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Open Letter

February 7, 2022

Attorney General and Minister of Justice
Department of Justice
1690 Hollis Street
P.O. Box 7
Halifax, NS B3J 2L6

Dear Minister Johns:

The African Nova Scotian Decade for People of African Descent Coalition (ANSDPAD Coalition) is a group made up of thirty- five African Nova Scotian organizations from across the province and the thousands of individuals these organizations collectively represent and serve. The ANSDPAD Coalition recognizes African Nova Scotians as a distinct people and advocates on behalf of their needs and interests.

Over 30 years ago the *Royal Commission on the Donald Marshall Jr Prosecution (Marshall Inquiry)* officially recognized systemic racism in the justice system and its impact on African Nova Scotians (ANS) and the Mi'kmaq. The Nova Scotia Public Prosecution Service (PPS) was created as a result of the *Marshall Inquiry* in 1990. Since then, **the PPS has never appointed anyone from the African Nova Scotian or the Mi'kmaq communities to a leadership role** (Director, Deputy Director, Chief Crown, Regional Crown, or Supervisor of Support Services).

On September 16, 2021, AIINS reported that the Nova Scotia Crown Attorneys' Association (NSCAA) wrote a letter to then Director of the PPS, expressing concerns about management-level hiring practices and seeking an acknowledgement of systemic discrimination within the PPS.

Lack of representative leadership within the PPS negatively impacts the African Nova Scotian and Mi'kmaq communities, including individual cases proceeding through the criminal justice system. Crown Attorneys exercise significant discretion. Leadership within the PPS must have the necessary cultural competency to give guidance to frontline Crown Attorneys. The *Marshall Inquiry* specifically found that officials, including senior officials, in the Attorney General's Department were applying discriminatory standards for Indigenous people in the exercise of their prosecutorial decision-making.

The ANSDPAD coalition has previously identified the problematic application of prosecutorial discretion in cases dealing with African Nova Scotians. Specifically, ANSDPAD wrote to the Director of Public Prosecutions about the decision of the PPS to continue the prosecution against Randy Riley despite clear concerns that the Crown is lacking a realistic prospect of conviction.

As outlined in that letter, decisions like this continue to undermine the confidence of our communities in the criminal justice system.

On June 15, 2020, the Director of Public Prosecutions issued a statement indicating that “work is underway on a comprehensive Public Prosecution Service policy respecting the fair treatment of African Nova Scotians”. It has been almost 18 months and this policy has yet to be launched.

The ANSDPAD Coalition acknowledges the Nova Scotia government’s apology for systemic racism experienced by African Nova Scotians and the Mi’kmaq. The institutional change that is required to address this systemic racism, including overrepresentation in correctional centres, requires the expertise of those from the communities most affected. Racism is not about intention; it is about outcome and impact. The lack of representation, and corresponding lack of expertise, in the leadership at the PPS, contributes to a lack of fundamental fairness for African Nova Scotians and Mi’kmaq people in the criminal justice system.

The Nova Scotia Government’s *Employment Equity Policy* states, “The Government of Nova Scotia is committed to being a workforce that is free of discrimination, values diversity and is representative, at all job levels, of the designated groups: Aboriginal People, African Nova Scotians...”

The Nova Scotia Government’s *All Together: An Action Plan for Diversity and Inclusion in the Public Service* cites Senior Leadership Accountability and Leadership Development as two of its main goals. It directs Departments to “set hiring goals for leadership positions and follow an established process for designating positions.” It also promises that “Senior leaders will be held accountable for diversity and inclusion in their departments.”

The PPS is accountable to the same hiring standards contained the *Civil Service Act* and government policy, as any other department.

Despite law, policy and the recommendations of the *Marshall Inquiry*, representation in PPS leadership has not progressed in over thirty years and the PPS has not been held accountable for this lack of progress.

With the recent retirement of the Director of Public Prosecutions there is an opportunity – indeed an imperative – to ensure that systemic racism is not allowed to continue within the Nova Scotia Public Prosecution Service.

The September 14, 2021 Mandate Letter addressed to you by the Premier states, “We have also committed to lead a government which represents all Nova Scotians and is reflective of the modern societal makeup of Nova Scotia, inclusive and respectful of all demographic, cultural and ethnic diversities to advance our collective growth and prosperity.”


The ANSDPAD Coalition calls on the Attorney General, as the minister responsible for the PPS under the *Public Prosecutions Act* to take the following, immediate, action:

- 1) Conduct an investigation into the racially discriminatory hiring practices at the Nova Scotia Public Prosecution Service.
- 2) Issue written instructions to the Nova Scotia Public Prosecution Service to publicly acknowledge the existence of systemic anti-Black and anti-Indigenous racism within that institution impacting African Nova Scotians and the Mi'kmaq and commit to eliminating it.
- 3) Amend the *Public Prosecution Act* as follows:
 - a. Implement changes to the appointment process for the Director of Public Prosecutions that increases accountability, transparency, and provides for specific consultation with African Nova Scotians and Mi'kmaq communities.
 - b. Add a requirement that potential candidates for the Director of Public Prosecutions must demonstrate experience in advancing individual and institutional cultural competency, including demonstrated experience in addressing the recommendations of the *Marshall Inquiry*, and substantive understanding of anti-Black racism and relevant Aboriginal and Indigenous Law.
 - c. Add a Deputy Director of Diversity, Equity, and Inclusion position. This position would report directly to the Director of Public Prosecutions and would be responsible for the implementation, tracking, and monitoring of equity initiatives within PPS. This position would be designated for candidates from the African Nova Scotian or Mi'kmaq communities.
- 4) Take immediate steps to create designated senior leadership positions for African Nova Scotian and Mi'kmaq candidates within the Nova Scotia Public Prosecution Service, and affirmative steps for recruiting and retaining African Nova Scotian and Mi'kmaq Crown Attorneys.

- 5) Meet with representatives of the ANSDPAD Coalition Justice Strategy Working Group to discuss these recommendations and related concerns.

Sincerely,

Vanessa Fells
Director, ANSDPAD Coalition



Robert Wright
Executive Director, African Nova Scotian Justice Institute

On behalf of the ANSDPAD Coalition Justice Strategy Working Group

cc: Honourable Tim Houston, Premier of Nova Scotia
Honourable Pat Dunn, Minister of African Nova Scotian Affairs
Candace Thomas, QC, Deputy Minister of Justice