second-guessing the professional prosecutor, employees rebelled. Two prosecutors attributed their own departure and that of some of their peers to this style of management. The role of the manager in a prosecution office seems to be tacitly negotiated by the members of that office. The occupational community defines a limit on what type of supervision is acceptable, and the challenge for managers is to find a style that fits the OC. In many cases, however, managers explain the bulk of their work is dealing with personnel issues. Managers retain formal control through the policy manual; they develop its content and implement it. Over time managers in the Public Prosecution

Service seem to have taken up a traditional antagonistic relationship with the prosecutors in the bargaining unit.

Management as a function in the bureaucracy, and management practices as they are applied in the workplace do not fit well with the norms and reality of prosecution work. Management is portrayed as an artificial barrier in prosecutors' stories; a function that is not necessary and that often gets in the way of doing the work. Prosecutors overall did not cite any instance of contact with management that drew on the typical management functions of training and development, counselling, coaching, or performance review. Their tales were full of peer interaction and support, and when asked specifically about management, described the rift that formal collective bargaining brought about in the membership of the NSCAA, when the middle managers were formally excluded from the bargaining unit. Prosecutors' stories relegate management to a minor role, though sometimes a major irritation. The prosecutors themselves are at the centre of the labour process, and they are "going it alone" against the bureaucracy and the Government, disappointed at the lack of support from their lawyer peers in management positions.

The Strike

I expected the June 1998 strike to be a major event in each narrative. In each province where I interviewed prosecutors, some form of job action is mentioned in stories. However, the two day illegal strike by Nova Scotia prosecutors is certainly not the central event in prosecutors' narrative in the way I expected it to be. The strike is

neither the beginning of stories nor does it form the climax of stories in any consistent way. The strike was simply one tactic, one incident among many in a much longer narrative. Stories about the strike do reveal the genesis of overt, collective solidarity and the beginning of the use of union-type tactics within the occupational community. The use of such tactics helped to mobilize the members towards the aggressive pursuit of collective bargaining. Up to this point in the overall narrative prosecutors had used discussion and persuasion to convince the employer of their need for improvements in working conditions. Prosecutors relied on their professionalism up to this point. Their arguments for better terms of employment were based on the belief that prosecutors are unique and this uniqueness warranted special consideration from the employer. The use of various tactics progressed from the more benign to the aggressive strike as prosecutors felt these were warranted and as earlier attempts failed to achieve the desired goals. “They’d threatened to go on strike in ‘96. I think there were just rumblings of, you know, ‘we’re going to go on strike’; ‘we’re not going to show up’ and that never happened” (Lawyer H).

The [government lawyers] association, which was a combination, actually, of the civil and criminal people, that’s how it started... for about ten years it was kind of a combined group flailing around, really not doing much but ideas and things, but not a whole lot actually happening. (Lawyer M)

Considering a strike had been an almost intellectual exercise for prosecutors in their association meetings; they discussed it, debated it, but did not formulate any plans to take action. There were several debates and different philosophical viewpoints on the matter over a period of years until a definitive decision was made to strike in 1998. However, persisting through the initial decision is a bit of a sense that the prosecutors

were “making it up as they went along”. The hesitation to act seems bound up in professional inertia rather than lack of dissatisfaction with working conditions.

In 1998, shortly after the Savage government’s wage rollbacks and salary freezes, discontent reached a tipping point and found a voice through the Association. The membership agreed to stage an illegal strike despite misgivings. “Well, if it’s a mass protest, then... let’s hope it’s not like Ronald Reagan, we’re all gonna get turfed” (Lawyer M). There is a subset of the Association that formed an active nucleus, as described in this account of the strike meeting:

I remember the meeting very well... it was April of ‘98 and there might have been 15 people at the meeting. At this time there’s probably 65 Crowns around the province and we’re just talking about are we going to work to rule or what can we do? And everybody kind of said look work to rule just doesn’t work because if you’re there you’ve got to give it your all. ...so then someone said ‘well let’s just walk out.’ Then it was kind of decided: ok we’re going to walk out, 15 of us. (Lawyer H)

When questioned about how solidarity was achieved, and how the other 45 members of the Prosecution Service were encouraged to support the strike, the storyteller replies:

Peer pressure (she laughs). You just kind of went back and ‘this is what we’re going to do’, you know? Talked about why we thought we should do it and if we all stuck together it was going to be fine I think some people were very fearful of it. And [we] said no if we all stick together they can’t get rid of 65 Crown attorneys. (Lawyer H)

Even during the strike event itself members of the NSCAA are tentative. They describe their morning gathering on the first day of the strike and the uncertainty they felt. “You know, I remember the first morning we met downstairs in the food court here

together and we were all sitting in the food court just waiting. ‘Oh look, so and so came.’ The day of the event, we still didn’t know who was gonna show up” (Lawyer T). However, as the action gathers momentum, there is pride and enjoyment in the story. Prosecutors talk about support from Legal Aid “they brought us snacks”. Prosecutors hear from the judiciary as well; “It got a lot of press I think there was you know nationwide press as I remember. One of the judges was in BC [and he said] ‘I opened the paper and saw your picture in it. I was on vacation’” (Lawyer H). This same lawyer concludes the story saying “there was a picket, yeah, which was actually very fun. It was, yeah! ”

Not every prosecutor walked off the job. Varying accounts describe 6 or 8 individuals who did not participate. Some non-participants had court responsibilities they could not put over, at least one person was reportedly threatened by his boss, and some individuals in the offices outside of the urban core did not support the strike. Some prosecutors “didn't believe in unions” and “wanted to go personally and negotiate with Cabinet”. These prosecutors were seen as “black sheep”, and apart from the Director of the Prosecution Service, support for the strike was almost complete. “The effect of [the strike] was a demonstration of unity, which we had never had on any real level before and that then solidified people’s desire to do something more concretely insofar as, collective bargaining [was] concerned.” (Lawyer M)

Not every prosecutor who does participate in the strike finds the action easy. Intimidation was perceived by some, “One or two were threatened... X didn’t show up. He was threatened by his manager. And then his manager showed up” (Lawyer T). Others struggled with disillusionment and their sense of professional identity.

I saw myself as a professional who would be treated [fairly] I thought in private practice you would never have to do it [go on strike], or if you worked for government you would be treated fairly and with, you know, more respect than we were getting at the time and that it would just never, ever come to that, and I was absolutely horrified when it did. However, it was important that we did it and I participated completely and was docked the two days pay or whatever it was that happened. (Lawyer P)

The strike altered relations with managers. Initially all those who absented themselves from the workplace received a written reprimand. The NSCAA fought this action and those letters of reprimand were eventually removed from employee files, not, however, before formal collective bargaining negotiations had begun. The Association had to gain formal status as a representative of the non-management employees of the Prosecution Service before it garnered enough power to push management to action.

Early discussions in the various working groups on salary issues included management as partners in discussions with the employer and with the Director of Public Prosecutions. The advent of collective bargaining brought a traditional management-worker divide which was enshrined in the text of the first agreement. The strike was thus a critical event in terms of the organizations involved: the NSCAA and the PPS. In one way it defined prosecutors as 'different' because they were lawyers represented by their specific Association, an association which no longer included the civil lawyers in government. Prosecutors were distinguished as individuals who were willing to take action and fight overtly to improve working conditions. The PPS also achieved some measure of differentiation from other departments of government through this special agreement to set salaries and working conditions. This last distinction was less significant for worker-management relations than the NSCAA perceived, because the

Public Service Commission actually conducted bargaining and only consulted with management at PPS on issues and priorities. Though the strike in June 1998 achieved these structural changes, the strike was not as critical an event for individuals in their storytelling. Their professional and personal work stories dominate their narratives.

Fairness

The descriptions of collective bargaining clearly highlight the idea of fairness, particularly when prosecutors contrast their behaviour and code of practice with other lawyers. A prominent story in the prosecutors' narratives describes the bargaining table encounters with the employer's labour lawyers. Labour lawyers do not abide by the same ethics of disclosure or ethos of fairness in negotiations that prosecutors expect.

But we're bound by different rules that don't allow us to do those kinds of things [surprise opposing counsel]. So my practice is geared that way, and ...when we go into bargaining I have to change my mindset. Because when we first started, we would tell the government everything and give them everything, show them everything, and then they would say thanks and leave. (Lawyer Q)

This open approach does not work in negotiations, where secrecy and hidden agendas and sometimes even prevarication are the norm. The practised labour negotiators in government left the bargaining table without giving any information away to the prosecutors. This happened repeatedly in the course of the first formal collective bargaining round. Hope sprang eternal among the NSCAA bargaining team: "well that wasn't very nice. Oh, well they'll come back next time and tell us everything." Of course that did not happen. The revelation that disclosure does not apply in collective bargaining marks a critical learning point in the Association's new role as bargaining

agent. This is also a significant point for the occupational community, which had to adjust its behaviour and move away from the norms of the profession into a new set of behaviours for bargaining. Collective bargaining highlighted the occupational community by its contrast with the community's prevailing norms. A member of past bargaining teams described keeping the two personas very distinct: prosecutor was one form of professionalism and bargaining representative another. The ethos of fairness permeates both, but is used in the execution of work in the former and as a *reason* for undertaking the latter. The 'disclosure dissonance' of the bargaining experience is also used as a training opportunity for new members of the bargaining team. "Anybody new I'd take on to the bargaining team, I'd bring 'em on just to see that one specific thing, where they just go, "what? What the hell's going on here? What do you mean, they don't have to tell—that's wrong." (Lawyer Q)

Facing the challenge of disclosure in the first round of negotiations was a major hurdle for prosecutors as they navigated the unfamiliar bargaining culture and practice. It also was a turning point in the balance of power for prosecutors. Once they learned how to proceed in bargaining by establishing positions, using strategic revelation and not providing copious advance briefs, they describe a shift in the power balance.

Oh, yes. They know exactly what's going on. They love it. But the last couple of years not so good for them, 'cause we caught on to all their little tricks, right? So things haven't been going so well. 'Cause their old basic tricks, you know, used on non-lawyers, might still work— Not anymore. (Lawyer Q)

Underlying this "unlearning" of disclosure practice is an ideological theme as well. Prosecutors had difficulty understanding management's resistance to their demands

for bargaining rights, when those demands were presented in a full and logical manner, with research citing bargaining precedence in other jurisdictions. There was an obvious gap between the lawyer's paradigm or world view of carefully reasoned argument and the more politicized approach of collective bargaining. Government holds almost complete power in an employment relationship where there are no statutory bargaining rights and no right to strike. Government regularly acted without consultation with Crown prosecutors, as was its prerogative. Prosecutors interpreted unilateral Government action as a threat to the independence of the prosecution function. The ethos of fairness and the need to protect prosecutorial independence became a rallying point in the struggle of collective bargaining; a call that the creation of the PPS underscored and one that mobilized the occupational community.

[we experienced] ...just this continuous frustration... you'd think your fellow civil servants would act in good faith 'cause for a lawyer to act in bad faith you [could be disbarred] and especially in criminal law where you've got the Charter rights of fairness and so on. So it is just totally shocking to be continually treated this way. But I don't think the... Public Service Commission really cares, I don't think that's part of their mandate. (Lawyer T)

Another prosecutor sums up the frustration with working conditions and treatment received from management and the employer as 'craziness'. Describing the climate during the lead up and aftermath of the 1998 work stoppage she says:

The thing that bothered me the most during all of that [time] because it just kept getting crazier and crazier, was that people that practice criminal law spend their professional lives making sure that everybody gets their rules applied the same way to them. That's what we do for a living. We get paid to make sure that fairness and transparency and the rules of natural justice apply to the person charged with the most egregious thing out there and it didn't feel like we were getting that in return. It drove me crazy. So I supported [the strike] completely. I was never part of the bargaining team or anything, but I supported it and was

really quite surprised... that there was no grievance mechanism other than going back up through the same people that would have imposed the discipline. I mean it's crazy, it's just crazy. Anybody walking down the street would say, 'What? How can that be? That makes no sense to me.' So, the fact that we had to fight so hard to get such basic things was astonishing to me, just astonishing. (Lawyer P)

The theme of fairness becomes an ethos that forms the basis for solidarity in the bargaining unit. Fairness is the instrument that allows prosecutors to move successfully between exclusionary and usurpatory closure strategies in pursuit of power to control their labour process. A sense of fairness abused is not uncommon in labour disputes. But prosecutors have honed it and raised it almost to the point of ideology to distinguish themselves from other lawyers, from their managers and from the employer. Not only does the prosecution process demand fairness in a legal sense, prosecutors are supposed to be fair as people too and they treat others fairly in court. They are united in their understanding of their duty of fairness. But rules from autocratic style leaders and managers – especially on policy matters are perceived to come from those with little experience in the trenches of prosecution. So when the work process is interfered with and employer treatment is perceived to run counter to the ethos of fairness, prosecutors resist and challenge their treatment and policies and they seek mechanisms of redress.

At first the lawyers in government tried lobby and consultation with the Attorney General – as peer to peer, within the profession, advisor or counsel-type of discussion. However that effort achieved only minimal gains and did not result in fundamental protection for lawyers from further arbitrary salary action. One individual recalls that period this way:

At the time of the Ghiz Archibald report [1994] we felt that ‘man this is it’ ... This is saying everything we’ve been saying for years. And now we have scholars and judges saying that these people are underpaid and overworked and if you don’t do something you’re going to have a major problem in the work place. I remember going to a meeting and Bill Gillis was the Minister of Justice at the time and I was devastated because I had great faith in our political master, and he looked at us and he said ‘what do you think this is? The eleventh commandment? There’s no money. Do more with less.’ Do more with less... (Lawyer V)

Shortly after this discussion, wages that had been frozen across the civil service were rolled back three percent. Prosecutors describe this as a period of “major frustration” for all the NSCAA membership. Some individuals in management positions were earning less than their direct reports. Individuals with several years at the bar and experience in prosecution found themselves earning less than new hires who were able to circumvent the wage freeze by negotiating inflated starting salaries. “[T]here were a lot of anomalies and unfairness in the system” and little motivation at the top to improve matters. The Director of Public Prosecution’s salary is linked to the Chief Justice of the Provincial Court and is set by independent tribunal; he did not feel the impact of the wage roll back and enjoys a salary set at approximately five times the starting salary of prosecutors. Thus both at the immediate supervisory and at the employer level, prosecutors felt the injustice of arbitrary action – they railed against the *unfairness* of their treatment.

Arbitrary Action and Reaction: Formalizing Organizations Around Resistance

Civil and criminal lawyers were employed in separate divisions of the Nova Scotia Department of Justice prior to 1990. Each year the department held an education conference bringing both groups of lawyers together for two or more days of

professional development. The event also contributed to team building in the department. The first concrete unilateral Government action prosecutors relate in their stories is the division of the education conferences between civil and criminal branches of the Department of Justice. From approximately the end of the 1980s onward, the two groups held separate conferences. This division is isolated in prosecutors' stories as an important moment. It is not a pervasive story, because not all prosecutors have personal knowledge or experience of this event. However, several prosecutors describe the split as a divide and conquer tactic that spurred a strong response. Prosecutors mobilized the membership of the lawyers' association to create an organization to represent of prosecutors alone. The former Government Lawyers Association was faltering and prosecutors wanted to keep momentum going in order to maintain gains in overtime and working conditions. They were also in pursuit of larger salary goals and a permanent salary setting mechanism.

Though the details vary in stories, all participants know the two groups of lawyers used to be together in one joint association, the Nova Scotia Government Lawyers Association. No one is clear why the civil lawyers faded away and there do not appear to be any documentary records of the Association. The current NSCAA record keepers do not have any of those materials. The head of public prosecutions was active in the nascent group and the current deputy minister of justice was president of the NSGLA in its early days. Different reasons were offered for the decline in civil lawyers' participation: lack of will, changed organization structure, an independent PPS identity, or loss of interest perhaps. The people leading the association were promoted to

management roles, which may have eroded some of the NSGLA impetus. The face to face meetings at which lawyers gripe about conditions and salaries was restricted to just prosecutors, and while this lowered the number of individuals involved, they were all facing the same work conditions and management team, and thus this became an excellent forum to express their occupational community goals. No matter the cause of the decline in civil solicitor participation in the government lawyers' association, the end result is clear: the prosecutors had a clear vision of their role and they had a goal which differed from that of other lawyers. Those other lawyers, civil solicitors, workers advocates, and legal Aid lawyers have been content as "free riders" on the coattails of the prosecutors wage gains.

One key respondent frames all his critical events as acts of opposition to unilateral government action. A specific story blends the power of formal policy with conflict over personnel management. This story details how government changed the internal dispute resolution policy for all civil servants. An internal complaint process existed with a final step that ended with the Director of Public Prosecutions and Public Service Commissioner. The negotiated agreement (framework agreement) between the NSCAA and the Government had three phases, the first of which was a salary setting mechanism. Phase Two of the framework agreement called for a grievance procedure: "The Employer and the Association agree that there exists a mutual interest in having an effective dispute resolution mechanism... and makes jointly this statement of intent to implement such a mechanism in a timely manner" (Province of Nova Scotia, 2000). Prosecutors wanted third party resolution of conflicts.

The Public Service Commission developed a new grievance policy in the period between the 2000 signing of the framework agreement and the conclusion of the first salary arbitration in 2002. PPS senior management announced meetings to “consult” on the revisions without any prior discussion with the Crown Attorneys’ Association. This initiative was purported to be the settlement of Phase Two of the Framework agreement. The new policy was not discussed or negotiated; it applied across the whole civil service, and in the view of the NSCAA was not joint as the agreement required it to be. This story epitomizes prosecutors’ descriptions of unfair treatment and deviousness at the hands of the employer. It served as an instance of mobilization for the Association: members used email and phone calls to convince their peers to boycott the ‘consultation’ sessions. Resistance to forms of objective labour control reinforced the solidarity of the nascent bargaining unit. The ethos of fairness, which unites the occupational community, provided a basis for resistance and solidarity of the Association as well. Further examples of the employer’s complete autonomy to impose working conditions are given in numerous other stories, some many years after the framework agreement was bargained.

End of 2006 they converted all the terms to full-time positions. Without, apparently, a competition. Because it was the will. The will of the world, I guess. Management, PSC, whoever it happened to be. They can make things happen when they actually want to. (Lawyer Q)

Individual stories change over the course of a whole narrative. Prosecutors reflect less of a divide between management of the Prosecution Service and employees as they work through the stories of their collective bargaining experiences. The centre of conflict becomes the Public Service Commission, the human resource agency of the government

employer. The PSC is the opposition in the struggle for bargaining rights. The continuity of employment gives the Association great strength. Many individuals who know the history are still employed, and newcomers have been steeped in the history of the struggle.

What I would say is that a number of the people who have been Crown attorneys and who have the labour relations experience are now in positions in management. [T]hey will carry with them that experience into management and that might change the dynamic to the extent that the management group can influence labour relations in our context because, I think, essentially the Public Service Commission are the governing authority really here, the determinative group. (Lawyer M)

The Public Service Commission, on the other hand, has seen almost complete turnover in the years since 1998. Lawyer M explains “we don’t have anyone there with corporate knowledge of our situation”. The NSCAA does not have strong relationships with anyone in this central HR agency and profoundly distrusts the policy initiatives, bargaining tactics, and bargaining agenda of the employer. Once again this isolation contributes to the strength of the occupational community.

Prosecutors base their struggle for bargaining rights on a need to counter the arbitrary actions of their employer. The result of this struggle is fairness achieved in the form of a fair salary setting system and a dispute resolution mechanism. Even more important, however, is the recognition that the Association is a valid form of employee representation and bargaining is necessary and compatible with the professional project of prosecutors.

Epic Stories

Many of the prosecutors interviewed change their tone and manner when moving from stories of their career to those of collective bargaining. The collective bargaining story is told with much more effort. Prosecutors take a significant pause at the outset of the story; they readjust their position and take large inhalations, for example. Lawyers launch right into the stories of their careers without any preamble, but prefaced the collective bargaining stories with phrases such as “I need a fireplace and a pipe. I could be Wilfred Brimley telling you the story” or “Gather ‘round, kids” and “Let me collect my thoughts here”. In addition, bargaining stories are constructed as epics. In these epic stories heroes face irrational opposition, discover the way the opposition operates in a loss of innocence, and then find within the occupational community the resources to overcome this opposition and ultimately triumph. The new social order that is established positions the Nova Scotia Crown Attorneys’ Association as the agent of power in the workplace; “we are the ones that achieve something for prosecutors”.

The storytellers emphasize the change and difference that bargaining represented by changing the way they tell these stories. The storytelling process reflects changes in prosecutors’ relationship with institutions in their stories. The career stories are more passive, quickly told tales of assimilation. There is no resistance, and no struggle in the career stories to form or to adopt an identity as lawyer. The profession as an institution that controls access, education and standards is reflected in the way prosecutors tell these types of stories.

On the other hand, the active change agent role taken on by the Association parallels a change in the power relations in the employing organization and also emboldens the storytellers as they recount their experiences. The new Association role also impacts professional norms in an important way to include a collective voice for previously autonomous individuals. The institution of the profession is subtly redefined by the prosecutors themselves as they build an occupational community around their ethos of fairness. Prosecutors assert themselves upon the profession to craft an identity as specialists in a niche of legal practice. They use forceful language and much action in their stories about fairness and their labour process. The prosecutors' ability to build an occupational community with a sustaining ethos of fairness lies at the heart of their movement between strategies of individualized professionalization and of collective bargaining. Prosecutors' place on Krause's continuum of closure strategies has shifted subtly compared to their non-bargaining peers. Additional instruments of closure are taken up by prosecutors, while their relationship to the labour market and forms of regulatory control are more limiting.

Closure Continuum Revisited

Study participants call collective action different things. "we don't have bargaining – we have a salary setting mechanism" was a common refrain among the prosecutors interviewed. Arbitration, and especially the legal battle in the arbitration hearing, resonates for members of the Nova Scotia Crown Attorneys' Association. Arbitration consumes most of the bargaining resources of time and money. Arbitration also garners more attention from NSCAA members as the hearing format is much more

familiar to prosecutors than a negotiating table. Since bargaining has failed to produce a negotiated settlement since the first framework agreement in 2000, arbitrated wage increases are the norm. This nuance is important to prosecutors' interpretation of their experiences because it alters the label on the instrument of closure, and allows prosecutors to remain in the realm of the profession while appropriating strategies from the realm of the union.

Certainly,—we're in a different workplace in its entirety. We're somewhat left to do our work in the purest form, and don't have to worry about...fear of discipline for no reason ...whether or not you are going to fall under that wage freeze ...because we have a bargaining relationship with the government. (Lawyer Q)

Returning the closure continuum, we see the prosecutors are positioned between two instruments of closure: collective bargaining and professionalization. Progress along the continuum is not unidirectional, as illustrated when the legal profession revises its Legal Ethics Handbook to codify practices long after full professionalization is achieved. Likewise, prosecutors skip steps in the continuum when they bypass state sanction and certification, proceeding directly to a union shop.

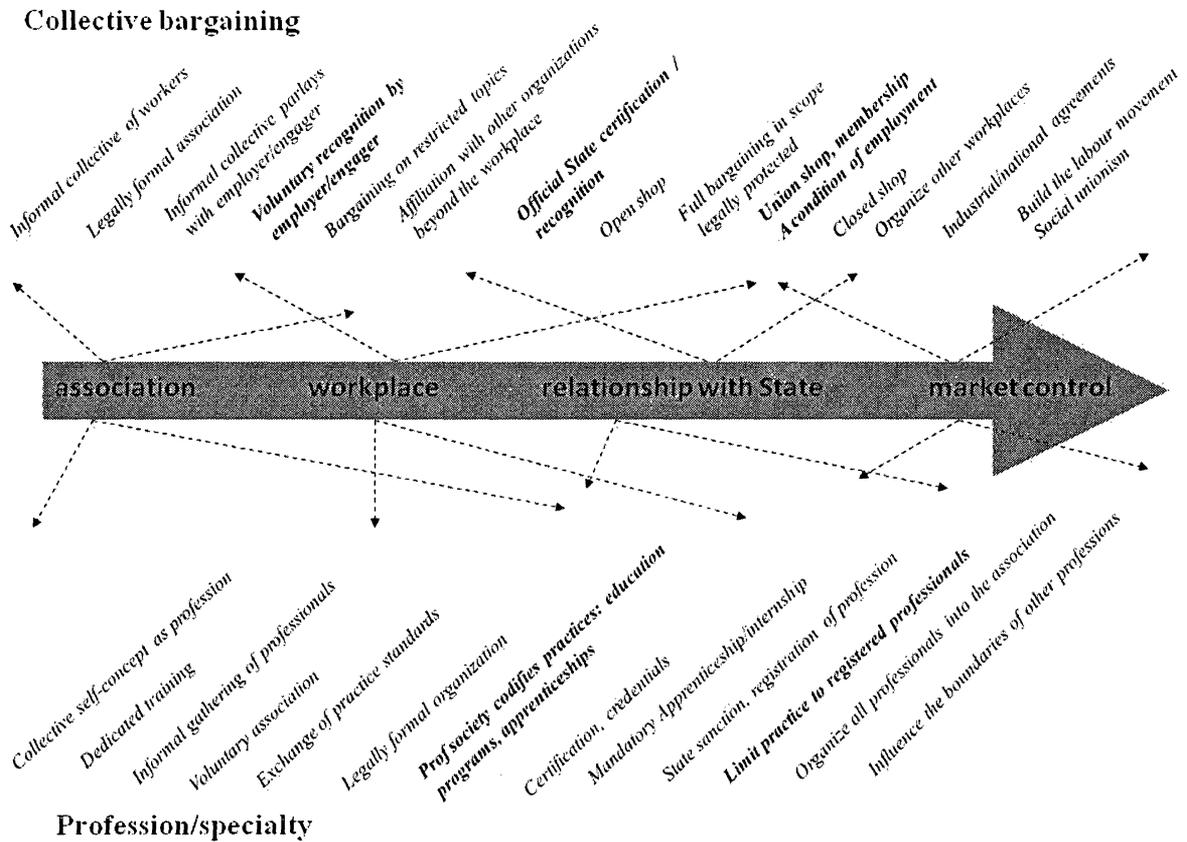


Figure 3 Emphasis in Closure Continuum

The story structures reflect a pattern of logic and rational thought, governed by an ethos of fairness that confronts irrational, arbitrary action from an opposing force. The catalyst of collective voice, nurtured in the occupational community, overcomes the opposition to allow the individual professionals to triumph and overturn unfair treatment. The Association is now where people turn for satisfaction of their workplace complaints. The individual action of key players has been solidified into procedures, such as a regular bargaining cycle and a series of agreements that the Association now owns and oversees. Procedures and tools in turn provide the potential to act on complaints for all prosecutors, not just those bold enough and political enough to have led the original charge. So we

see Giddens's structuration at play again. As mentioned at the outset of this chapter, the cycle of action turns into structure, which enables action in return. This cycle is reflected in the history of the Public Prosecution Service, and in the experiences and stories of the prosecutors. The stories move prosecutors forward not just through time in a chronological sense, but with energy into new frontiers. They have redefined their niche of the profession with a specific ethos and used that ethos to embrace new forms of closure.

The Importance of Structure in Organization and Occupational Community

Structure was the genesis of practice and in turn it has followed practice. The prosecutors became contractual appointees and then an organization formed around them in the Department of Justice (Archibald, 1989). The prosecutors were concerned with their lot and they formed an association representing all lawyers. This was a loose grouping that relied on informal discussions and sought a champion to carry forward suggested changes and improvements to Cabinet. This broader group of lawyers used the privilege of personal relationships with elected officials under the system of Order in Council appointments to achieve direct gains in workplace rights. Their action was still 'within' the fraternity of the legal profession and government appointees. This is clearly illustrated by one respondent who introduced each character in his narrative by their political affiliation and family ties. The power of the employer to act independently and without consultation changed some of the formal structures and employment conditions for prosecutors but led to prosecutors to resist. The practice of gathering together to seek redress, already well established, led to formation of the NSCAA with a defined purpose:

to seek a salary setting mechanism and grievance resolution process, through collective bargaining. Prosecutors first had to coalesce as an occupational community, however, in order to interpret the actions of the employer as unjust.

Structure plays an important role in forming the occupational community. The fact that prosecutors are gathered together into a single organization helps to forge a community in which prosecutors are easily identified by others in the profession and in society in general. The workers share similar work conditions, and turn to each other through the technical tools of work to get support and advice. These are necessary steps in a union organizing drive as well. The formal education conferences for the whole Service provide an opportunity for the prosecutors' own association to also meet and develop their employee-specific concerns independent of management. In the urban centres several prosecutors are gathered in the same physical location, and share tools and resources for their legal research. In almost all cases prosecutors have court partners with whom they share actual cases and files, as well as the work environment with a specific judge or judges and defence counsel. Even in small centres there is a closeness and camaraderie that extends to social events. "Christmas parties for prosecutors were all held on the same day and I ended up at the Dartmouth office and commiserated with my former colleagues that I was no longer a part of what was the greatest little law firm ever." (Lawyer P)

Prosecutors express a set of values as active agents who present the 'facts', are neutral, have a quasi-judicial role and make significant decisions. These values led to them to interpret the employer's actions, management's actions, and their captive

situation of powerlessness as 'unjust'. They turned their professional values, nurtured in an occupational community, into the basis for collective action.

Conclusion

Stories of early apprenticeship and early career reinforce the characteristics of a tightly bound occupational community. The prosecutors describe consistently how their early apprenticeship to prosecution is intense. They are on their own almost immediately and though there is a strong network of support for asking questions, they work independently and come to rely on themselves quickly. In all but two cases of those I interviewed across Canada, the job search was also very rapid. Prosecutors describe choosing criminal law and then finding a job. Though the practical aspects of the search, interview, etc. may in fact have been more complex, the story is presented as a smooth transition once the idea and norms of criminal prosecution were embraced by the incumbent. Prosecutors still embed themselves in the legal profession when they refer to their employment as "my practice".

Crown prosecutors definitely "work together, have some sort of common life together and are to some extent separate from the rest of society" (Salaman, 1974, p. 19). Nova Scotia Crown prosecutors invoked closure through the NSCAA as a way to separate from management and the Public Service employees generally. They use the organization structure of the PPS to establish their expertise as prosecutors and control over the practice of prosecution and they use the Association to reclaim control over their labour process. They have little faith in management either to advise on policy or to

oversee their work. Although they welcome every prosecutor to the association as a member, they also see some management as hiding from the real work of practising law and they push those managers out of the occupational community.

The occupational community finds its expression within the environment of dependent employment. The community was defined as prosecutors transitioned to dependent employment. But the full realization of the power of the occupational community lies within the execution of prosecution duties; the independence and the requirement for fairness in all dealings. This is the ethos that both sets prosecutors apart from other lawyers in general and unites them within the prosecution service. The classic labour gripes of poor pay and inadequate working conditions are the surface issues the media reported during the June 1998 strike. But the malaise among prosecutors was more fundamentally tied to their labour process. It was powerlessness that irked the professionals so profoundly, in addition to the arbitrary treatment by individual leaders and by government policy on a broad scale. Their efforts to address these injustices through internal, informal networks of lobby and consultation with Attorney general were unsuccessful. This further isolated them from any collegiality of the Bar that may have previously existed, and pitted prosecutors against their own senior management and the Public Service Commission. It is interesting that despite some very strong political views among key informants for this study, there is little targeted animosity towards the parade of Attorneys General, with only one exception described above. Otherwise the prosecutors attribute action in their stories to those closest to them, their colleagues and

direct managers, or else the Public Service Commission as the employer and implementer of Government's policy decisions.

Is an occupational community necessary for collective action among professionals? The data from this study shows that such a community is united on a dimension that speaks to their professional tenets and has a goal that reinforces professionalism in conjunction with usurping power from the employer. Circumstances and history combined to highlight prosecutorial discretion in the Nova Scotia Public Prosecution Service. The presence of a strong occupational community enabled prosecutors to articulate their concerns and reconcile collective action with professionalism. This case indicates that occupational community is the vehicle that enables prosecutors in Nova Scotia to articulate an ethos and then to build union solidarity. Is the professionals' goal any different from that of other employees? The literature provides arguments for and against this proposition. The goals of professionals are those of all employees, namely control over their labour process. Perhaps the difference between professionals and other workers is no longer one of class as Parkin suggests but of one of the order of events. Prosecutors are workers, plying their trade in a captive situation, subject to structural constraints and practice norms. Social boundaries limit their relationships and they simply want recognition for their efforts - compensation when their labour process is fettered. However, they cannot abandon the essential element of their professional project, the exercise of discretion, in pursuit of collective bargaining goals. The individualism of the profession fights against the collective nature

of bargaining. An occupational community seems necessary in order for professionals to articulate a theme that traverses both forms of closure.

Prosecutors sell their labour but they still control the deployment of their expertise. Bureaucratic policy fetters their professional discretion somewhat as does the criminal code but they also set the boundaries of the profession. Prosecutors resist the rules by not applying them, by criticizing them, and by using their professional and prosecutorial discretion. They assert their professionalism, in their daily reaction to their employed condition. They may use tactics of unionists but they come to these as professionals and do not abandon one identity and rhetoric only to replace it with another. Prosecutors have built perhaps a new breed of unionism built on occupational community and manage to traverse the dimensions of closure without giving up their professionalism. In fact it is reinforced through this experience.

Because of the Association and the profile building that we've done, the actual view of a Crown attorney has changed by other lawyers. There used to be a time when we weren't considered really lawyers at all. You were just considered ...throw-aways. If you couldn't get a job, then you were a Crown attorney, ...a government lawyer. The Crown Attorney's Association's there... to protect Crown attorneys who are valuable. (Lawyer Q)

As a profession evolves into specialized sub-segments, a new community arises from stratification of the work (Van Maanen & Barley, 1984). Prosecutors draw on the strength of the professional inclusiveness and the structure of captive employment, yet they move further into an occupational community than either the other members of their profession in private practice or other lawyers in the civil service. Using that occupational community to craft an agenda for labour process control, prosecutors raise

the status of their professional niche and secure more control over the workplace and working conditions. At the same time, the development of collective bargaining projects across the country reinforces the occupational community of prosecutors on a national scale, what Salaman would call the cosmopolitan (Salaman, 1971b). The knowledge that others are struggling who share values and do similar work enables prosecutors to move across the country and build a broader occupational community.

The structure of the Public Prosecution Service and the evolution of the prosecution function contributed to building a distinct occupational community among prosecutors. The OC is built on the dimensions of strong involvement, dominant values, and marginal status. These features alone are insufficient to explain the strength and sustained length of the prosecutors' struggle for collective bargaining. The prosecutors' occupational community is further underpinned by an ethos of fairness. The ethos of fairness appears in their work, their struggle, and their stories. Prosecutors create a narrative of epic proportions that sets them on a quest for fairness. They seek a way of distinguishing themselves from other government lawyers, a way to set themselves apart from the rest of their profession, and a means to rise above their marginalized status. Collective bargaining is the strategy that achieves these goals. A strong occupational community united around a compelling ideology or ethos was necessary to mobilize prosecutors in their quest. Wage rollbacks may have been a triggering event in the prosecutors' narrative. A salary setting mechanism was the first major gain in their struggle and is source of satisfaction for the community's members. Salary may have been the opening volley in the struggle, but fairness became the anthem.

Chapter 6 Conclusions and Recommendations

People are capable of maintaining many separate identities, often tied to different life circumstances. We need only think of an individual who is a parent, a spouse, an employee, and a community volunteer to illustrate this point. Often those identities are circumstance-specific. Such is not the case for prosecutors. They are not moving between different locations as they navigate across identities. Both their professional and collective bargaining identities are rooted in their work experience and these identities are compatible, not mutually exclusive. This dissertation asks how it is possible to strongly maintain both forms of closure, exclusionary and usurpationary closure, in the same work context. Prosecutors manage to accomplish this task. Their dual closure strategies coexist through the unifying effect of an occupational community. The social support, sharing of work stress and definition of prosecutor role in this OC achieve demarcationary closure within the profession; prosecutors are set apart from their legal peers and from other public service employees through the presence of their occupational community. The OC also defines the issues around which prosecutors rally their workplace concerns. The occupational community gives voice to an ethos that crosses both professional and workplace concerns and permits prosecutors to be fully engaged in their professional project at the same time that they engage in collective bargaining over their terms of employment.

The law is arguably at or near the pinnacle of the hierarchy of professionals in Canada. Law may not enjoy the broad popular support of medicine, perhaps because

lawyers work in for-profit private practice in a country where medicine is still largely a public service. However, law is a fully realized closure project and its members enjoy the status and earnings of full professionalization. Lawyers exercise almost complete control over the application of their expert knowledge and over their work processes. Lawyers maintain control over access to their profession through self governance and the self employed/partnership structure of legal work. The legal profession is evolving, however, as the literature and my research interviews demonstrate. The legal profession is a rich site for research into how features of the contemporary workplace impact a longstanding social institution. Specialization, issues of governance, autonomy, formal and real labour process control, and accountability for the public trust are all issues brought into sharp relief through a study of lawyers' employment experiences. Crown prosecutors vividly illustrate the convergence of these pressures in their struggle for collective bargaining.

In this dissertation I described the history of prosecution in Nova Scotia and the evolution of employment structures in order to understand the relationships between Crown prosecutors and numerous other actors in the social relations of production. Marsden (1999) encourages researchers to reconstruct the present day employment experience through study of the deep structures that underlie it. In this case, I examined the profession and the workplace in order to understand how prosecutors maintain their membership in both. They accomplish this through the choice of different closure tactics. The prosecutors' sense of professionalism is more complex than a reaction to a superficial encounter with either the profession or workplace; it is rooted in a "historical

process and its explanatory reflection in thought” (Engels, 1967, p. 895 quoted in Marsden, p. 99). Analyzing the stories of prosecutors reveals the structure of social relations within the profession and within the workplace. Analysis of the relationships between these two social institutions, profession and workplace, reveals an occupational community. The presence of this community within the profession shapes prosecutors’ choices for collective action in the employment setting.

Nova Scotia is a particularly appropriate site for this study because the Nova Scotia Public Prosecution Service (PPS) has a unique relationship to the Government. Due to its history the Service enjoys a measure of independence. Guidelines and instructions on cases from the Attorney General must be written and reported. The issue of independence in prosecutorial decision-making is particularly sensitive in Nova Scotia, and notions of autonomy and subordination are especially acute. Nova Scotia is not unique in its experience of public scrutiny however, it is a first instance of an independent prosecution service in Canada and thus an important opportunity to study the effect of such a structure on the legal profession and employee representation in collective bargaining. A case study approach is well suited to examining the Nova Scotia experience as other studies of the process of labour mobilization and the institutionalization of collective power have shown (Haiven et al., 2005).

Contribution of the Research Project

The Employed Professional

The theoretical themes upon which the dissertation is based, professionalization, collective bargaining, and occupational community, each address ways in which people organize their work: the work spaces, work processes, the rules that govern workers, access to work, and the broader social relations of work. Each theme is distinct because it takes a specific perspective on these various aspects of work. Each theme explores a different form of worker control. The manner in which the themes reinforce each other is the major contribution of this research. In particular, this project examines the relationship between a large social institution, the legal profession, with a dominant role in the economy and in crafting and upholding social rules, and the power of its individual members when those members step outside the usual employment structure and become dependent employees. The workings of instruments of exclusionary and usurpatory closure are examined in this study and found to converge in cases where professionals are employed.

In this case study of Nova Scotia Crown prosecutors I found professionalization to be an evolving process, whose structural forms are slow to change but whose members differentiate and adapt themselves to market realities quite readily. I also found collective bargaining coexists compatibly with professionalization in a dependent workplace when an occupational community is clearly defined among employees. Furthermore the occupational community provides a discourse that crosses the

ideological divide between forms of closure. The basis of such an occupational community is founded jointly in the professional project and in the nature and culture of the employment setting. Thus the two forms of closure; professionalization and collective bargaining can and need to be examined together. Furthermore, a basis for compatibility can be located in the operation of the professional project itself.

Interest-based associations alone do not appear to be sufficient to mobilize workers. The Nova Scotia Government Lawyers Association, for example, did not mobilize workers in collective action. That group faltered for reasons that have not been documented; however the location of individual civil lawyers in separate client departments of government may have impeded the formation of an occupational community. Civil lawyers did not have the rallying point of an ethos of fairness in the way prosecutors did. The Civil Trial Lawyers' Association mentioned by Lawyer R in Chapter 5 is also in marked contrast to the associations of prosecutors that engage in collective bargaining. Prosecutors perceive that there is little to bind lawyers who do not share working conditions. In fact, lawyers in private practice agree. However, shared working conditions alone are not enough to mobilize workers either.

The marginalization of a professional specialty coupled with organization crises isolates workers from their profession and reduces some of the rewards of professionalization. Thus separated from the support of their profession, these workers turn towards each other to form a new type of solidarity. This solidarity is based on a language of professionalism and individuality, similar to the profession's norms, but through a shared workplace it also mobilizes workers to take collective action. A

structured association arises to support the occupational community when workers articulate a sense of injustice. With the support of a powerful ethos or discourse the OC can help to mobilize workers towards collective action. Further research is needed to explore whether this phenomenon exists in more loosely affiliated work settings, especially since occupational community has been identified across workplaces and not just within them. Investigation is also warranted in instances of OC solidarity which do not lead to collective bargaining.

Summary of Findings

Benefits that accrue to professionals as a result of successful closure were eroded when prosecutors became dependent employees. The vehicle of professionalism, which serves their self-employed colleagues adequately, was failing prosecutors in this new environment. They lost respect, status, and financial security. Prosecutors turned to collective bargaining in order to reclaim some of these benefits. In particular, they looked for wage increases, job security, and guarantees of professional development to maintain their skills. They remade an existing association to represent their interests to the employer and foster solidarity across other provincial prosecution services.

The Research Question

The research question I posed in Chapter 2 asks how is it possible for professionals to move back and forth from usurpatory to exclusionary strategies of closure and still maintain full membership and support for each form of collective to which they belong: the profession and the collective bargaining association. I examined

three forms of worker control that converge in the case of Nova Scotia Crown prosecutors to find an answer to this question. Professionalization, collective bargaining, and occupational community are all instruments used by prosecutors in an attempt to control their labour process. These professionals develop an occupational community based on their professional specialty. The occupational community is rooted in an ethos that speaks to both professional ideals and the dependent employment condition. The occupational community bridges the apparent gap between two worlds of closure. OC allows professionals to move back and forth between closure strategies, negotiating different identities as professional, prosecutor, employee, and bargaining association member. I studied a series of elements related to each of these forms of worker control in order to understand how prosecutors were successful in embracing all three instruments of control. Below I summarize the key aspects of the research project and my findings. I then reflect on the implications of this study and possibilities for future research.

Professionalization

My study began with a discussion of the professionalization, and the legal profession in particular. The general literature on the professions holds many insights for this study. What has occurred in the medical profession, for example, is a continual differentiation of specialties as the profession matured and as technological and scientific advances were embodied in practice. A similar process has occurred in the practice of law, with particular emphasis on private practice and the growing complexity of commercial transactions and civil litigation. Legal firms now exist that have very specific expertise. Individual practitioners are also identified as experts in very specific

applications of the law. Statutes and case law have also evolved into a more complex web of rules and precedents which complicate the practice of criminal law.

Specialization has segmented the profession into niche practices. The professionalization project in the law continues to evolve requiring its members to reassess and adapt their tactics of exclusionary closure. Education requirements and access to the profession have become more structured and the boundaries of the profession are carefully drawn. For example, the Nova Scotia *Legal Professions Act* specifies what tasks belong to the profession; it defines the practice of law, and specifies the boundaries between law and other occupations.

Dependent Employment

Crown prosecutors in Nova Scotia practice within this evolving profession and they are socialized to the profession's dominant norms. For example, they refer to their work as "my practice". However, the prosecutors are located at the intersection of two important developments. They are highly specialized and are found in dependent employment. The prosecutors' employment structure is tied to the segmentation of the legal profession and the specialization of the public prosecution function. They are gathered into a single group and the business side of law as well as competition for work is no longer part of their professional experience. All prosecution work is controlled by employees of the Prosecution Service; they perform the work or else delegate it.

Prosecutors are further distinguished from their self-employed peers because they share working conditions and terms of employment that are not of their making. The status of dependent employment creates an 'other', an opposing force in the form of the employer.

The bureaucracy of the civil service and its emphasis on management roles and control through policy introduces a control in the labour process that lawyers are not necessarily trained to understand or to accept.

At the outset of this research I hypothesized that the tightening controls of bureaucratic and direct personal resistance (Hodson, 1995) led prosecutors to become isolated from the profession of law. The power inherent in the professional project is diminished when lawyers are employed in a dependent employment relationship. Their autonomy is eroded and professional discretion is threatened. Both segmentation in the profession and grouping lawyers into a single place of employment without the ownership/business aspect of a legal practice changes prosecutors' perception of professionalism to the point where their behaviour is markedly different from their legal peers. Public challenges to the integrity and professionalism of Crown prosecutors negatively impact their status in the profession and in society. This undermining of the public function of prosecution exacerbates the prosecutors' feeling of isolation from the balance of the profession. Prosecutors drew on the power of the profession to define their niche, yet the exclusionary closure of the profession as a whole failed to satisfy their interests. Professional collegiality also failed to control their labour process (Hinings, 2005). As a result, prosecutors look for an alternate instrument to achieve their professional and workplace goals.

Occupational Community

My research examines the elements of occupational community to determine which are important for prosecutors. I found many of the determinants and characteristics of occupational communities are present in the case of prosecutors. These professionals have a strong involvement in their work and identify with their specialty from a very early point in the professional training. They are distinguishable from their legal peers on this dimension, which is reinforced through their demanding and solitary work experiences. Prosecutors form a close social bond with their reference group of peers, with whom they share a strong set of work values. As individuals many are also driven by a strong sense of social justice. As a group they share difficult working conditions and have a need to consult with their peers on professional decisions. Though in dependent employment, they are autonomous to a large extent and difficult to supervise. They are marginalized through low pay and government employment.

The occupational community gave prosecutors a bridge between professionalization and collective bargaining. OC gives its members a language that makes sense in both contexts, and enables them to tell their stories as professionals and members of a bargaining association without sacrificing the benefits of either closure strategy. An occupational community enables prosecutors to move between strategies of usurpatory closure and exclusionary closure to maintain their professional identity and vigorously pursue bargaining rights.

The characteristics of occupational community are enhanced in dependent employment with the Public Prosecution Service. In the context of a strong professional project that has achieved social closure to the extent the legal profession has, there needs to be something more that mobilizes professionals to seek bargaining rights. In the case of Nova Scotia prosecutors it is the presence of an occupational community that is characterized by an ethos of fairness and independence. This is fertile ground for mobilization when prosecutors are faced with bureaucratic work setting. The Charter of Rights and Freedoms and the Criminal Code of Canada demand impartiality and full disclosure of evidence by the prosecution in a criminal trial. The history of the organization of public prosecution services and the PPS policy manual are constant reminders of the need for operational independence from elected officials. The values of the prosecution service play an important role in binding the members together more so than the friendship and social aspects of OC.

The emphasis in the Nova Scotia criminal justice system on independence comes from the legacy of the wrongful conviction of Donald Marshall Jr. and is an important part of the culture of the Public Prosecution Service. Prosecutors take this notion of independence and marry it to the requirement for disclosure and fairness in their practice of prosecution to create an ethos that permeates all of their stories. They see their circumstances and they interpret their experiences through a lens that demands they remain impartial but that also requires impartial, reasoned behaviour from others. When prosecutors encountered irrational, indefensible, unfair treatment from their employer, they mobilize their ranks to push for collective bargaining rights. The struggle endured

for over a decade before a first agreement was achieved containing the two fundamental elements of a collective agreement: a salary setting mechanism and a grievance procedure. The struggle continues as bargaining moves forward.

I asked in the course of this study whether there is a hierarchy of specialties in the legal profession and as a result ,if there is a proletarianization within the profession, or somehow a subordination of the specialty? I found that yes, prosecutors perceive a hierarchy that is based on status, competence and salary. But it is not clear whether that subordination is due to the nature of the work (i.e. dirty work), or if it is due to dependent employment. Prosecutors are dedicated to the ‘pure practice’ of their profession and I have found they are not proletarianized (Rosen, 1999). By this I mean that although prosecutors do not own the fruits of their labour, they still exert autonomy over how they practice their profession. The formal control imposed by management encroaches on that professional autonomy, and is couched in terms of both efficiency as well as quality assurance. In contrast, the lawyers in the private sector describe their management control almost solely in terms of quality control and mentorship. However, prosecutors are able to resist the formal control of their management bosses partly because they work independently and are not closely supervised. Prosecution work is not subject to machine discipline nor is it Taylorized into prescribed steps and tasks. Individual discretion enters into each case file and provides an opportunity for prosecutors to resist management’s formal controls. The expression of resistance in the form of collective bargaining leads prosecutors to build a separate identity within the broader profession and they reclaim some of their status and economic power. Prosecutors engage in collective action to

protect and preserve the aspects of their professional work that make them unique and set them apart from other branches of their occupation. The two factors of dependent employment and occupational community are entwined and consideration of both is necessary in any explanation of the prosecutors' experiences.

Bucher and Strauss say (1961) that social movements come from segmentation of professions. It was obvious in my interviews that a common education and socialization for lawyers do not build a sense of collectivism. Only at work do prosecutors develop a differentiated professionalism when they come face to face with the demands of their job tasks and the social context of the workplace. This social context includes the support from members of their peers as well as the stringencies of management control in the civil service bureaucracy.

What is it that binds a community, brings it together and gives it the capacity to act? Kelly (1998) sees injustice as a key element in mobilization. The wrongs suffered by an individual must be seen to affect or threaten the broader group, redress must be possible, and the end result must be worth the fight (Kelly, 1998). These are values prosecutors express when they describe their sense of professionalism. The profession from start to finish embraces and reinforces the values of autonomy and independence. For mobilization to be successful, prosecutors need to possess some further element that binds them.

Collective Action

How does the existence of a strong occupational community impact the struggle for collective bargaining? The shared ethos of fairness is vocalized daily in the course of prosecutors' work and regularly in meetings of the bargaining association. Each workday experience contrasts the professional demands of independent judgment with the realities of dependent, supervised employment in a bureaucracy. Prosecutors have constant reminders and opportunities to compare their professional ideals with their employment realities. They find unfairness in their employment relationship with management and with the employer, the Public Service Commission.

I proposed that the practice of prosecution is not 'de-professionalized' (Haug, 1975) as a result of collective bargaining. Collective bargaining by Crown prosecutors strengthens the sub section of the profession dealing with criminal matters by defining boundaries, specifying membership and controlling access to representation and the benefits of bargaining. The practice of prosecution exhibits characteristics of an occupational community (Van Maanen & Barley, 1984) which have been exacerbated if not created by organization and statutory forces and reinforced by the governance of the broader profession. Within this occupational community, the bargaining association in turn enacts exclusionary closure against management and usurpationary closure against the employer.

Crown prosecutors practice usurpationary closure when they seek collective bargaining, and their narratives reflect a subordination story. They occupy a position in

the organization and labour process that requires usurpation to satisfy their interests, and specifically the interests that the profession protects as well – monopoly of practice, security of income, status. Crown prosecutors define their struggle for collective bargaining in terms of social closure for their profession and using language that reflects the issues of professional discretion. Crown prosecutors do not control their labour process when they cannot exercise discretion unfettered by policy and bureaucratic rules.

Prosecutors move back and forth between two closure strategies using the language of fairness that is unique to their employment situation. Occupational community nurtures this language and enables prosecutors to access alternative closure mechanisms. The occupational community within a sub-specialty takes professionals outside their institutional structure and mobilizes them to recraft the profession. Collective representation is an evolving process for prosecutors; it is closely tied to shared ethos and to their institutional setting.

The Influence of Organization Context

Prosecutors resist the constraints of bureaucratic management control. When favouritism or arbitrariness appears to affect management decisions and opportunities at work, prosecutors begin to resist the work structures and the policies of their employer. Is resistance enough on its own to overcome the normalization of the profession? Several other groups of lawyers in public service have not sought collective bargaining. Notably in Nova Scotia the Department of Justice lawyers did not join their prosecutor peers in their struggle for bargaining. Prosecutors in half of the other provinces in Canada did not

have collective bargaining at the outset of this research. Public employment alone does not appear to be enough to trigger mobilization in the absence of a strong discourse of fairness.

The story of the Nova Scotia prosecutors is not unique. Prosecutors from other provinces in Canada tell stories that are similar in nature. In British Columbia the government and prosecutors went head to head in a bitter battle over breach of contract when the government withdrew its earlier recognition of the bargaining agent and refused to move forward in an existing bargaining relationship. A series of questionable prosecutions and public scrutiny put pressure on prosecution services from the public point of view as well in British Columbia, Saskatchewan, Manitoba, and Ontario. Prosecutors in these other provinces have also sought collective bargaining. Public service and protection of the public interest are entwined in the struggles of these professionals. Both factors are important in their struggle for collective bargaining. There may also be evidence of an occupational community that spans different workplaces.

Independence of the PPS

Although study participants did tell stories about the various landmark prosecutions that led to an independent Public Prosecution Service, achieving that independence was a key event in itself and provided key language for the prosecutors to leverage in their struggle. Independence became a rallying cry that made sense to the professional norms and thinking of prosecutors and also to the organization concerns of

workers. The antecedents of the Nova Scotia Crown Attorneys' Association lie in the discontent of all government lawyers, many of whom had been agitating for some time. The creation of the PPS made prosecutors different and set them apart in real and intangible ways. The obvious changes to legislation and new work premises, separate from the Department of Justice were coupled with a change in culture as well. The pieces were in place for change from a structural perspective, how prosecutors stitched them together is reflected in their stories. The building blocks of the plot could have gone in any direction; resistance could have been individual, as some prosecutors wanted. However, people with an inclination for bargaining had the language and collateral examples to rally prosecutors and mobilize them in a critical event: the June 1998 strike.

All the people I spoke to with experience in the PPS knew of the strike and brought it into their stories in some way, even if only through an oblique reference. Only one newcomer was reluctant to acknowledge collective bargaining and may not have been aware of the history of job action as she has not participated in any NSCAA meetings yet. However, she was aware of bargaining's outcome: a complex salary grid, and was quite impressed by it. It will be important for the association to tell its stories to newcomers and to develop their fairness discourse in a way that remains meaningful to all their members. Members of an occupational community need to share strong core values in order to maintain solidarity. This feeling of belonging to a community is what enables the prosecutors to move between both streams of the closure continuum.

Prosecutorial independence is a critical element in the way prosecutors define their niche in the profession; it is an essential aspect of the way they apply their

professional knowledge and the decisions that they make. This form of independence is quite separate from the operational independence of the PPS, but the two are linked. The latter is deemed necessary to secure the former. Independence is also part of the culture of the Public Prosecution Service, and is a product of the legacy of numerous inquiries into the conduct of prosecutions in Nova Scotia. The organization culture of operational independence and the prosecutors' quest to demonstrate their independence from political interference influence their workplace relationships to the extent that prosecutors cannot feel truly independent of the employer's influence without collective bargaining. Prosecutorial independence and operational independence for Crown prosecutors are not fully achieved unless collective bargaining is in place.

Relationship with Management

Collective bargaining and the settlement of issues by arbitration have achieved some gains, but mostly in the area of salary. To date, these mechanisms have not been successful in fully addressing issues of labour process control or relations of production. Although the managers in the PPS went out on strike alongside their employees in June of 1998, since that time the prosecutors' have effectively practiced exclusionary closure against their former fellows in the dispute. This is partly due to the language in the framework agreement that removes managers from the bargaining unit, and partly due to the perception that managers do not stay current, and thus lose credibility in terms of the technical component of the job. Managers are separated from the occupational community because they do not uphold the ethos of fairness in their management practices. To some extent the position of management and senior executives with the

PPS is also perceived as a status rank, with perquisites in return for little “real prosecution work”. Prosecutors united in the rigours of what they deem a pure practice of law look down upon administration and personnel tasks. This disregard closes the ranks of the bargaining association and reinforces the occupational community membership for practicing prosecutors only. Ackroyd and Muzio (2007) discuss internal closure in professional services firms and the way partners exclude other legal employees within a single employer. The phenomena of occupational community and collective bargaining may contribute some insights into the professional service firm employment context as well.

Though the official position of senior management at the PPS was against collective bargaining and its attendant threats to managerial power, the collective bargaining of Crown prosecutors and the increasing independence of the PPS enhanced the status of PPS management in relation to other managers in government, other Prosecution services in Canada, and internationally¹⁵. Collective bargaining among Crown prosecutors may also serve to further underscore the segmentation of the legal profession generally, at the ownership/managing partner level. In effect, management achieved closure from the rest of the profession by proxy, through the efforts of their subordinates.

¹⁵ At the outset of the prosecutors’ labour struggle only Australia had an independent prosecution service.

Limitations

There are limitations of this dissertation that arise from the design of a case study. There is also potential bias in the study as a result of my direct experience with the events described here and my prior knowledge of several of the individuals involved in my research. Both of these limitations are mitigated in my approach to sampling and the treatment of the data I collected.

Case Study

A case is only one instance of a phenomenon. This case is based on a small group of workers in a single workplace not found anywhere else in Nova Scotia. The study could be criticized for too narrow a focus on one setting and circumstance without relevance to other workers elsewhere. The point of a case study, however, is not to duplicate and generalize from the few to the many (Yin, 1981). A case study is an opportunity for theorizing in detail with a small data set. It is also an opportunity to examine size as an aspect of collective action, testing out what Olson (1977) says about small groups being more effective and motivated to seek collective action. Case study research permits an in-depth exploration of phenomena and experience that would be overwhelming in a larger sample. Narrative analysis facilitates this detailed examination of the data. A case study is an opportunity to extend theory through attention to either conflicting theories or subtle differences in comparable theoretical approaches. My examination of what appear to be conflicting logics of collective action fits well with the case study approach.

A case study can also be challenged on the grounds that it cannot be duplicated elsewhere. There are two ways in which this problem has been mitigated. First we know that the phenomenon of prosecutors seeking collective bargaining rights has been replicated in several other jurisdictions across Canada. While I did not research these instances in detail, I did take pains to learn about them from the national organization of prosecutors and civil lawyers, the Canadian Association of Crown Counsel. I did documentary and interview research in Ontario and British Columbia. Second, I conducted interview and focus group research with some other professional and semi-professional groups. Thus, I have deepened the scope of the case study research by exploring analogous situations.

Finally, the results of a case study might be criticized for being of little interest to a broader research and practitioner audience. Why might that not be the case here? Although I have made a point of demonstrating the specialization of the prosecution function I have also taken steps to examine British Columbia and Ontario as comparators. The themes and critical events in the Nova Scotia data appear in the other jurisdictions studied and participants from all three provinces contributed rich data used in my analysis. Though their individual circumstances and details varied from province to province and individual to individual, these differences are explained in my analysis. In addition, prosecutors are not unique in facing workplace and professional challenges. Segmentation has occurred in other professions, notably medicine (Freidson, 1986; Gawande, 2007a). Many credentialed employees seek representation for collective bargaining. The anticipated merger of the Social Science Employees Association and the

Canadian Union of Professional and Technical Employees is one recent example of this trend in addition to the long standing unionization of healthcare and teaching professionals (Campbell & Haiven, 2008).

Narrative Analysis

The in-depth analysis and theorizing potential of a case study can be realized by using narrative analysis. Narrative analysis of the social relations that underpin the labour process has two distinct advantages. Narratives present both a historical as well as an ongoing perspective from participants. The way storytellers recount the events of their past tells us a great deal about not only how they positioned themselves and interpreted the experience at the moment, but also how they continue to interpret and craft meaning from those events. Foucault (1975) says we construct identities as we talk and interact. Story tellers also share with us new constructions of their identity and position in social relations as they tell their stories in the present. Although I asked prosecutors to tell me stories of events in retrospect, I did not set any limits on where they began nor where the stories ended. For many the longer narrative of career and collective bargaining moved right into a commentary about the future. In this way, the research methodology becomes part of the process that is being researched. Narrative is not purely a device to analyze the historical, but also to situate a story's relevance in the present.

Storytelling gives participants the power to situate themselves within their stories in a particular way (Boje, 1991) and gives them an additional legitimate venue to recount the development of their collective bargaining struggle. The participants set the tone and

the topics, and reveal what is most important to them. I was able to probe to ensure I covered the range of my research questions. The analysis respected the stories of the interviewees as themes emerged through critical events, and if the probes did not generate a story, there was nothing to report or analyze. This reflects the notion that intense experiences and moments of frustration require the most effort to make sense of and understand (Weick, 1995). Stories are a valuable means to discover how individuals cope with these changes, especially those that contradict their accustomed norms (Riessman, 1993). Narrative privileges the voice of participants and their truth and knowledge claims. I intentionally chose this methodology in order to help manufacture distance from the events and participants described in this research. However, the methodology imposes parameters on the analysis and limits the critical examination of participants' claims. At the heart of this study is an examination of *how* Crown prosecutors constructed their rationale for collective bargaining as supportive of their professional project. A critical examination of that rationale might be possible in a second pass at the analysis, but is beyond the scope of the present work.

Narrative analysis presents an alternative way of looking at labour process as an unfolding story; one that changes with the telling but also changes over time. Can we say that the labour process is perhaps mutable? Certainly the way workers view it is mutable, and organization changes over time as well. Structures change as do priorities, relationships and power dynamics. The pressures from the external audience and stakeholders also change. The context or social norms that govern the organization change as members of society redefine these norms and reinterpret the organization. One

aspect of the context is the profession. The professions are specializing to maintain control over specialized knowledge. This control preserves mystique and market niche but places demands on the governance structure of the profession. Informal divisions emerge within professions as well, and intra-profession relationships must be redefined on an ongoing basis. Professionals are also becoming employees and this new status requires them to adjust to a new set of relationships in the workplace.

Personal History and Interest

My personal history with the prosecutors' struggle for collective bargaining and my personal interest in labour relations was both an advantage and a disadvantage in this study. I had good access to the research setting and to participants. I understood the workings of government, the location and access rules surrounding documents and how best to approach individual participants. However I was at risk of receiving biased stories because of my former role as a negotiator for management. I worked to minimize this possible bias by emphasizing my role as a researcher and the distance of six years since I had been employed in the civil service. The fact that my negotiation experience resulted in a negotiated agreement offset some of the resentment generated in the prosecutors' struggle for recognition of bargaining rights. Prosecutors' subsequent dealings with the employer and human resources officers were less cordial, but I was not a party to those talks, and thus one step removed. I am not and have never been a member of the legal profession. My outsider status also lent some credibility to my request for participants' stories. I realize that I collected stories that were crafted specifically for me, in my role as "researcher with a history". Only two participants in

the study had any amount of direct personal contact with me during my time in the civil service and I was able to isolate and compare their stories with those of other participants. The themes of the study were repeated in their stories.

Sample

The potential shortcomings of the size of a case study were overcome in my sampling technique. There was diversity among respondents. Study participants are located at various spots on the political spectrum and are drawn from the Association executive, bargaining committees, and staff prosecutors. Their experiences of prosecuting ranged from region to centre, both Halifax and Dartmouth, and they include managers and non managers. This sample gives me a range of perspectives with the exception of those who did not participate in the strike and were antagonistic towards the association. I requested a meeting with the Director of Public Prosecutions but he declined to participate in this study at this time. I also requested an informal discussion with the former Public Service Commissioner but she failed to respond to my inquiry.

There was some risk in a snowball sampling approach, particularly that I would encounter individuals with consistent values and perspectives on bargaining. In fact I found this not to be the case. I spoke with individuals from a wide range of viewpoints and with varying knowledge and affiliation with the collective bargaining mechanism. I also encountered markedly different ways of viewing the current status of labour relations in the workplace. Some participants consider the prosecutors are unionized, bargain collectively and refer to the Nova Scotia Crown Attorneys' Association as a union.

Others clearly state that prosecutors did not have collective bargaining but have a salary setting tribunal instead. Yet they are all Nova Scotia prosecutors. Some participants referred me to others as a way of supporting their own comments and reinforcing their viewpoint; “so and so can tell you more about that” or “you should really talk to so and so because they were there”. Most interestingly, I found several times that participants referred in this way turned out not to share the viewpoint of the referrer at all. I have thus a considerable amount of confidence in the selection of the sample and in its approximate representativeness of the diversity of opinion and experience in the prosecution service. I acknowledge that a census of the association membership and of management would be necessary to gather all possible variations, and that such an exercise would be valid for only the point in time for which it is gathered, and this is something I consider a possible future research direction.

Implications of this Research

A number of research and practical implications arise through this research. This study illustrates an intersection of the theories of professions and organizations with collective action that helps to explain the experience of Crown prosecutors. This study may provide insight into other professionalized workplaces and other occupational communities considering closure strategies, especially those where workers are pursuing both the professionalization and the collective bargaining paths. Further research opportunities are discussed below and extend across the public and private sectors. This dissertation, drawing together the professionalization and occupational community broadens our understanding of collective action in the workplace at a time when the

discourse of professionalism and professionalization is rampant in workplaces and among workers, and when traditional forms of unionism face decline (Kumar & Schenk, 2006). Professionalization and collective bargaining are not incompatible constructs. Professional workers' choice of representation may make a difference in the success of their closure strategies.

Implications for the Legal Profession

Media coverage of the Canadian legal profession (Ceballos, 2009a, 2009b; Moulton, 2009a, 2009b) indicates that the profession is in danger of fundamental restructuring as young lawyers continue to prefer urban practice and the small and solo practice in non-urban areas is not replenished. Where individuals cannot access legal services, the provision of those services by firms and individuals at a distance and with different forms of personal contact will contribute to changing the structure and service offered by the profession in ways that international writers have foreseen (Abel, 2004; Susskind, 2008). What large scale private firm consolidation might mean for the continuing practice of prosecution is unclear, as the public service is delivered in a relatively craft-type of undertaking, despite the volume of cases prosecutors face. However, if collective bargaining is achievable on a small scale among prosecutors there may be worthwhile opportunities to study the conditions of large scale employment of other specialties of law, particularly where legal services are delivered at a distance and automated to address the lack of legal presence in rural communities. The continued specialization in legal practice seems assured, and prosecution appears to be positioned to maintain its distance from the balance of the profession. What we have learned about the

interaction of isolation, specialty and dependent employment in this study may be relevant to other employed lawyers. Muzio and Hodgson (2008) have documented changes in the structure and labour process in professional service firms. Less attention has been paid to public practice of law where a large number of lawyers are employed in non-prosecution functions. Civil lawyers in some Canadian provinces also bargain collectively with their public service employers. This group will be worth examining using the tripartite analysis developed here to determine the role of an occupational community among civil lawyers. The presence of a unifying discourse, nurtured in an OC may mean the broader labour movement needs to reconsider its traditional approaches to solidarity and organizing among professionals.

Theoretical Implications

One of the contributions of this research project is the linkage made between a profession as a large, diversified social institution, and the immediate workplace of members of that profession. Further research could give consideration to another stream of theorizing in industrial relations. Kelly (1998) develops mobilization theory into a model that follows an injustice-leadership-action motif. He says injustice is the basis of collective mobilization and the sense of injustice is based on individual perceptions that something is not right or is questionable. Leaders emerge to frame the injustice and to allocate responsibility to a particular party. In Kelly's view mobilization moves from the individual to the collective, enabled by leadership and rudimentary organization. This is a common view of collective action and prosecutors tell stories of individual injustice: discipline targeted at an individual, maternity leave benefits denied to women,

discrepancies in placement on the salary range relative to years of experience. The broader analysis of prosecutors' stories, however, reveals that their mobilization is not based solely on group solidarity arising out of instances of individual injustice. Individual injustice is not expressed in every story. Rather injustice is expressed as "unfair" actions of the employer and management that contrast with the extreme sensitivity to fairness that prosecutors embody in their work. Injustice is thus based on a collective notion of its opposite and upon an ethos that identifies the group, as opposed to experiences that individuals have and which they collect, reflect upon, and then seek to redress.

Although injustice is a strong theme among the narratives of prosecutors, it is not used in the sense that Kelly describes. This collective action by prosecutors is more in keeping with the challenge to mobilization that Atzeni (2009) presents which is based on solidarity and not injustice. The prosecutors achieved such solidarity and used the occupational community and its ethos of fairness to define both closure projects: collective bargaining and professionalization. Prosecutors describe their struggle for bargaining rights in terms of fairness and injustice, but these arguments arose out of professional solidarity and the language of that solidarity, fairness, gave them a point of departure from which to compare their experiences of management and employer treatment. Employees were able to label these experiences "unfair". The potential exists to discover this form of mobilization based on shared discourse or shared occupational community in occupations and workplaces that have not traditionally been considered sites for collective action. Likewise, groups with an interest in collective action, such as

labour unions, may make strategic decisions on their organizing efforts in light of this interpretation of mobilization potential.

Existing industrial relations theory is not adequate to explain the case of Crown prosecutors' collective bargaining. Prosecutors' collectivism is drawn not solely from their experience of the labour process, but from the professional project. When a strong occupational community emerges within a subset of a profession and is determined to some extent by dependent employment, then collective action is the result of a particular blend of power struggles. The prosecutors sought more control over their working conditions to address workplace injustice, it is true. But the unifying force for that struggle is rooted in their professional project, and its apparent failure to secure the benefits originally promised in the professional socialization process. There is more support for Atzeni's (2009) position on mobilization and solidarity, though that too is incomplete as it is based solely in the capitalist labour process and many aspects of public employment and professional work are left unaddressed by both Atzeni and Kelly.

The proportion of professionals in the Canadian workforce has been growing (Kumar & Schenk, 2006; White, 1993). These workers represent potential growth for the labour movement. Yet some authors have questioned the usefulness of the traditional industrial model of unionization for these employees (Black & Silver, 2006; Hurd, 2005; Parkin, 1979). I disagree. I am inclined to support the view that some form of unionism is valuable among employed associates, for example, who do not have an ownership stake in their firms (Rubenstein, 2007). There are characteristics of public prosecutors' associations and their struggle for collective bargaining that I propose differ in important

ways from other research into unionization. The inclusion of occupational community as an explanatory tool helps us understand how professionals reconcile collective bargaining with the logic of professionalism. Occupational community may hold the key to organizing professional employees. This feature of my research subject presents an opportunity to re-theorize labour processes, and to enrich the body of research with multiple levels of analysis, ranging from the collective through to the individual. The concept of the independence of the Crown prosecutor and the prosecutorial function is not only fundamental to the employment relationship, but is also a relevant reflection of professional autonomy for which parallels may be drawn in the broader world of professional work. Thus the findings of this program of study have the potential to apply across a general range of employment conditions in the Canadian workplace.

Finally, the closure continuum (Campbell & Haiven, 2008) may be better cast as a series of overlapping spheres of activity. This case study illustrates that professional projects are fluid. Closure is not stable, but needs constant attention and work as conditions change. Those conditions include the institutional context, the institutional field and its stakeholders, as well as the market place, relations with the state, the nature of work and workplaces, and the needs and concerns of members of the profession. Hence the closure continuum is perhaps better represented conceptually as a set of four arrows that are related and that represent the overall notion of progress towards full closure. However, activity may take place in one aspect of the project without undoing progress made in other areas.

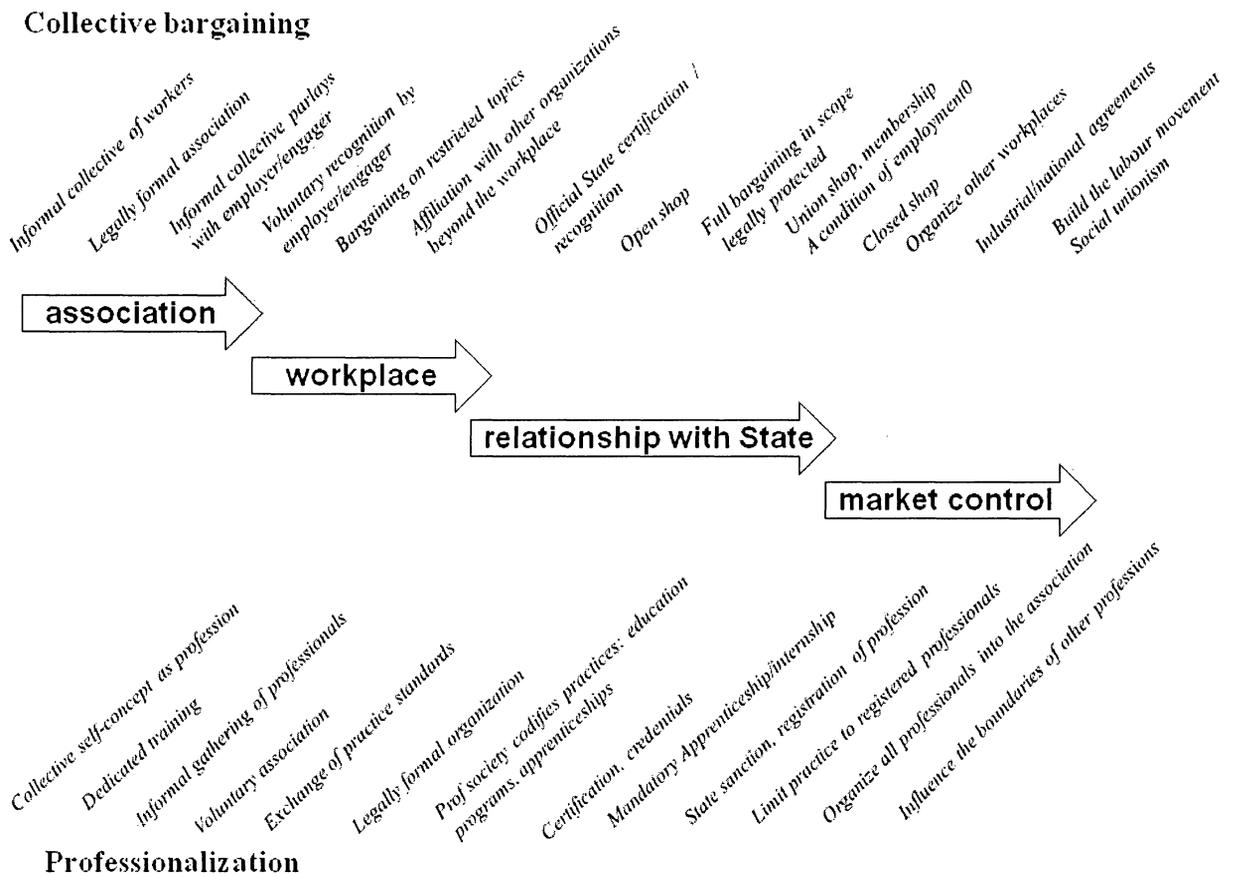


Figure 4 Revised Closure Continuum

Other Professions

The experience of Crown prosecutors may indicate what might occur across other segmented professions under similar stresses and strains. The choice of usurpatory closure by one segment of a profession may have an impact on the role and position of that part within the broader profession. The study of professions could be further developed in an organization-specific context as more and more professionals are employed in large public and private sector firms. I have shown how isolation and marginalization is possible within an elite profession. Other aspects of occupational

community may be relevant in different professions. Occupational community among prosecutors developed after the fact, and not as a precursor to, professionalization. Further research can explore whether OC is present and utilized in the same manner in other professions, especially those experiencing a loss of professional autonomy or restrictive management practices.

Semi-professionals may be similarly affected by the convergence of dependent employment and professionalization. The growing credentialization of the workforce (Freidson, 2001; Haiven 1999) means more and more workers are faced with potentially conflicting logics of collective action. They may find themselves grouped in an employment setting with loyalties to the employer as well as loyalties to an existing or burgeoning professional project. Occupational community may explain how they manage this transition.

Occupational communities do not exist only within organizations. Architects have been shown to exhibit a cross-organizational OC within the broader realm of the profession (Salaman, 1971b). The role of OC across different employment settings can also be studied to determine its role in mobilizing members of a profession to collective action. The current union drive among United Church of Canada ministers is a case in point.

Unions and Employers

Unions may benefit by looking at professional members or those with credential and professionalization projects in terms of the dimensions of occupational community in

order to address how they target communication and organizing and representation strategies. Union organizing is largely workplace based, however the open source unionism movement (Freeman & Rogers, 2002) indicates that more labour movement growth is possible by using the virtual workplace of the internet. Occupational communities can span different workplaces and may provide insight for this realm of union activity. Unions may also want to reconsider the role of leadership in labour mobilization. Kelly (1998) says that the presence of an articulate leader in the work milieu is also necessary for mobilization of workers. The early leadership of the Nova Scotia Lawyers Association went on to prominent roles in government, but whether a single individual is responsible for framing the need for collective bargaining is less clear. Many prosecutors give examples of various individuals who framed an argument for collective bargaining or cited injustices that the membership of the NSCAA found compelling enough to support. The leadership and the bargaining teams have both changed over time and yet all the prosecutors in this study continue to speak about their struggle and collective bargaining agenda with energy and commitment. There is more to the case of Nova Scotia Crown prosecutors than simply workplace malaise.

Bucher and Strauss (1961) say the knowledge built by the study of professions applies to the study of professionals who bargain collectively.

Since professions are in movement, work situations and institutions inevitably throw people into new relationships... The fate of individual careers is closely tied up with the fate of segments, and careers that were possible for one generation rarely are repeatable for the next generation (Bucher & Strauss, 1961, p. 334).

In light of these conclusions human resource managers and employers may be interested in the implication of this study for broader dimensions of work design and career planning.

Extension of this Research

This study raises a number of questions it does not answer. My findings can be a point of departure to question of why prosecutors in some Canadian provinces have not achieved collective bargaining. Likewise, one might pursue the question of why not only prosecutors but also civil lawyers succeed in winning bargaining rights in other provinces. Further afield, I am struck by the question of why is it, for example, that staff lawyers in large and medium legal firms do not strive for collective bargaining? They have a more controlled labour process and seemingly less autonomy than their self-employed peers. Private sector staff lawyers are mentored but they are also closely managed and have limited access to firm earnings and the exercise of discretion when compared with their prosecuting and self-employed colleagues. What role does the promise of ownership as a partner play in keeping associate lawyers ideologically opposed to bargaining? The oppression by management and the lack of ownership opportunity spurs prosecutors onward in their struggle. What implication do these two factors have for in-house counsel facing a similar dependent employment setting?

The response to these questions may entail the use of other methodologies to collect additional data using my theoretical framework. A cross-Canada survey of members associations in the Canadian Association of Crown Counsel to explore the

presence and nature of occupational community may shed light on the first questions. Other methodologies might also be applied to my data or to the concepts I have used here. For example, critical discourse analysis of archival texts is possible. Participant observation in ongoing negotiations or the preparation for those negotiations might also generate significant data for analysis. And finally, a critical gender analysis of my data seems indicated by the themes important to women prosecutors' stories. The role of occupational community in building solidarity may be influenced by the gender of members of the OC, and by the gendered nature of the work performed.

Concluding Thoughts

Twelve years ago, I witnessed Crown prosecutors struggle for collective bargaining rights and I saw a tremendous reaction from the employer, government, and other members of the legal profession. At the time I felt I could not ask the questions necessary for me to understand either the drive for bargaining rights or the resistance to recognizing those rights. I was on the opposite side of the bargaining table from Crown prosecutors and thus on the opposite side of the struggle during my time as a government employee. I received my mandate from Cabinet and my direction from senior civil servants and I was not able to challenge either of those. Only through academic research am I now able to explore and reflect on how this group of professionals managed successfully to redefine their relationship with their employer and their profession.

Crown prosecutors did not substitute one form of disciplinary control for another in their quest for bargaining rights. They maintain full professional status in the

Barristers' Society even as they form new social relations to bargain. The power inherent in the network of social relations has not only shifted in favour of Crowns, but has generated new forms of power. To fully understand this we need to reconstruct the history of the social production of prosecution. Lawyers' control of the elements in Krause's (1996) model of guild power and the strategies of collective bargaining are both used to achieve the closure and control goals of professions, bringing us full circle to the motivation of the parties' surface action. The relationship between professions and employers as social actors has been redefined with the wide scale move of professionals into salaried positions.

I set out to study what happened within one of the elite institutions in our society – the legal profession. What I discovered in my study was how a subset of an elite group could become marginalized. I identified the instruments available to them to regain the benefits of lost status, money, and respect. I am left with the belief that the changes experienced by Crown prosecutors and the legal profession are present in some form in many workplaces and among many groups of credentialed workers. Other cases will doubtless reveal different circumstances; however what remains is to explore how these other groups experience and manage through these challenges.

I stop short hypothesizing that an overarching ideology or ethos will emerge in each case, but I do want to say that some powerful aspect unique to an occupational community may be at work, and this is not derived from mobilization theory (general injustice and dissatisfaction) or closure theory (us versus them). Occupational community articulates uniqueness in a way other instruments of collective action cannot.

For prosecutors this was an ethos of fairness. However, occupational community may not always result in an expression of uniqueness that is compatible with collective bargaining.

Abbott (1988) says that competitions over control of boundaries between professions are decided by the group that makes the most compelling case for solving the underlying problem of work and management. In the case of Crown prosecutors, the model of collective bargaining won this contest which was not between one profession and another but between two ways of representing the interests of prosecutors. The closure strategies of collective bargaining and professional societies are quite distinct, one protecting the public interest and one the interests of individuals, though this dissertation has shown the two interests are not incompatible and often overlap. I have challenged the profession's universal claim to protection of the public interest by illustrating how a specialized segment of the profession, in lobbying for closer control of its members' work in the interest of public protection, in fact represents the interests of those members on a very individual basis.

Storytelling is a way to control our past and manage our current identity. Studying stories reveals the moments that comprise significant events for the narrators. These moments shape the storyteller and her place in a web of social relations. This dissertation project offered Nova Scotia Crown prosecutors the chance to remake their experience in the telling of their stories, and in turn, this telling may reinforce the occupational community and its guiding ethos.

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Appendix A - Individual Interview questions

Individual narrative of career in legal profession and experiences as Crown

Attorney

1. Tell me the story of your career.
2. Tell me the story of how you came to be a Crown Prosecutor.

(where did you go to law school?)

(describe your work history)

(Why do you stay? Why did you leave?)

3. How do you describe what you are and what you do?

Critical incident:

4. When did you first feel that you were a lawyer? A Crown prosecutor?

(Did this involve autonomy?)

5. What were some of the key events in becoming a lawyer, a prosecutor, a civil servant?

(who are the key actors, protagonists, antagonists, what issues?)

6. What is the career path of Crown Attorneys generally?
7. What does professional discipline look like? What is your role as a lawyer under the NSBS in terms of discipline by or of other lawyers?
8. What contact do you have with other lawyers? (OC)

(Other lawyers at the criminal bar, other prosecutors here and elsewhere?)

(Other lawyers generally, your classmates from law school?)

Without giving me names, tell me who are your 5 best friends?

Organization issues (OC)

1. What is a day's work like? Who determines what you work on and how you do the work?

Describe for me your leisure time

2. Is your work process different than that of other lawyers?
3. Describe the relationship between lawyers and management roles in legal practice. How do you make the shift from associate to partner/ from Crown Attorney to Senior Crown or Regional Crown?
4. What is the relationship of management prosecutors to the NSCAA?
5. Do you want to 'manage' others?
6. Tell me the story of developing and implementing the Manual for Crown Attorneys. Who were the players and how was it received? How is it used? (A. MacDonald)
7. How do per diem prosecutors work? When do they come to a file and what prep do they do compared to the Crown Attorneys? What is the responsibility of PD compared to the CA? (R. Woodburn)
8. How many full time permanent CAs are there? How many per diems are used and how many casual employees? (R. Woodburn)

Narratives of collective action and struggle for collective bargaining

1. Tell me the story of Crown Attorneys seeking collective bargaining.

(What issue mobilized collective action?)

(Why did the collective action begin with (salary?))

(What were some of the key events in achieving collective bargaining?)
2. What role did the NSBS play (If any) in the Crowns' struggle for collective bargaining?
3. Given the rural/urban divide, how did you pull all Crown Attorneys together into a collective?

(On what front were they united?)

(How did the Crown Attorneys (NSCAA) deal with free riders? Who were they (by group not by name))
4. What is the story of the creation of the NSCAA?
5. What does it mean to you to be a member of the NSCAA? (or not to be a member?)
6. What is your role in the Association?
7. What is the aim of the NSCAA?
8. Has anything changed in the workplace as a result of collective bargaining?

Substantive conditions, relationships, work process, autonomy, control

9. Could the goals set out by the NSCAA have been achieved by some means other than collective bargaining?

The profession and forms of interest representation

1. What other organizations are you a member of? Why are you a member and what does membership give you?

Canadian Association of Crown Council?

Criminal Lawyers – NS, National

Canadian Bar Association

2. Can you tell me about a critical event in your story?

(Was there a turning point?)

(Was there some event, idea, or relationship that had an important impact on your experience as a Crown Attorney in Nova Scotia? on your experience with collective bargaining?)

3. I would like to ask you one question again, now that we have discussed the Crown Attorneys and collective bargaining: How do you describe what you are and what you do? – and has that changed in light of collective bargaining?

Appendix B - Focus Group Questions for discussion

1. Describe your profession/ (Law, Nursing, Librarianship) is a profession. Please comment.
2. What does it mean to you to be a lawyer? Nurse? Librarian?
3. What is the role of the Nova Scotia Barristers' Society? College of Nurses? Canadian Association of University Librarians?
4. How does the profession regard the different areas of specialty (law/nursing/library) practice?
5. How has the profession changed since you were admitted to the Bar/certified/registerd?
6. How has your practice changed?
7. How has the perception of the practice of criminal law changed post Marshall inquiry? Post Kaufman reports?

The Lawyer as Prosecutor (2007)

Rule

When acting as a prosecutor, the lawyer has a duty to

- (a) act, in the exercise of any prosecutorial function including the exercise of prosecutorial discretion, fairly and dispassionately;¹
- (b) act in the spirit of the decision of Mr. Justice Rand in *Boucher v. R.*, which is to say to seek justice, not merely to strive to obtain a conviction and to present to the court in a firm and fair manner evidence that the lawyer considers to be credible and relevant;²
- (c) not prevent or impede one charged with an offence or in peril of such a charge from being represented by counsel or from communicating at reasonable times with counsel; and
- (d) disclose to defence counsel or to the party charged, if unrepresented, in a full, fair and timely fashion, before, during and after a trial, as circumstances may dictate, all such matters as are required to be disclosed in accordance with the policies and standards of Crown disclosure determined, from time to time, by law or by directive of the Attorney General, whether such disclosures may tend to show guilt or innocence or would affect punishment.³

Guiding Principles

1. For the purposes of this Chapter, "prosecutorial discretion" includes the power to conduct a prosecution, the power to proceed with multiple offences, the power to make submissions with respect to detention in custody, the power to negotiate a plea, the power to prefer an indictment, the power to proceed summarily or by indictment, the power to appeal and the power to withdraw charges.⁴

2. Lawyers acting as prosecutors customarily possess and exercise discretionary powers quite unlike other lawyers. Crown Attorneys draw their powers from the Attorney General for whom they act as agent and to whom they are accountable. They are accountable for their professional conduct also to the Society which is the institution in Nova Scotia charged with the responsibility for the formulation, promulgation and enforcement of standards of conduct for its members. The Society, however, when considering the conduct of its member lawyers who act as prosecutors, must at all times be mindful of the public policy, legal and constitutional considerations that gravitate in favour of permitting prosecutors to function independently.⁵ The Society is to understand the difference between taking to task professional misconduct or conduct unbecoming lawyers who practise as Crown Attorneys on the one hand and interference with the exercise of prosecutorial discretion to the detriment of the administration of justice on the other and to operate only within the realm of the former.⁶

In relation to the Crown Attorneys, Society disciplinary investigation or review is to be restricted to those complaints showing conduct amounting to a manifestly deliberate and improper use of the office of the Crown Attorney.

Commentary

Duty not to make unilateral representations

17.1 Except as required or permitted by law, the court or accepted practice, the prosecutor has a duty not to initiate or indulge in unilateral communications with the court concerning the matter currently before the court without the consent of all other counsel involved or the accused, if unrepresented. Delivery of pre-trial memoranda or other material to the court without contemporaneously making reasonable efforts to forward it to other counsel or the accused, if unrepresented, is a violation of this duty.

Plea bargaining

17.2 A prosecutor has a duty not to negotiate and recommend a plea agreement if the defence, by such agreement, is obliged to plead guilty to an offence or charge not reasonably supported by the facts.

Applicability of other Rules in the Handbook

17.3 The other Rules and provisions in the Handbook apply, *mutatis mutandis*, to lawyers acting as prosecutors.

Applicability of duties to prosecutors other than Crown Attorneys

17.4 The duties in this Chapter and in the Handbook generally apply, *mutatis mutandis*, to lawyers acting as prosecutors who are not full-time or part-time Crown Attorneys. This will include a lawyer who has conduct of proceedings in the name of and on behalf of any complainant in any proceeding against an accused who may be convicted of any offence or charge and as a result face fine, punishment or any other penalty including reprimand or suspension or dismissal from any employment, activity or organization.

Notes

1. The Report of the Royal Commission on the Donald Marshall, Jr. Prosecution, Volume I, page 238 states, on this subject, as follows:

25.12 Prosecutorial discretion in the conduct of trials

Once the Crown has determined that a prosecution will proceed, the adversarial aspects of the criminal justice system are evident. The accused is normally represented by defence counsel, the Crown's case is presented by the prosecutor and the trial is conducted before an independent judge with or without a jury.

While the courtroom setting is adversarial, the Crown prosecutor must make sure the criminal justice system itself functions in a manner that is scrupulously fair. The phrase 'criminal convictions system' is not a mistake of history - we do not have a 'criminal convictions system'. Justice is an ideal that requires strict adherence to the principles of fairness and impartiality. The Crown prosecutor as the representative of the State is responsible for seeing that the State's system of law enforcement works fairly.

See also *R. v. R. (A.J.)* (1994), 20 O.R. (3d) 405 (C.A.) [Duty not to act belligerently towards people such as other counsel, parties, and witnesses].

2. "It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings." *Boucher v. R.*, [1955] S.C.R. 16 at 23, 20 C.R. 1 at 8, 110 C.C.C. 263 at 270, per Rand J.

See also K. Bresler, "I Never Lost a Trial!: When Prosecutors Keep Score of Criminal Convictions" (1995-96), 9 *Georgetown J. Legal Ethics* 537.

3. See, for example, *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 re: the duty of prosecutors to disclose all evidence that might affect the accused (in terms of guilt, innocence, punishment).

However, see G. MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline* (Toronto: Carswell, 1993), at 2-6: "...Canadian rules of professional conduct are silent on the subject of a lawyer's duty to disclose relevant documents in civil litigation, and discipline proceedings are rarely initiated as a result of lawyers' failure to disclose."

4. See *Nelles v. Ontario* (1989), 98 N.R. 321, per Lamer J. (S.C.C.), particularly the paragraphs under the entitlement "The Role of the Attorney General and Crown Attorney."

5. For a discussion of public policy considerations of Crown Attorneys in the context of immunity from and exposure to the tort of malicious prosecution, see the paragraphs of Mr. Justice Lamer's decision in *Nelles*, *supra*, note 3, under the entitlement "Policy Considerations."

6. For a case in which a law society was found to have overreached itself and exceeded reasonable limits in its instigation of disciplinary proceedings against a Crown Attorney in the course of such prosecutor's exercise of prosecutorial discretion, see *Hoem v. Law Society of British Columbia* (1985), 63 B.C.L.R. 36, 20 D.L.R. (4th) 433, [1985] 5 W.W.R. 1, 20 C.C.C. (3d) 239, (B.C.C.A.). See also, however, *Cunliffe v. Law Society of British Columbia*, [1984] 4 W.W.R. 451; 40 C.R. (3d) 67 (B.C.C.A.), in which the court upheld the citing by the Law Society of British Columbia of a Crown Attorney (Bledsoe) for conduct unbecoming a barrister and professional misconduct for not informing the defence of particulars of witnesses whose evidence was crucial to the accused's defence.

Appendix D Nova Scotia Public Prosecution Service Crown Attorney Manual

Table of contents¹⁶

Crown Attorney Manual:

Prosecution and Administrative Policies for the PPS

The policy documents in this Manual are intended to assist prosecutors in Nova Scotia in the exercise of their discretion. They do not create any rights and they do not have the force of law. The policy documents are reproduced here so that the public will be more fully aware of the principles which underlie the many decisions made by prosecutors in dealing with criminal matters.

Cover

Prosecution Policies:

Note: Certain words and phrases in these policies have the meanings established in the "WORDS & PHRASES" section of this part of the Manual. These policies are to be read in the context provided by the PREFACE to this part of the Manual.

- Preface
- Words & Phrases
- Core Policies:
 - Introduction to Core Policies
 - The Decision to Prosecute
 - Resolution Discussions and Agreements
 - Staying Proceedings and Recommencing Proceedings
 - Disclosure
- Particular Prosecution Policies:
 - Alternative Measures - Adult Diversion
 - Appeals to the Court of Appeal
 - Assault Prosecutions
 - Cases involving the death of a child less than five years old
 - Conditional Sentences
 - Consent by the Prosecutor to Re-Electing Mode of Trial
 - DNA Identification Act Sampling Authorizations Firearms Registration Offences
 - Home Invasions
 - In-custody Informers

¹⁶ Retrieved November 5th, 2010 from http://www.gov.ns.ca/pps/ca_manual.htm

- Interviewing Witnesses (Other than Experts or the Police) - Practice Note
- Impaired Driving-Resolution of Charges
- Impaired Driving - Section 258(1)
- Impaired Driving - Sentencing Repeat Offenders <>Jurors - Background Checks
- National Flagging System for High Risk, Violent Offenders
- Nudity - public [Section 174 of the Criminal Code]
- Police Misconduct - Disclosure (R. v. McNeil)
- Private Prosecutions - Intervention by the Attorney General
- Remands to Federal Institutions
- Restorative Justice Program - Referrals at Crown Entry Point
- Revocation of Driver's License
- Risk Assessments in Spousal-Partner Violence Cases ODARA
- Sexual Offences - Practice Note
- Sexual Offender Treatment Program (ECFPH)
- SOIRA Policy
- Special Communications Needs - Investigation and Prosecution of Persons with Special Communication Needs
- Probation Orders
- Spousal / Partner Violence
- Transfer ("Pick-up") Orders - Practice Note
- Victims of Crime / Witnesses - Publicity (Practice Note)
- Violent Crimes
- YCJA 'Bail' Hearings
- YCJA Extrajudicial Sanctions
- YCJA Guilty Pleas-Practice note
- YCJA Prosecutions-Nunn Recommendations

Administrative Policies:

- Aboriginal Cases
- "Bail Reviews" - Protocol re Section 525 of the Criminal Code
- Case Bulletins
- Complaints - Bar Society
- Complaints - Public
- Conflicts of Interest
- Environmental Prosecutions - Disclosure to Crown
- Freedom of Information and Protection of Privacy (FOIPOP) Act - Procedure re Applications for Records
- French Language Communications Policy
- Investigation - Additional Investigation and Reinvestigation
- Major Case Contingency Protocol
- Media Inquiries and Public Statements
- Occupational Health and Safety Act - Disclosure to the Crown
- Parental Support - Young Victims / Witnesses
- Pre-charge Advice re Investigation / Prosecution of Police
- Provincial Forensic Psychiatric Service Sexual Assault Program - Provision of Information
- Records - Routine Access (without FOIPOP Application)
- Review Board Hearings

- Sentencing - Supreme Court
- Sign Language Interpreter Services
- Special Prosecutions Section - Referrals
- Vacancy Publicity - Chief Crown Attorney Positions
- Vacancy Publicity - Crown Attorney Positions
- Witness Fees

Forms:

- Application for Transfer of Charges (Outside Nova Scotia)
- Application for Transfer of Charges (Within Nova Scotia)
- Crown Inter-office Request to Obtain a Transfer Order
- Recommendation for Appeal
- Request for Referral to Special Prosecutions Section
- SOIRA Form 52
- Spousal/Partner Violence Checklist
- Spousal/Partner Violence Notice of Discontinuance
- Undertaking re Videotaped Statements
- Witness Fee Claim Form - W1
- Witness Fee Reimbursement - W1A
- Witness Fee - Special Reimbursement - W2
- Witness - Air Transportation Approval Form - W3
- Case Bulletin Form

Appendix:

- PPS Organizational Chart
- Public Prosecutions Act

Appendix E Profile of Principal Study Respondents Who Are or Were Prosecutors

Gender:	
Male	11
Female	5
Years of experience as a lawyer based on call to the Bar:	
Called before 1980	3
Between 1981 and 1990	8
Between 1991 and 2000	4
Between 2001 and 2010	1
Years of experience in prosecution:	
0-10 years	2
11-20 years	10
21-30 years	4
Employment history:	
Only ever employed in prosecution	2
Experience with Legal Aid	6
Experience in private practice before prosecutions:	
Civil	11
Criminal	2
Worked in public sector first	2
Left prosecution for a period of time (study or work)	5
Serves or served on the Bench	3
Changed jurisdiction of practice (to new province or to/from Federal)	6
Held elected role in collective bargaining association	8
Has management experience	5
Family status:	
Single	5
Married without children	4
Married with children	7



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