



B.C. COURT OF APPEAL 2010 ANNUAL REPORT



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MEMBERS OF THE B.C. COURT OF APPEAL

Chief Justice

Chief Justice Lance S.G. Finch

May 5, 1983 (Supreme Court)
May 28, 1993 (Court of Appeal)
June 6, 2001 (Chief Justice of British Columbia)

Justices of the Court of Appeal

Madam Justice M. Anne Rowles

March 31, 1983 (County Court)
January 1, 1987 (Supreme Court)
October 11, 1991 (Court of Appeal)
January 1, 2008 (Supernumerary)

Madam Justice Jo-Ann E. Prowse

January 1, 1987 (County Court)
September 8, 1988 (Supreme Court)
June 24, 1992 (Court of Appeal)
March 1, 2008 (Supernumerary)

Madam Justice Catherine A. Ryan

May 26, 1987 (County Court)
July 1, 1990 (Supreme Court)
January 28, 1994 (Court of Appeal)
January 1, 2008 (Supernumerary)

Mr. Justice Ian T. Donald

June 30, 1989 (Supreme Court)
January 28, 1994 (Court of Appeal)
January 1, 2008 (Supernumerary)

Madam Justice Mary V. Newbury

July 9, 1991 (Supreme Court)
September 26, 1995 (Court of Appeal)

Madam Justice Carol M. Huddart

September 4, 1981 (County Court)
May 26, 1987 (Supreme Court)
March 19, 1996 (Court of Appeal)
June 30, 2003 (Supernumerary)

Mr. Justice John E. Hall

July 11, 1991 (Supreme Court)
December 19, 1996 (Court of Appeal)
August 1, 2006 (Supernumerary)

Mr. Justice Kenneth C. Mackenzie

May 6, 1992 (Supreme Court)
June 23, 1998 (Court of Appeal)
May 6, 2007 (Supernumerary)

Madam Justice Mary E. Saunders

December 23, 1991 (Supreme Court)
July 2, 1999 (Court of Appeal)

Mr. Justice Richard T. A. Low

March 31, 1977 (County Court)
July 1, 1990 (Supreme Court)
July 28, 2000 (Court of Appeal)
April 1, 2008 (Supernumerary)

Madam Justice Risa E. Levine

September 26, 1995 (Supreme Court)
February 6, 2001 (Court of Appeal)

Mr. Justice Kenneth J. Smith

May 31, 1993 (Supreme Court)
October 1, 2001 (Court of Appeal)
May 28, 2008 (Supernumerary)

Mr. Justice Peter D. Lowry

October 11, 1991 (Supreme Court)
June 30, 2003 (Court of Appeal)

Madam Justice Pamela A. Kirkpatrick

November 20, 1989 (Supreme Court
Master)
November 27, 1992 (Supreme Court)
June 2, 2005 (Court of Appeal)

Mr. Justice Edward C. Chiasson

September 14, 2006 (Court of Appeal)

Mr. Justice S. David Frankel

March 2, 2007 (Supreme Court)
May 10, 2007 (Court of Appeal)

Mr. Justice David F. Tysoe

June 24, 1992 (Supreme Court)
June 22, 2007 (Court of Appeal)

Madam Justice Daphne M. Smith

December 19, 1996 (Supreme Court)
May 8, 2008 (Court of Appeal)

Madam Justice Kathryn E. Neilson

July 1, 1999 (Supreme Court)
May 8, 2008 (Court of Appeal)

Mr. Justice Harvey M. Groberman

December 14, 2001 (Supreme Court)
May 8, 2008 (Court of Appeal)

Madam Justice Elizabeth A. Bennett

August 27, 1997 (Supreme Court)
May 14, 2009 (Court of Appeal)

Madam Justice Nicole J. Garson

March 21, 2001 (Supreme Court)
May 14, 2009 (Court of Appeal)

Mr. Justice Christopher E. Hinkson

March 2, 2007 (Supreme Court)
March 19, 2010 (Court of Appeal)

STAFF OF THE B.C. COURT OF APPEAL

Jennifer Jordan	Registrar
Gregory Pun	Law Officer
Maria Littlejohn	Associate/Deputy Registrar
Vicki Jang	Manager/Deputy Registrar
Alix Going	Executive Assistant to Chief Justice Finch

Law Clerks 2010-2011

Kaity Cooper
Keith Evans
Ben Heller
Thea Hoogstraten
Emily Lapper
Danielle Rondeau
Fred Sheppard
Paul Todd
Erin Tolfo
Jennifer Vallance
Yichuan Wang
Micah Weintraub

Special Assignment

Peter Millerd

Judicial Staff

Cathy Clough
Susan Devenish
Elise Du Mont
Joanne Heaton
Diana Huynh
Bonnie Marcaccini*
Susan McEvoy
Cherry Mills
Barbara Moss
Victoria Osborne-Hughes*

* **Victoria**

Registry Staff

Jaclyn Burgoyne*
Shelly Ducharme**
Matt Dykeman
Steven Evans*
Torri Enderton
Shayna Irvine
Sue Lang
Barry Lai
Wendy MacKenzie*
Christina McKenzie**
Erica McCuaig
Merle Sandell*
Diane Schwab
Moiria Syring*

* **Victoria**

** **Kamloops**

Ushers

Bill Deans
David O'Brien
Susan Brokenshire

SUPERIOR COURTS JUDICIARY STAFF

Judicial Administration

Frank Kraemer, Q.C.	Senior Counsel & Executive Director Judicial Administration
Rani Amott	Director of Human Resources and Support Services (until September, 2010)
Kory Bonhomme	Director of Human Resources and Support Services (starting November 15, 2010)
Kevin Arens	Director of Information Technology and Finance
Tammy McCullough	Secretary to Senior Counsel & Executive Director
Cheryl Steele	Finance and Administration Clerk
Michelle Sam	Judicial Administration Clerk

Judges' Library Diane Lemieux

Library Technician Sarah Preston

Website Administrator Mary Falck

IT Services Mark Hujanen, Service Delivery Manager

REPORT OF THE HONOURABLE CHIEF JUSTICE FINCH

General

The Court of Appeal is constituted by the *Court of Appeal Act*, R.S.B.C. 1996, c. 77. The *Court of Appeal Act* provides for a Chief Justice and 14 other justices, as well as for supernumerary justices. Thus, the Court of Appeal may from time to time have more than 15 judges. The Chief Justice of British Columbia heads the Court of Appeal.

The Court of Appeal is the highest court in the province. It hears appeals from the Supreme Court in civil and criminal matters, from the Provincial Court on some criminal matters, and reviews and appeals from some administrative boards and tribunals.

The judges of the Court of Appeal are also judges of the Yukon Court of Appeal. The Yukon Court of Appeal sits at least one week a year in Whitehorse. Yukon appeals are also heard in other British Columbia court locations, such as Vancouver.

The Court of Appeal hears appeals regularly in Vancouver and Victoria, and as needed from time to time in Kamloops, Kelowna and Prince George. The Court of Appeal has a Registrar who, in addition to other administrative duties, hears matters related to the settling of orders, books and bills of costs.

The Court's Complement

At the beginning of 2010 there was one vacancy in the Court. It arose from the appointment of the Honourable Mr. Justice

Robert J. Bauman, as Chief Justice of the Supreme Court on 9 September 2009.

That vacancy was filled on 19 March 2010 with the appointment of the Honourable Mr. Justice Christopher E. Hinkson to the Court. He came to the Court after serving three years as a judge on the Supreme Court to which he had been appointed on March 2007.

Justice Hinkson graduated from the Faculty of Law at the University of British Columbia in 1975, and was called to the Bar of British Columbia in 1976. After serving his articles with Guild Yule and Company, he joined Harper Grey LLP (formerly Harper, Grey, Easton & Co.) where he practiced for more than 30 years.

Justice Hinkson had an extensive litigation practice in the areas of medical negligence, personal injury, professional negligence and administrative law. He was president of the Vancouver Bar Association in 1986/87. He was appointed Queen's Counsel in 1991. He was elected a member of the American College of Trial Lawyers in 1997.

Justice Hinkson made significant contributions to legal education in British Columbia while at the bar, serving as an adjunct professor at the Faculty of Law at the University of British Columbia, and in many other capacities. He took a number of difficult cases on a *pro bono* basis, and in addition represented many lawyers before the Law Society of British Columbia.

Justice Hinkson has three children - the eldest practices law at Guild Yule LLP.

His oath taking in the Court of Appeal was attended by his parents. His father, the Honourable E. E. Hinkson passed away later in 2010, and his career is described later in this report.

All members of the Court of Appeal welcomed the appointment of Justice Hinkson as a learned, hard working, good natured new colleague.

At the end of 2010, the Court had a full complement of 15 full time members, and nine supernumerary judges.

In Memoriam

In 2010 we lost three distinguished former members of the Court of Appeal.

The Honourable Hugh Percival Legg



The Honourable Hugh Legg was a member of both the Supreme Court and the Court of Appeal. He passed away on 27 February 2010 at the age of 88.

Hugh was born and educated in England.

He joined the R.A.F. in 1941, at the age of 19, and came to Canada under the Commonwealth Air Training Program. He was commissioned as a pilot in 1942, served as a flying instructor in Canada, and was then sent to India flying agents and supplies into Burma and French Indo-China. He left the service in 1945 with the rank of squadron leader.

Hugh attended the University of British Columbia after the war and obtained a Bachelor of Arts degree in 1950 and Bachelor of Laws degree in 1951. After articles, and two years' practice in a small

firm, Hugh joined Lawson Lundell Lawson and McIntosh where he practiced until his appointment to the Supreme Court in September 1976.

During his time at the bar Hugh served as a Bencher of the Law Society of British Columbia from 1960 until June 1975 when he was elected Treasurer, the highest office of the Law Society was then known. He was appointed Queen's Counsel in 1972.

Hugh served as a Justice of the Supreme Court from September 1976 until his appointment to the Court of Appeal in 1989, at the same time as Mr. Justice Martin Taylor and Mr. Justice George Cumming. Hugh remained a member of the Court until his retirement in February 1997.

During his time as a judge in both courts, Hugh earned a reputation as a patient, thoughtful, courteous jurist. Counsel always came away with the satisfaction of knowing that their case had been heard and understood. Hugh's reasons for judgment reinforced counsel's confidence in his judicial powers.

Hugh is survived by Marie, his wife of 65 years, five children, seven grandchildren and four great-grandchildren. He will be remembered by all who knew him with respect and affection.

The Honourable Ernest Edward (Ted) Hinkson

The Honourable Ernest Edward (Ted) Hinkson passed away peacefully on 6 September 2010 in Vancouver at the age of 84. His judicial career spanned 28 years,



coming to an end with his retirement from the Court of Appeal in 1996. He is remembered by all who knew him as a kind, decent and generous man, who devoted his life to his profession and his family.

Ted was born in Regina, Saskatchewan, graduated from high school there and then attended the University of Toronto, graduating with a history degree in 1949. He returned to Regina for the summer, and married his wife, Barbara Ferrier. The newlyweds moved to Vancouver where Ted attended law school at the University of British Columbia. He graduated in 1952, in the same class as Madam Justice Patricia Proudfoot, Madam Justice Mary Southin, and Judge Dolores Holmes.

Ted articulated with Davis Hossie & Lett and then spent a further year working for Neil Hossie. Ted then joined the law firm of Guild Yule and Company. He had an active civil litigation practice, much of which was devoted to defending doctors, dentists and druggists. He was meticulous in the preparation of his cases, and mastered the *Rules of Court*. He knew what could be accomplished by the intelligent use of the *Rules*, and the serious problems that might befall one who was careless of their content.

His former colleagues in the law firm (many of whom are either former or active judges) remember Ted as a team player. He was balanced, temperate and objective. He did everything that was expected of him and more, and he did it all to the highest professional standards. Those younger lawyers in the firm, who were fortunate enough to be junior to Ted, remember him as a patient and dedicated mentor.

Ted's first judicial appointment in 1968 was as "Local Judge of the Supreme

Court", a position created to provide a Supreme Court Chambers Judge before there were Masters. Ted served as local judge from 1968 to 1970, as a justice of the Supreme Court from 1970 to 1977, and as a member of the Court of Appeal from 1977 to 1996.

Ted is survived by his wife Barbara, daughters Susan and Catherine, his son Christopher (now Hinkson J.A.) and their families.

The profession and the public have lost one of our finest. Ted was the consummate professional and, as one golfing partner has said – he was "a gentleman's gentleman".

The Honourable James Allen (Jim) Macdonald

The Honourable Jim Macdonald passed away on 14 December 2010 at the age of 93. He is survived by his wife Bobbie, three children, four grand-children, and his brother Alex.



Jim was a judge in British Columbia for 27 years. His first appointment in 1965 was to the County Court of Vancouver where he sat as the first local judge of the Supreme Court (the "Chambers Judge", to be followed by Judges Kirke Smith, Hinkson, Hutcheon and Mackoff).

In 1966 he was appointed to the Supreme Court where he served until his appointment to the Court of Appeal in 1979. He remained a Justice of the Court of Appeal until his retirement in 1992.

Jim came from a distinguished legal family. His father, Malcolm Archibald

Macdonald, was a lawyer, appointed as Attorney General in 1917. “M.A.” was a Justice of the Court of Appeal from 1924 to 1940, and then Chief Justice of British Columbia from 1940 to 1941.

Jim’s brother, Alex, was Attorney General for British Columbia in the 1970s, and his brother Malcolm, who predeceased Jim, was a judge of the Provincial Court. Jim’s daughter Sarah is a lawyer, practising with the Provincial Ministry of the Attorney General.

Jim was a distinguished jurist. He presided over the longest trial in the history of British Columbia. *Morrison Knudsen et al v. B.C. Hydro* was a contractual dispute over the construction of the powerhouse on the Peace River, which took over 400 court days spread over five years.

Jim was a model of patience and his calm and his quiet presence brought great dignity to every court in which he presided. He was very hardworking and collegial, often volunteering for judicial assignments when not scheduled to sit.

Jim had a quick and penetrating wit, and his humour was often self-deprecating. In the words of our former Chief Justice, Allan McEachern, Jim was “a man who brought so much dedication, good humour, courtesy, kindness and common sense to the law”.

The Work of the Court

In 2010 the Court delivered reserved (written) judgments in 321 appeals and 75 chambers applications. In addition, the Court pronounced judgment with oral reasons in a further 157 appeals, and in the vast majority of chambers applications.

All reserved judgments are given a neutral citation and are posted on the Court’s website. All oral judgments of a division are transcribed, given a neutral citation,

and posted on the website. Oral chambers judgments are transcribed and placed in the Court file. They are available to counsel or parties upon request, but are not given a neutral citation or posted on the website unless they are considered to be of precedential value.

Most of the justices’ non-sitting time is taken up either with the research for or writing of reserved judgments or with preparation for upcoming appeals. The law clerks assist the justices in these tasks. Responsibility for the writing of reserved judgments is shared among those members of the Court who have heard the appeals.

The Court continues to work towards full compliance with the guideline set by the Canadian Judicial Council for pronouncement of reserved judgments within six months from the date of hearing. Out of the total 88 reserved criminal judgments rendered in 2010, 95% were pronounced within the guideline. On the civil side, of the 233 reserved judgments delivered in 2010, 90% were pronounced within the guideline. Of all reserved judgments, both civil and criminal, 93% were rendered within three months or less of the hearing date.

Appeals to the Supreme Court of Canada

The statistics indicate that the Court is essentially the court of last resort for litigants in British Columbia. As set out later in this Annual Report (see “Supreme Court of Canada” in the statistics section and the Registrar’s Report), in 2010 only 72 applications for leave to appeal were filed in the Supreme Court of Canada from judgments of the Court, and only 10 applications were granted.

Self-Represented Litigants

As noted in the Registrar’s Report, the Court hears a significant number of

appeals involving self-represented litigants. The number of civil filings for self-represented litigants increased 6% over last year. It is significant to note that the number of civil and criminal appeals heard where at least one party was self-represented also increased compared to 2009.

The Court again acknowledges the significant contributions of the bar in providing *pro bono* assistance to litigants unable to afford legal services. The Court is most grateful to all lawyers who have provided free legal advice, advocacy, or other assistance to litigants with arguable cases, who lack necessary financial means to engage in the appeal process.

Extra-Judicial Appointments & Activities

In addition to the justices' workload in hearing cases and issuing judgments, every justice is involved in activities in the legal profession, for the larger Canadian judiciary, and for local communities, the Province, and the country of Canada. Justices also attend continuing education seminars, for lawyers and for judges, in Canada and abroad, as participants and speakers. As a partial but representative listing, in 2010 justices of the Court held positions on various bodies such as:

- National Centre for Business Law
- Justice Education Society
- Canadian Superior Courts Judges Association – 2012 Quadrennial Commission
- Publication Ban Working Group
- Judges' Dinner Committee (Hutcheon Papers)
- Canadian Judicial Council Jury Instruction Committee
- Canadian Institute for the Administration of Justice annual conference

- Winter Program for Newly Appointed Federal Judges
- International Commission of Jurists
- BC Courthouse Library Society
- BC Judicial Appointments Committee
- International Centre for the Reform of Criminal Law

Interpreters:

- Southern Interior Forest Labour Relations collective agreement
- Coast Forest Labour Relations Collective Agreement

Attended seminars either as speakers or audience members:

- Workshop in Nha Trang as part of Judicial Development and Grassroots Engagement Project for Vietnam
- CLE BC Appellate Advocacy Seminar
- National Judicial Institute Joint Education Seminar for the Courts of Appeal for Newfoundland, Labrador and Prince Edward Island
- Statute Law Society, London England, celebrating first anniversary of the UK Supreme Court

Wrote and edited books and articles:

- Annual Review of Insolvency Law
- Family Law Sourcebook
- CLE BC Administrative Law Practice Manual

Assisted in:

- Inns of Court Program for young lawyers
- UBC-UVic Moot

Membership in the following committees or associations:

- Canadian Superior Courts Judges'

- Association
Judges Technology Advisory
Committee of the Canadian
Judicial Council

Visits to the Court

In January, 2010 the Court received a three-judge delegation from the Republic of Korea and a six-party delegation from the Republic of Guatemala. A Japanese delegation attended in October 2010, which included two Judges of the Supreme Court of Japan as well as Consul Yoichi Ikeda. The Court hosted two delegations from the City of Tianjin of the People's Republic of China. In November, 2010 the Court received a six-judge delegation representing the Tianjin People's Court and the Tianjin Higher People's Court. In December, 2010, the Court received an 18-judge delegation representing the Tianjin People's Court, the Tianjin First and Second Intermediate People's Court, the Tianjin Higher People's Court and the Tianjin Maritime Court. The Court thanks Greg Pun, Law Officer of the Court for his help in organizing these visits.

Court meetings

At the spring meeting of the Court in April 2010, Mr. Justice Donald and the Law Officer of the Supreme Court, Heidi McBride, presented the new *Publication Ban Practice Manual* to the Court.

At the fall meeting of the Court in October 2010, the Court heard from Professor Gordon Rose from the SFU Psychology Department. Professor Rose spoke on *The Ability of Jurors to Comprehend a Judge's Instructions*.

On behalf of the Court, I express sincere gratitude to all of these speakers for their contributions to our continuing education.

Staff of the Court

After three years as the Law Officer to the Court, Greg Pun has decided to return to private practice. The Court would like to thank Greg Pun for his dedication and hard work on behalf of the Court, most particularly for his superhuman efforts in making the centennial celebrations such a memorable experience. No detail was too small for Greg to undertake and to solve.

The Court continues to receive the assistance and support of its dedicated and professional staff. Registrar Jennifer Jordan, Associate/Deputy Registrar Maria Littlejohn and Manager/Deputy Registrar Vicki Jang provide the foundation for an effective and efficient Court operation.

The Court is also served by a body of fine personnel in the Court registry, in the courtrooms and by our judicial assistants and law clerks.

To all these persons who contribute to the smooth operation of the Court, the judges express their sincere gratitude.

And to all members of the Court I again give my sincere thanks for their hard work and collegiality.

100TH ANNIVERSARY OF THE BRITISH COLUMBIA COURT OF APPEAL

The centenary provided a unique opportunity to make some public expressions about the Court of Appeal, presently and historically, legally and socially. As the Chief Justice said in a number of letters and speeches, the centenary allowed us “to honour the many men and women who, as judges, lawyers, and staff, have helped to make the history of the Court” and “to anticipate a promising future while acknowledging a remarkable past”.

In keeping with that mandate and goal, the Court made its presence felt to many people in many ways in many places. There was a film, a book, a magazine, a journal, a website, and numerous television broadcasts and newspaper articles, and especially the five special sittings held in the province’s major cities (Victoria, Vancouver, Prince George, Kamloops, and Kelowna).

The centenary engaged many of the law-related entities in the province, including the Law Society, the Canadian Bar Association – BC Branch, local and county bar associations, and the Justice Education Society. It engaged numerous law students at both the University of British Columbia and University of Victoria law schools, and both practising and academic lawyers. It engaged many members of the profession, from articled students to junior and senior members of the bar; and judges from all three British Columbia courts and many other Canadian courts. All were afforded several chances in varied places to be involved at formal and educational events, and at informal and social events.

The centenary also brought the Court of Appeal to the public at large, from high schools students (via the visits in Victoria and the Justice Education Society Teacher’s Guide to the film mentioned below) to university students (via the Chief Justice’s remarks at Thompson Rivers University in Kamloops). Members of the public were also able to see the Court of Appeal by way of the broadcasts on the Knowledge Network of the film “*Though the Heavens Fall: 100 Years of the British Columbia Court of Appeal*” and through the various news reports of the five special sittings, as well as by personal attendance at any of the special sittings.

In addition to the many lawyers and others who assisted with particular events (who are listed at the end of this report), acknowledgement must also be made to the Court staff and sheriffs in all the courthouses where special sittings took place. The special sitting events involved numerous registry staff, Court clerks, judicial administrative assistants, Court Services staff, and sheriffs. Without their generous and prompt assistance, the events would not have run as smoothly as they did.

The assistance of Cathryn Wilson and Kathryn Slemko in the planning, organization and execution of the Conference/Symposium events and Gala dinner events is gratefully acknowledged.

What follows is a listing of the events and the activities that took place to celebrate the centenary.

Victoria Special Sitting and Dinner

The Victoria special sitting was the inaugural event of the centennial year, held 8 January 2010 (close to the actual centennial date of 4 January 1910).

The Victoria special sitting was, by most measures, the biggest special sitting event of the year and in attendance second only to the National Judicial Institute's Conference/Centenary Symposium and gala dinner.

Attendees included 19 of the Court's 23 justices, who came to Victoria for the special sitting and dinner. The event is captured by the photo appearing at the beginning of this Annual Report.

On the morning of the special sitting, several judges of the Court visited four local high schools. Part of their visit included a showing of an abbreviated version of the film "*Though the Heavens Fall: 100 Years of the British Columbia Court of Appeal*".

The special sitting took place in the Maritime Museum in Bastion Square (the one-time law court building), which still maintains a heritage courtroom. The courtroom was filled to capacity with 75 people including Court judges, other local Provincial Court and Supreme Court judges (including Chief Justice Bauman), local lawyers, and other guests.

That evening there was a celebratory dinner hosted by the Lieutenant Governor at Government House.

Vancouver Special Sitting and Reception

The Vancouver special sitting was held 26 March 2010. The date was set to accommodate the Olympics which took place during February 2010. The true anniversary of the first Vancouver sitting of the Court could be arguably either 15

February 1910 (first actual sitting in 1910 accordingly to British Columbia Reports) or 5 April 1910 (first scheduled sitting for 1910 pursuant to the 1907 statute).

Invitations were extended to provincial and local politicians; current and retired judges of the Provincial Court, Supreme Court, and Court of Appeal; current and life benchers of the Law Society; the University of British Columbia Board of Governors and the University of British Columbia law school faculty; current and former court staff; current and former law students who assisted with research on the history of the Court; senior members of law-related groups such as the Law Foundation of British Columbia, the Canadian Bar Association – BC Branch, the *Advocate*, Courthouse Libraries of British Columbia, the Continuing Legal Education Society of British Columbia, the Justice Education Society of British Columbia; and executive members of other Lower Mainland bar associations.

Approximately 250 people attended the special sitting, including local lawyers, court staff, and members of the public. The Vancouver special sitting was followed by a reception at the Law Courts Inn.

Symposium and Appellate Judges' Conference

The annual National Judicial Institute (NJI) Appellate Judges' Conference was held in Vancouver on 22 April 2010. This was joined to a one-time Centenary Symposium held 23-24 April 2010. The Symposium was an added event because of the Court's centenary and was open to judges and members of the legal profession.

The Conference and Symposium took place at the Morris J. Wosk Centre for

Dialogue and had local, national, and international guest speakers. The Conference and Symposium topics were as follows:

April 22, 2010

International Law in Domestic Law; Extradition; Aboriginal Law.

April 23, 2010

Appellate Procedure and the BC Court of Appeal; Effect of Disruptive Technologies and Social Developments on the Legal System; Evolving Challenges for Courts in Democracies; Confidence in the Justice System in BC; Media Panel Discussion.

April 24, 2010

Neuroethics: Ethical and Legal Challenges to the Emerging Era of Personalized Medicine; Forensic Pathology; DNA Evidence Issues for Criminal Lawyers; Awareness of DNA Testing's Technical Limitations for Criminal Lawyers; The Human Rights Situation in Iran Today; International Human Rights, International Criminal Law, and The International Criminal Courts: Some Features of an On-going Interplay; Human Rights and Evidentiary Issues in the Context of Criminal Proceedings; Canadian Courts as World Courts: Promises and Perils of Universal Jurisdiction.

Gala Dinner

In conjunction with the symposium, a gala dinner was held 23 April 2010 at the Westin Bayshore. Over 1,000 judges, lawyers and others from all parts of British Columbia and Canada attended. The Master of Ceremonies for the dinner was

Glen Ridgway, Q.C. who, in recognition of the national scope of attendees, spoke in both French and English. The keynote speaker was the Chief Justice of Canada, Beverley McLachlin, and host Chief Justice Lance Finch.

The Honourable Martin Taylor, Q.C. (a retired Court of Appeal justice) performed his work “*The Lawyer’s A-Z*”, a 17 minute review (revue) of all manner of law, mostly connected to the Court of Appeal and to the *Donoghue v. Stevenson* case, done to the tune of “*The Maple Leaf Forever*”.

Also shown at this event was a seven minute version of “*Though the Heavens Fall: 100 Years of the British Columbia Court of Appeal*”.

Prince George Special Sitting and Dinner

Although it was hoped to hold some regular business during the sitting time, no cases were brought before the Court. Nonetheless, given the desire to use the Centenary to promote the Court as a part of the community, and the recent issuance of the Practice Note on Interior Sittings, the Court sent a division to Prince George for 14 September 2010. The division included Chief Justice Finch, Mr. Justice Frankel and Madam Justice Neilson.

The local committee coordinated with the Canadian Bar Association BC Branch to hold a continuing professional development event in the morning to coincide with the special sitting. The topic was “Ethics in Action: Practice and Community”. Thereafter, the division held a lunch meeting with about 16 local lawyers to discuss the Practice Note and other matters of common interest.

Following the lunch meeting, the special sitting was held in the Prince George

courthouse. About 40 people attended the special sitting.

A dinner was held in a local hotel, attended by the division and about 40 local lawyers. The mayor of Prince George, His Worship Dan Rogers, also attended.

Kamloops Special Sitting and Dinner

Although it was hoped to hold some regular business during the sitting time, no cases were brought before the Court. Nonetheless, given the desire to use the Centenary to promote the Court as a part of the community, and the recent issuance of the Practice Note on Interior Sitings, the Court sent a division to Kamloops on 18 October 2010. The division consisted of Chief Justice Finch, Madam Justice Saunders and Madam Justice Smith.

The judges held a lunch meeting with local lawyers to discuss the Practice Note and other matters of common interest. About 24 lawyers attended the lunch meeting.

Following the lunch meeting, the special sitting was held in the Kamloops courthouse. About 45 people attended the special sitting, including local lawyers, court staff, and members of the public.

The dinner was held in the old Kamloops courthouse.

On 19 October 2010, Chief Justice Finch gave a short speech at Thompson Rivers University. About 50 students from several classes and disciplines attended the lecture.

Kelowna Special Sitting and Dinner

In Kelowna, two cases were brought for hearing on 1 November 2010. The division (consisting of Chief Justice Finch, Madam Justice Huddart and Madam Justice Garson) dealt with those cases and the special sitting events of 2 November 2010.

The special sitting took place in the Kelowna courthouse. About 35 people attended the special sitting, including local lawyers, court staff, and members of the public.

The division then held a lunch meeting at the Rotary Centre for the Arts with about 20 local lawyers to discuss the Practice Note on Interior Sitings and other matters of common interest.

After the lunch meeting, there was a continuing professional development event at the Harvest Golf Club, arranged by the local committee in conjunction with the Canadian Bar Association British Columbia Branch, followed by the centenary dinner.

Justice Education and Knowledge Network Film

Under the auspices of the Justice Education Society and the Knowledge Network, the film *Though the Heavens Fall: One Hundred Years of the BC Court of Appeal*, commemorating the Court of Appeal's centenary was prepared.

A near-final cut of the film was shown to the current judges of the Court at the Court's semi-annual meeting in April 2009 to positive reviews. An advance screening was held in the Vancouver courthouse heritage courtroom on 2 October 2009 for retired and current judges of the Court and some other related guests.

A special screening for participants in the film and for friends of the Justice Education Society (JES) was held on 22 March 2010.

The film runs about 50 minutes. JES prepared a teacher's guide which includes a DVD copy of the film.

The film aired on Knowledge Network during 2010. The DVD was also shown at

three Victoria-area high schools as part of the Victoria centenary event on 8 January 2010.

Court History by Christopher Moore

Christopher Moore, a well-known writer of Canadian history and the author of several works of legal history, wrote *The British Columbia Court of Appeal - The First Hundred Years, 1910-2010*, which was published in March 2010. Funding for the project was provided by the Law Foundation of British Columbia. There was a book launch at the Art Gallery (the old courthouse) on 22 April 2010, as part of that weekend's Symposium and gala dinner events. The book examines the various periods of the Court, describing the judicial personalities as well as the prominent cases that defined the period. The book is the most comprehensive picture of the Court ever assembled.

The Advocate Special Edition

The January 2010 issue of the *Advocate*, dedicated to the Court's centenary, featured Registrar Jennifer Jordan on the cover. A number of lawyers wrote short articles on some of the leading appellate counsel of the British Columbia bar over the last century.

BC Studies

In September 2009, anticipating the centenary, *British Columbia Studies* published a special issue, No. 169 (Summer 2009), with articles by several academics on aspects of the Court's jurisprudence in the last century.

UBC/UVIC Moot

The annual UBC/UVic moot took place on 6 February 2010 at the Vancouver courthouse. In honour of the centenary, the two moots were heard by six Court of Appeal justices.

CLE Appellate Advocacy Seminar

On 1 October 2010, the Continuing Legal Education Society of British Columbia held its usual quadrennial seminar on appellate practice and advocacy

The seminar covered both civil and criminal appeals and included such topics as *Differences Between Trial and Appellate Advocacy; Practice in the BC Court of Appeal; Sentence Appeals; Perspectives from the Court of Appeal Registry; Factum Writing; Oral Advocacy*; and a live demonstration of a criminal appeal.

Centenary Website

A website (<http://www.bcca100.ca>) was set up in autumn 2009 to advertise the April 2010 Conference/Symposium and gala dinner, and to handle registration and ticket sales for those events.

The website also had information about the Court of Appeal and the centenary, including photographs, links to some of the other materials (e.g. Mr. Moore's book, the film *Though the Heavens Fall: One Hundred Years of the BC Court of Appeal*), press release about the other centenary events, and links to things like the news broadcasts about the special sittings. Attempts are being made to preserve the historical information contained in the website.

Yukon Court of Appeal 50th Anniversary

Research in 2009 serendipitously uncovered the fact that the legislation establishing a separate and distinct Yukon Court of Appeal was first enacted in 1960, making 2010 the 50th anniversary of the Yukon Court of Appeal. Accordingly, plans were taken up to celebrate that event.

During the regular May sitting a division of the Court (Madam Justice Saunders, Madam Justice Bennett and Madam Justice Garson) also participated in a special sitting and dinner, which was also attended by Chief Justice Finch. On the morning of 17 May 2010, the Court held its special sitting at 10:00 a.m., prior to the commencement of regular business. Justice Veale and Chief Judge Karen Ruddy of the Territorial Court also sat on the bench for the special sitting.

About 50 people attended the special sitting, including local lawyers, Court staff, and members of the public.

As is usual for the Yukon division sitting, there was a bench and bar dinner that night. The dinner was a special occasion because the Court's 50th anniversary coincided with the 25th anniversary of the establishment of the Yukon Law Society. In addition to a speech given by Professor Ken Coates of the University of Western Ontario (an expert on local Yukon history), the Law Society presented 25 year membership pins to those members so deserving.

Centenary Event Planners and Participants

Knowledge Network/

Justice Education Society Video

Megan Haldar, Director

Film Oversight Committee

Finch, CJBC

Levine, JA

The Honourable Martin Taylor, Q.C.

Rick Craig

Hamar Foster

David Hay

Sharon Bliss, Knowledge Network

Planning Committee Victoria

Kathryn Berge, Q.C.

Charlotte Salomon

Jim Legh (Chair)

Bruce Hallsor

Shelley Spring

Susen Johnsen (Rotto)

Dean Donna Greschner

Maritime Museum Executive Director

Greg Evans

Speakers at Victoria Special Sitting

Gary Lunn MP

Attorney General Michael de Jong, Q.C.

Glen Ridgway, Q.C.

James Bond

Charlotte Salomon

Victoria Dinner Speakers

Lt. Governor Stephen Point OBC

Chief Justice Robert Bauman

Madam Justice Jacqueline Dorgan

Prof. John McLaren

The Honourable Alan Macfarlane

Douglas Macfarlane

Trudi Brown, Q.C.

Glen Ridgway, Q.C.

Finch, CJBC

Judges Visiting Victoria High Schools

Finch, CJBC

Rowles, JA

Newbury, JA

Huddart, JA

Mackenzie, JA

Saunders, JA

Levine, JA

Chiasson, JA

Tysoe, JA

D. Smith, JA

Neilson, JA

UBC-UVIC Moot Judges

Donald, JA

Newbury, JA

Tysoe, JA

Neilson, JA

Groberman, JA

Garson, JA

Vancouver Special Sitting

Planning Committee

Robert Brun, Q.C.

Thelma O'Grady

Susan van der Flier

Derek Chapman (Chair)

Dean Mary-Anne Bobinski

Joelle Walker

Patrick Cleary

David Turner

Sandra Kovacs

Speakers at Vancouver Special Sitting

Lt. Governor Stephen Point OBC

Sandra Weafer

Attorney General Michael de Jong, Q.C.

Glen Ridgway, Q.C.

James Bond

Barbara Collins

Appellate Judges Conference/Symposium

David Wiseman (NJI)

Mary Ahearn (NJI)

Symposium Organizing Committee

Geoff Cowper, Q.C.

Dean Mary Anne Bobinski

George Copley, Q.C.

Donald, JA

Prof. Robin Elliot, Q.C.

Finch, CJBC
Prof. Hamar Foster
Frankel, JA
Anna Fung, Q.C.
Kathy Grant
Dean Donna Greschner
John Hunter, Q.C.
Miriam Maisonville, Q.C.
Neilson, JA
Newbury, JA
Saunders, JA
D. Smith, JA
Marvin Storrow, Q.C.

Symposium Speakers

Lt. Governor Stephen Point OBC
Prof. Stephen Toope
Prof. Jutta Brunee
Gib van Ert
Mr. Justice David Watt
Judge Patrick Healy
John Hunter, Q.C.
Prof. John Borrows
Jean Teillet
Prof. Hamar Foster
Prof. Richard Susskind
Prof. Judith Resnik
Prof. Kent Roach
Neil Boyd
The Honourable Patrick LeSage
Kirk Makin
Peter McKnight
Mary-Lynn Young
Dr. Judith Iles
Mr. Justice Stephen Goudge
Alan Gold
Dr. Don Riley
Shirin Ebadi
Prof. Peter Burns
Associate Chief Justice Dennis O'Connor
Prof. Rene Provost

Vancouver Gala Dinner
Dinner Committee
Marvin Storrow, Q.C.
Daniel Bennett
Dean Mary Anne Bobinski
The Honourable Donald Brenner, Q.C.
Derek Brindle, Q.C.
Russ Chamberlain, Q.C.
Murray Clemens, Q.C.
Geoff Cowper, Q.C.
Ian Donaldson, Q.C.
Finch, CJBC

Prof. Hamar Foster
Anna Fung, Q.C.
Gerald Ghikas, Q.C.
John Gordon, Q.C.
Wendy Harris, Q.C.
John Hunter, Q.C.
William Kaplan, Q.C.
Robin McFee, Q.C.
Miriam Maisonville, Q.C.
Sharon Matthews
Karen Nordlinger, Q.C.
The Honourable Wally Oppal, Q.C.
Robert Prior, Q.C.
Donald Sorochan, Q.C.
Mitchell Taylor, Q.C.
The Honourable Allan Thackray, Q.C.
Donald Yule, Q.C.

Dinner Assistants

Toni Armanno
Lauren Blake-Borrell
Kari Schroeder
Matthew Scott
Gloria Ng
D.J. Larkin
Isabel Henkelman
Bob Kucheran
Brenda Osmond
Rory McGillis
Mark Myhre
Kerry Birch

Dinner Speakers

Glen Ridgway, Q.C.
Chief Justice Beverley McLachlin
Finch, CJBC
Chief Leah George Wilson
Anna Fung, Q.C.
Newbury, JA
Michelle Pockey
The Honourable Martin Taylor, Q.C.

Book Launch and Reception

Christopher Moore
James Bond
Andrew Wilkinson, Q.C.
Claire Wilson
Greg Sexton
Heather Skappak

Whitehorse Sitting
Planning Committee

Mr. Justice Ronald Veale
Debra Fendrick
Tracy McPhee
Melissa Atkinson

Speakers Whitehorse Sitting

Mr. Justice Ronald Veale
The Honourable Geraldine van Bibber
Chief Brenda Sam
John Phelps
The Honourable Marian Horne
Susan Dennehy
Rod Snow

Whitehorse Dinner Speaker

Prof. Ken Coates

Prince George Planning Committee

Ronald Tindale
Greg Petrisor
Benjamin Levine
Kerri Fisher (Chair)
Grant Zimmerman
Lorne Dunn
Patricia Schmit, Q.C.

Prince George Professional Development
Event

Jennifer Weber
Glen Ridgway, Q.C.
Stephen McPhee

Prince George Special Sitting Speakers

Bruce Kaun
Attorney General Michael de Jong, Q.C.
Glen Ridgway, Q.C.
Stephen McPhee
Oliver Hui

Prince George Dinner Speakers

Glen Ridgway, Q.C.
Stephen McPhee
His Worship Mayor Rogers
Finch, CJBC

Kamloops Special Sitting Planning
Committee

Ken Walker
David Dundee
Sarah Firestone (Chair)
Leyna Roenspies
Michelle Stanford
Tara Decker
Tamara McKinnon
Butch Bagabuyo

Kamloops Special Sitting Speakers

Rex Renkema
Lorne Fisher
Glen Ridgway, Q.C.
Stephen McPhee
Sarah Firestone

Organizers Thompson River

University Visit

Karen Strothers Dawson
University Vice-President Richard
Barnsley
Dean Christopher Axworthy, Q.C.

Kelowna Special Sitting
Kelowna Planning Committee

Meg Shaw, Q.C.

Tom Fellhauer

Cathie Heinrichs (Co-chair)

Grant Hardwick (Co-chair)

Neville McDougall

Sandra Hakanson

Taryn Moore

Norman Yates

Kelowna Special Sitting Speakers

Clarke Burnett

Colin Forsyth

Glen Ridgway, Q.C.

Stephen McPhee

Heidi Taylor

Deborah Pearce

CLE Appellate Advocacy Program
Planning Committee

Raymond Lee

Ursula Botz

Holly Brinton

Patrick Foy, Q.C.

Gil McKinnon, Q.C.

Faculty for CLE Appellate Advocacy

Finch, CJBC

Hall, JA

K. Smith, JA

Frankel, JA

Garson, JA

Susan Brown

Mr. Justice William Ehrcke

Gregory Fitch, Q.C.

Angus Gunn

John Hunter, Q.C.

Registrar Jennifer Jordan

Deputy Registrar Maria Littlejohn

Robert Mulligan

Gregory Pun

Paul Riley

Centenary Website

Cathryn Wilson

Doug Jasinski (Principal, Skunkworks

Creative Group)

REPORT OF THE REGISTRAR

The Court's Workload

There were 962 filings of new appeals in 2010, a decrease from the 1089 new filings in 2009. The decrease relates to a decrease in both civil and criminal filings.

Statistics for criminal and civil case loads for 2010, with comparable numbers from 1999 to the present, are attached as appendices to this report.

Sittings of the Court

Due to the Olympic festivities around the Vancouver courthouse in 2010, and because of the disruption to traffic and the increase in noise, the Court decided not to sit during the three weeks of the celebrations. However, the sitting time was made up by the Court sitting more third divisions the remainder of the year.

In 2010, division one sat for 36 weeks, division two sat for 36 weeks and division three sat for 19 weeks. The Court also sat two divisions in the summer months. In addition, the Court sat for seven weeks in Victoria and one week in the Yukon Territory. The Court sat a total of 101 divisions in 2010, equalling the number of divisions sat in 2009.

Self-Represented Litigants

In 2010, out of 705 civil appeals filed and applications for leave to appeal filed, 195 cases (28%) involved a litigant who was not represented by counsel. There were fewer judgments rendered in civil appeals involving self-represented litigants. Of 289 civil cases disposed of in 2010, 61 (21%) involved at least one in-person litigant. This is a 6% increase over 2009 of

appeals heard involving self-represented litigants.

On the criminal side, there were 257 appeals or applications for leave to appeal filed. Of that total, 33 (13%) were appeals or applications by self-represented litigants. Of the 189 criminal appeals heard in 2010, 17 (9%) appeals involved self-represented litigants.

Media Lock-Up for Release of R. v. Henry Judgment

There was a successful media and counsel lock-up prior to the release of the *R. v. Henry* judgment on 27 October 2010. Approximately 18 accredited media showed up for the briefing by the Law Officer, Greg Pun. These lock-ups are useful in giving the journalists a chance to review the Court judgment in detail, to ask any questions of the Law Officer and to prepare a more comprehensive and accurate report for release. Lock-ups also assist counsel who have a chance to digest the judgment before facing questions from the media.

Registry and Staff

The Court of Appeal is fortunate to have such dedicated staff who serve the public and the judges with enthusiasm and dedication. In times of budget restraint and staff shortages, it is a credit to the staff that the level of services remains high.

In 2010 we said good-bye to Matt Dykeman, who left clerking in the Court of Appeal to pursue a more senior position with Court Services. We welcomed Erica McCuaig as a court clerk, who comes to us with extensive experience clerking at the

Provincial Court. Barry Lai is also welcomed as a new court clerk. He comes to us from the pool of agents who regularly visit our registry.

WebCATS

WebCATS, the web-based Court of Appeal tracking system is the Court's electronic file management system. WebCATS has been available to the public through Court Services Online since 2005, allowing the public to search civil and criminal indices for free and to view recent individual files for a fee.

Upgrades to WebCATS in 2010 included an amendment to the oral hearings. Judges have been giving an increasing number of oral judgments on dates other than the hearing date. This involved a change to the results screen so that oral judgments could be captured in a fashion similar to the reserve judgments.

A large change to the information available to the public is the ability to view available hearing dates. The Court now has information on the Court of Appeal website which shows available court time for the calendar year. Counsel and parties are asked to check dates on the website before they contact the scheduler to schedule a Court matter. The list is found at both the "Scheduling" and the "Hearing List" tabs on the website.

For the Criminal Pilot Project (see the Rules Committee Report), a new initiating letter was created that automatically populated all of the date fields in the letter. Since all dates are calculated in relation to the filing date, this was a useful letter for staff.

Another small change was to reorder all of the scheduled hearings in WebCATS so that all the matters in one division were listed together. Prior to this the list

displayed the hearings according to the file number.

WebCATS has always had the ability to capture the amount of time a court hearing takes. An addition to the chambers screen now makes this collection of time available for chambers hearings as well.

Plans for 2011 include the addition of e-filing. To deal with some documents which will not be e-filed at first, the staff will be uploading documents using a scanner. The current plan is to scan all initiating documents and orders.

The Court has also approved the list of documents available through Court Services Online. Documents on family files will not be viewable. As well, all affidavits will not be viewable. These are the same rules that are followed in the Supreme Court.

Registrar's Hearings

In 2010, the Registrar conducted 97 hearings out of a total of 134 scheduled hearings. Of those 97 hearings, 34 were for the assessment of costs, 45 were to settle orders, and 12 were hearings combining the settling of the order with the assessment of costs.

In July 2010 the *Court of Appeal Rules* were amended giving the Registrar more jurisdiction to settle appeal records, appeal books and transcripts. As a result, there were also six hearings in 2010 dealing with the settlement of books.

COMMITTEE REPORTS

PLANNING COMMITTEE

Members:

The Honourable Chief Justice Finch (Chair from Sept 2010)
The Honourable Madam Justice Saunders
The Honourable Mr. Justice Lowry (Chair to September 2010)
The Honourable Mr. Justice Chiasson
The Honourable Madam Justice Neilson
The Honourable Mr. Justice Tysoe (Sept 2010)
The Honourable Mr. Justice Groberman (Sept 2010)
Frank Kraemer Q. C., Senior Counsel & Executive Director, Judicial Administration
Jennifer Jordan, Registrar
Gregory Pun, Law Officer

The Planning Committee meets several times throughout the year to consider matters of general importance to the operation of the Court. The Committee acts as the Court's executive committee. New policies, initiatives, and changes in the administration of the Court are considered by the Committee.

The Committee reports to the full Court at the semi-annual meetings to obtain approval where required.

These are some of the matters considered during 2010:

Self-represented litigants

The number of self-represented litigants appearing before the Court is seen as a growing concern. The Committee has asked the Pro Bono Committee to endeavour to identify the problems which now arise and to develop proposals to address them for the Court's consideration.

The greater use of technology

The Committee considers it is incumbent on the Court to explore how technology that is now available can be used to improve all aspects of the appeal process and reduce the volume of paper that it consumes. The task rests largely with the Court's Technology Committee which has been asked in particular to consider the use of electronic books (Appeal Records, Appeal Books and Authorities) as well as the development of hyperlinked factums.

Chambers Practice

A review of chambers practice has revealed issues about incomplete materials, late materials, and late adjournments. To some extent, the amendments to the *Court of Appeal Rules* in 2010 which provide for more time for the filing of motion books and materials may alleviate some of these problems, at least in relation to leave applications. However, there is also concern about the length of chambers hearings and

whether more accurate estimates of time should be required and enforced.

Registry Practice

With the assistance of Court Services personnel, the Court registry staff are undertaking the preparation of a comprehensive manual to assist them in processing documents. Members of the Planning Committee will perform an advisory role on this project.

Kelowna, Kamloops and Prince George Sittings

Prior to November, 2010 the Court had not travelled to Kamloops or Kelowna since 2006 to hear an appeal. It has been even longer since the Court travelled to Prince George. Counsel have indicated that there is still interest in the Court travelling to the Okanagan. The Committee has proposed that counsel contact the Chief Justice when they want a division to travel to their city. If there is sufficient public interest or importance to an appeal, the Chief Justice will direct that a division be scheduled to sit there. The request must be made at least 60 days before the anticipated hearing.

Release of Reserve Judgments by e-mail

Reserve judgments have been released by e-mail since the beginning of September, 2010. Counsel send a request to the Court Reserve Judgment box at ca-rj@courts.gov.bc.ca and the judgment is e-mailed at the same time as it is released in chambers. Where a party asks that the e-mail be sent to multiple people, the requesting party is now asked to forward to the judgment office an e-mail with all of the participants copied.

Increased Sittings in the Yukon

The Yukon has asked for more sitting time. Another division will be scheduled to visit the Yukon in November 2011, in addition to the May 2011 division. Whitehorse is the default sitting venue for hearing all Yukon appeals. If counsel wish to have a matter heard in Vancouver, the request should be made to the Chief Justice to indicate the reasons why the matter should be heard in Vancouver.

Acknowledgements

As always, the Committee has been greatly assisted throughout the year by our Senior Counsel and Executive Director, Frank Kraemer, Q.C., our Registrar, Jennifer Jordan, and Law Officer, Greg Pun.

RULES COMMITTEE

Members:

The Honourable Chief Justice Finch (*ex officio*)
The Honourable Madam Justice Prowse (Chair from Sept 2010)
The Honourable Madam Justice Newbury (Chair to Sept 2010)
The Honourable Mr. Justice Lowry (to Sept 2010)
The Honourable Mr. Justice Frankel
The Honourable Madam Justice Garson
The Honourable Madam Justice Bennett (Sept 2010)
The Honourable Mr. Justice Hinkson (Sept 2010)
Jennifer Jordan, Registrar
Gregory Pun, Law Officer

The Court of Appeal Rules Committee meets regularly throughout the year to discuss proposals by the judges of the Court, the Registrar and lawyers, for amendments to the *Court of Appeal Act* and the civil and criminal *Rules*. The Committee is also responsible for amendments to the *Yukon Court of Appeal Act* and *Rules*. The Committee reports to the full Court on recommendations for amendments. It consults with members of the bar when there is a proposal that significantly changes the practice and procedure of the Court.

Criminal Appeal Rules

Criminal Pilot Project

In an effort to reduce unacceptable delays in the prosecution of criminal conviction and acquittal appeals, the Committee approved a pilot project, commencing on 7 September 2010, where all conviction and acquittal appeals are subject to a new timeline for the filing of documents in the Court of Appeal. The intent is to have most appeals completed within one year of commencement. The Practice Directive for the pilot project was produced after meetings with Crown counsel, members of

the defence bar and with the Legal Services Society. Registry staff are to monitor the filing deadlines and there is a compliance hearing automatically scheduled at the one year anniversary. If the timelines prove acceptable, they will be incorporated into the *Criminal Appeal Rules*. Specifics of the pilot project are as follows:

1. Counsel would have to file confirmation that the transcript and appeal books have been ordered;
2. Transcripts and appeal books should be filed by a certain date at which time counsel will set the hearing date;
3. The date for the filing of the appellant's factum is calculated from the date the notice of appeal is filed;
4. A "compliance date" hearing is also automatically scheduled for chambers in case the appellant's factum is not filed by the scheduled date.
5. The respondent's factum would be filed in relation to the hearing date

- (within four to six weeks of the hearing date).
6. There would be exceptions to this schedule: counsel could agree to abbreviated time limits; in person appellants might not be required to follow the timeline; complex appeals may need to follow another schedule – by agreement and approval of a chambers judge. Provision may be made for case management in these instances.
 7. To provide immediate feedback for the purpose of making necessary adjustments as the project proceeds, a brief questionnaire will be prepared for counsel to complete after the hearing.

Rule 13(3) applications may be useful in effectively bringing the timelines in the pilot project into effect on appeals commenced before 7 September 2010.

Legal Services Society reporting letter

The Practice Directive on applications for the appointment of legal counsel pursuant to s. 684 of the *Criminal Code* has been amended. The change is that the letter of authority that the applicant sends to the Legal Services Society, if legal aid is refused, asks for the Society to send a letter to the registry indicating only that legal aid was refused, whether the refusal was based on financial circumstances, the grounds of appeal that were considered on the application and that the documents reviewed be forwarded to the Court of Appeal.

Criminal Forfeiture Appeals

Forfeiture appeals have been treated to date like sentence appeals. However, they are often more complex and involve transcripts and factums. The Committee agrees that forfeiture appeals should be

treated like conviction appeals with transcripts and factums. Unlike other sentence appeals, counsel will be responsible for ordering transcripts.

Civil Appeal Rules

Civil Appeal Rule Amendments

The Civil Rule amendments were proclaimed on 1 July 2010. The amendments include:

1. Rule 1 was amended to define “business day”
2. Rule 7(2) was amended and increases the appellant’s time for filing of the Notice of Motion for leave to appeal from 5 days to 10 business days.
3. Rule 8 was likewise amended to increase the respondent’s time for filing a reply book from 1 day to 5 business days.
4. Rule 9 (4) was amended to provide for a time limit of “5 business days” instead of 5 days for stay of proceedings or stay of execution.
5. Rule 9(5) was added to provide for a reply to a stay and setting 2 business days for the filing of the reply motion book.
6. Rules 23 to 25 relating to factums on cross appeal were replaced with new rules 23 and 24. The new rules provide for a reply factum on a cross appeal and the new names for the factums (also followed in Form 11). In addition the rules set the page limits for the various factums:
 - a. 40 pages for “respondent’s factum on appeal” and “respondent’s cross appeal factum”.

- b. 30 pages for “appellants cross appeal factum” and 5 pages for “appellants reply factum”
7. The settlement of appeal books and appeal records was added to the rules, and consolidated with the section with settlement of transcripts. The form for the registrar’s appointment has likewise been amended.
8. Rule 54.1 was added as the Electronic Filing Rule.
9. The Court forms have been amended to show the Hornby Street address for the Court.
10. Form 9 (Appeal Record) was amended to ask that a copy of the original signed reasons for judgment be included.
11. Form 12 was amended to have affidavits listed in the order that they were sworn.
12. Form 12 was also amended to allow an appeal book to be printed double-sided with the page numbers on the upper outside corner of the page.
13. The “Fees Payable to the Crown” which were originally part of the Supreme Court Schedule 1 Appendix C have become Appendix C Schedule 1 of the *Court of Appeal Rules*. The fees have also changed – the numbers are rounded. They are subject to a cost of living adjustment every two years.
14. The major change to the fees is that there is no hearing fee charged for a ½ day appeal.

Orders on Oral Reasons for Judgment

There is some confusion arising in the situation where there is an oral hearing and the reasons for judgment are given orally on another date. Litigants are filing orders in the reserve judgment form and the registry has to return the orders for correction. The proposed correction is that the oral reasons for judgment form will include the phrase “and on oral reasons for judgment being given today”. Amended forms will be proposed for the 2011 legislative amendments.

Refusal of extension of time

The Court has issued a Practice Directive to allow orders to be filed which dispose of an appeal where an extension of time to file a document has been refused. The Practice Directive reads:

Result When Extension of Time Refused

When an application to extend the time to file an appeal record, transcript, appeal book or appellant’s factum has been refused by a justice in chambers, the order shall include a direction that the appeal is dismissed as abandoned pursuant to s. 10(2)(e) of the *Court of Appeal Act* unless a justice otherwise orders. If there is a reason why the appeal should not be dismissed as abandoned, counsel should raise the issue at the hearing.

The order should indicate any disposition as to costs, either as made by the justice or as otherwise permitted by law.

Leave to Appeal

Some issues have arisen with the current process of applying for directions as well as for leave to appeal. A subcommittee of the Rules Committee has been formed to “rationalize, simplify and resolve” the leave to appeal problems.

Chambers practice

Some judges of the Court met with counsel who frequently appear in Court chambers to discuss possible reform to the civil chambers practice. The meeting resulted in the following initiatives:

- Amend the *Rules* to provide for the filing of responsive materials on chambers applications;
- Prepare a Practice Directive to permit the filing of written argument where not specifically required by the *Rules*;
- Encourage counsel to schedule chambers matters at the beginning of the week instead of on Thursdays and Fridays, when the lists are usually long; and
- Amend Form 6 to indicate whether an application is contested.

The expectation is that issues with adjournments should almost disappear if there is an opportunity to respond to general applications.

Acknowledgements

As always, the Committee has been greatly assisted throughout the year by our Registrar, Jennifer Jordan, and Law Officer, Greg Pun.

COURT OF APPEAL TECHNOLOGY COMMITTEE

Members:

The Honourable Chief Justice Finch (*ex officio*)
The Honourable Madam Justice Saunders
The Honourable Madam Justice Levine (chair)
The Honourable Mr. Justice Chiasson
The Honourable Mr. Justice Tysoe
The Honourable Mr. Justice Groberman
Frank Kraemer Q. C., Senior Counsel & Executive Director, Judicial Administration
Jennifer Jordan, Registrar
Gregory Pun, Law Officer

The Court of Appeal Technology Committee was created to deal with issues arising from the use of computers in the courtroom. The Committee's concerns relate to the effect on the Court's process from the presence and use of computers in the courtroom. There are two aspects to the Committee's inquiries: electronic appeals, and the use of laptops in the courtroom by counsel and judges.

The Committee is addressing both physical issues, such as the placement of computers and monitors in the courtroom, and more fundamental questions about the changing nature of appellate litigation.

William v. HMTQ Appeals

The judges hearing these three appeals in November, 2010 were interested in collecting as much of the material as possible in electronic format. The voluminous transcript was electronic, as were the trial exhibits and authorities. The factums of all the parties were filed as electronic hyperlinked factums as well as in paper format. In the end, because of the voluminous material, the parties also all

filed condensed books at the beginning of the hearing.

The screens were set up in the courtroom and the judges made various uses of their laptops, from taking notes to annotating documents.

Counsel preferred the traditional method of presenting an appeal and because of the complexity of the material, counsel were responsible for the display on the screens in the courtroom; the screens, however, were not used very much.

The Court was able to reduce a significant amount of filed paper for these appeals. The condensed books used by counsel for the hearings were a miniscule fraction of the record. By eliminating the filing of the usual copies of appeal books and transcript, counsel were able to focus on those materials they needed for the hearing, and reproduce only those in hard copy. While these were somewhat unique circumstances, valuable lessons were learned and, with the proper protocols, the Court should be able to achieve similarly

favourable results in terms of reducing the flow of paper.

In the end, the main lesson learned is that strict standards for the preparation of documents must be set for counsel, particularly around the authorities. It is important that the references be to authorities that appear in the same reporter. Also, standards for hyperlinked factums are essential.

These appeals also had added complexity because each of the three parties was an appellant. Collecting and storing the material presented a unique challenge and emphasized the need for consistent naming of documents.

Electronic Appeal Documents

The Committee is involved in looking at the various formats of documents. In addition, work has to be done in setting an infrastructure for the collection, use and preservation of electronic material. Currently the *Act* and *Rules* all refer to paper copies of documents. The legislation has to be changed to allow for the filing of electronic copies only. This leads to the need for archiving and retrieval standards. The Committee is currently working with Court Services to identify and develop an infrastructure for an electronic Court.

The aim of the Committee is to allow judges to continue to work the way they want but using paper on demand instead of the current system of collecting everything in paper.

An essential component of this work is to also meet with counsel, transcription companies, and others involved in the preparation of documents for the Court to discuss the implications of moving to an electronic world.

EDUCATION COMMITTEE

Members:

The Honourable Mr. Justice Donald
The Honourable Madam Justice Newbury
The Honourable Mr. Justice Frankel
The Honourable Mr. Justice Groberman

The Education Committee presents programs for the judges at monthly sessions known as “Law at Lunch” and at the spring and fall meetings of the Court.

Law at Lunch is an informal lunch meeting of the judges, held about once a month, at which a speaker presents a topic that relates generally to the work of judges and its impact on others. Programs of greater length are presented at the semi-annual meetings.

Law at Lunch speakers included Mr. James Tate, of the B.C. Bar, on the “Lawyers’ Rights Watch” program; Justice Garson, on the new *Supreme Court Rules*; Justice Slade, on the Special Claims Tribunal; and a panel consisting of Justice Ryan, Justice Saunders and Justice Chiasson, on civility in judgments and related issues.

At the spring meeting of the Court in April, Heidi McBride, Supreme Court Law Officer, presented the new Publication Ban Manual.

At the fall meeting of the Court in October, Prof. Gordon Rose, of the Simon

Fraser University Psychology Department, spoke on “the Ability of Jurors to Comprehend a Judge’s Instructions”.

The Committee played an active role in the Court’s centenary celebrations, in particular, the 2010 National Judicial Institute Appellate Seminar and the Centenary Symposium which immediately followed.

Judges of the Court are given the opportunity to attend educational programs offered by various organizations, including the National Judicial Institute, the Canadian Institute for the Administration of Justice, the Federation of Law Societies, the Continuing Legal Education Society of British Columbia, the Canadian Bar Association, and university law schools.

All of these educational activities are designed to assist judges to remain current in the understanding of substantive and procedural legal developments, as well as in some of the broader issues that form the background to judicial work.

JOINT COURTS TECHNOLOGY COMMITTEE

Members:

The Honourable Mr. Justice Masuhara* (Chair)
The Honourable Madam Justice Levine
The Honourable Mr. Justice Tysoe
The Honourable Madam Justice Boyd*
The Honourable Mr. Justice Myers*
The Honourable Mr. Justice Rogers*
His Honour Master Baker*
Frank Kraemer Q. C., Senior Counsel & Executive Director, Judicial Administration
Jennifer Jordan, Registrar
Kevin Arens, Manager Information Technology and Finance
Cindy Friesen*, Manager, Trial Coordination
Heidi McBride*, Law Officer (Secretary)
(*B.C. Supreme Court)

In 2010, the Committee reviewed the performance issue of laptops which contained encryption software, started a tablet computer project and reviewed various security matters. The Committee was also involved in reviewing the new features of the courts website which include a site search and an RSS feed. These two additions are the result of feedback from users of the website. As well, while the judgment database has always been blocked from Google indexing to protect the privacy of the litigants, the rest of the site is available and is now indexed by Google and other search engines.

In addition, the Committee began to work on developing policies around the acquisition of new software applications and hardware for the members of the courts. To this end terms of reference were prepared and reviewed for the committee.

The Committee met with members of the bar in September to gather information on how the bar is utilizing information technology, what the drivers are, and the application of technology in the courts.

The meeting was well attended and the feedback from the profession was very useful. The Committee continues to evaluate the application of information technology in its processes.

The Committee notes that some electronic proceedings were planned for 2010 as well as 2011. Results from which will inform the Committee as to the direction to proceed in setting standards. Another significant issue identified was the infrastructure of the courts and the lack of technology-friendly courtrooms. Funds will have to be allocated to improve these courtrooms in order to accomplish these goals. The Committee and judges of the courts are generally becoming more engaged in the process of introducing technologies into the registries as well as the courtrooms. Both courts have representation on the Integrated Electronic Courts project of the Ministry of the Attorney General. The project seeks to improve its work processes through electronic filings as well as electronic processing and to provide for more electronic information hardware and software in the courtroom.

JUDICIAL ACCESS POLICY WORKING COMMITTEE

Members:

Jennifer Jordan, Registrar (Chair)
Frank Kraemer, Q.C., Executive Director & Senior Counsel, Judicial Administration
Trish Shwart, Executive Director Business Transformation and Corporate Planning
Kashmiro Cheema, Acting Director, Court Reform
Jan Rossley, Director Judicial Administration, Provincial Court
Heidi McBride, Supreme Court Law Officer
Gene Jamieson, Legal Officer, Provincial Court
Kathryn Thomson, Legal Policy Consultant

Mandate of the Committee

The Committee is a joint committee consisting of representatives from all three courts and Court Services members. The Committee develops draft policies and interacts with the various court committees, seeking guidance and approval for draft policies relating to access to court records, specifically those in electronic format. The Chief Justices and Chief Judge are consulted before a policy is adopted. In addition to policy work, the Committee also reviews access applications for those seeking bulk access to court record information.

Work of the Committee

In 2010, work of this Committee continued to revolve around issues relating to the Digital Audio Recording System (DARS), discussions about access to criminal record information, and preparation and review of court access policies. The Committee also dealt with requests to increase the list of documents which were viewable through CSOnline.

The Supreme Court has approved a draft *Court Records Access Policy* which should be available in early 2011. Similarly, the Provincial Court has approved *Policies*

Regarding Public and Media Access in the Provincial Court of British Columbia and this again should be available in early 2011. The Court of Appeal will consider these policies before drafting a similar policy for the Court of Appeal.

Access to Provincial Court criminal information was provided free of charge in 2008 and 2009. In 2010 Court Services attempted to impose user access fees. However, this was short-lived and complaints resulted in removing the fees.

Access to restricted files in Court Services Online by counsel of record has been implemented.

An issue which has been growing over the last year is the use of mobile devices in the courtroom. The presiding judge controls the use of devices in the courtroom (including the use of Twitter and blogging). The Committee will be assisting the judiciary in developing a policy.

During the year, the Committee received, considered, and granted a number of applications from a variety of government agencies and departments for access to court records for the purpose of fulfilling their statutory mandate.

LAW CLERK COMMITTEE

Members:

The Honourable Madam Justice Kirkpatrick
The Honourable Mr. Justice Frankel (Chair)
The Honourable Mr. Justice Tysoe
The Honourable Madam Justice D. Smith
Gregory Pun, Law Officer

The Law Clerk Committee provides general supervision over the Court of Appeal's law clerk program. The Law Officer provides day-to-day supervision for the law clerks. One of the major tasks of the Committee is to interview the short list of candidates, following the interviews by the law officers of the Supreme Court and Court of Appeal.

Law clerks in the Court of Appeal commence their terms in the first week of September each year and finish variously after 10, 11, or 12 months (i.e. at the end of June, July, or August).

In September 2010, 12 clerks began their clerkships at the Court of Appeal for the 2010 – 2011 term. Of the clerks who started in September 2010, there are five from University of British Columbia, three from University of Victoria, two from Dalhousie University and one each from Queen's University and the University of Manitoba.

In January 2010, the law officers of the Court of Appeal and the Supreme Court received 94 applications for the 30 law clerk positions available in the two courts for the 2010 – 2011 term. About 49 were from students at either the University of British Columbia or the University of Victoria law schools, and the remainder

were from other Canadian and foreign law schools.

In February 2010, the law officers interviewed 82 of those applicants. Subsequently, the judges of the Court of Appeal Law Clerk Committee interviewed 22 candidates and selected 12 for the positions in the Court of Appeal.

In August 2010, the Court hired an additional law clerk for a 12-month term beginning in September to assist the Court with the Aboriginal rights and title appeals from the order of Mr. Justice Vickers in *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700.

In November 2010, Judge Kirkpatrick and members of the Supreme Court Law Clerk Committee, the law officers, and some former and current clerks, attended recruitment information sessions at both the University of British Columbia and the University of Victoria law schools.

The law officers and the members of the Law Clerk Committee continue to refine the recruitment and application process.

The Committee expresses its thanks to Jill Leacock and Heidi McBride, Law Officers for the Supreme Court, Greg Pun, Law Officer for the Court of Appeal, and to Susan Devenish and Krystal Mason, for their assistance.

LIBRARY COMMITTEE

Members:

The Honourable Madam Justice Kirkpatrick (Chair)
The Honourable Madam Justice Griffin*
The Honourable Madam Justice Humphries*
The Honourable Madam Justice Kloegman*
Frank Kraemer Q. C., Senior Counsel & Executive Director, Judicial Administration
Diane Lemieux, Librarian
(*B.C. Supreme Court)

In a time where many are relying less on paper reporters and more on electronic databases the Library decided, due to space and budget constraints, to cancel all of the law reporters purchased by subscription or received in the way of binding in Kamloops, Victoria and New Westminster. Prior to making this decision, the Committee received a positive response from the judges and masters in these locations indicating a willingness to use online resources. Vancouver, being the central source, will continue to subscribe to the BCLR's, CBR's, CCC's, CPC's, CR's, DLR's, RFL's, SCR's, and WWR's for the time being. Duplicate binding of the CCC's, SCR's and BCLR's in Vancouver was also discontinued.

The conversion process for posting of Court of Appeal and Supreme Court judgments, which started in June 2009, continues to be done by the library technician, Sarah Preston, along with Mary Falck, the website administrator, who posts the judgments on to the courts' website, sends them to the various publishers, and notifies the lower court judges of appealed decisions. Diane Lemieux and Susan Devenish continue to act as back-ups for both Sarah and Mary

during absences.

As always, the judicial members of the Library Committee thank the library staff for their dedication, hard work, and cheerful responses to the request of judges, masters, law clerks, and judicial administrative assistants.

PRO BONO COMMITTEE

Members:

The Honourable Chief Justice Finch (until June, 2010)
The Honourable Mr. Justice Donald
The Honourable Mr. Justice Mackenzie (from October, 2010)
The Honourable Madam Justice Levine
The Honourable Madam Justice Neilson

Self-Represented Litigants

In 2010 the Committee became part of a larger Court initiative involving self-represented litigants. The ratio of self-represented litigants to represented parties has been growing over the years and the Court's efforts to provide materials and assistance to these litigants has not kept pace.

The initiative began with the Chambers project of the Planning Committee. One of the recommendations from the Chambers Project was to provide a more varied type of material to assist self-represented litigants. Such materials could include short videos on procedure as well as better graphic materials, flow charts and smart forms.

The Court does not have the resources to undertake a project of this magnitude. The Justice Education Society (JES) was approached and Rick Craig, JES Executive Director, and his staff have kindly offered their assistance and experience to move forward on this project. The first hurdle is to obtain funding.

As part of the strategy, the material can be developed in stages. In the same way that the websites which JES has developed for the other courts, the Court of Appeal website could start with a few instructional videos based on the material contained in

the current guidebooks (*How to Conduct an Appeal* and *Responding to an Appeal*).

At a later date, the website could add more booklets and develop some smart forms, which would assist the applicant in filling in the blanks of the Court forms.

The idea is to start with civil materials and to plan to add criminal materials at a later date (the ratio of criminal self-represented litigants is smaller than that of civil litigants).

At its October meeting the Court enthusiastically approved the plan to move forward in developing this website in conjunction with the JES. This Committee will form the consulting committee for this project.

It is anticipated that the first phase of the project will run through the end of 2011.

Access Pro Bono

Access Pro Bono was incorporated in February 2010 to carry on the work of the Western Canada Society to Access Justice and Pro Bono Law of British Columbia, which formally merged as of 1 April 2010.

The mission is to promote access to justice in British Columbia by providing and fostering quality pro bono legal services for people and non-profit organizations of limited means.

Services

Access Pro Bono carries on the services and programs formerly offered by the two organizations including:

- over 89 summary legal advice clinics in community centres, social agencies, churches and courthouses located throughout the province;
- a province-wide roster program providing representation services to individuals and non-profit organizations of limited means;
- a superior courts civil duty counsel project in Vancouver; and
- a Children's Lawyer project in Nanaimo.

Assistance 2010

In 2010, 9 low-income British Columbians received full legal representation in the BC Court of Appeal through Access Pro Bono's Court of Appeal Roster Program, for which Access Pro Bono maintains a roster of 194 lawyers. A further 13 low-income British Columbians received legal assistance on their Court of Appeal matters from Access Pro Bono's Civil Chambers Duty Counsel Program. Finally, 25 low-income British Columbians received legal advice from Access Pro Bono clinic lawyers on whether or not to pursue their Court of Appeal matter.

Volunteers for 2010

The Court of Appeal is extremely appreciative of all the lawyers who devote their time to pro bono cases. Names of some of the lawyers who took on new pro bono Court of Appeal cases in 2010:

Meera Bennett
Joseph McArthur
Warren Milman
Andrew Pilliar
Paige Morrow
Ben Ingram
Herman Van Ommen
James MacInnis
Donald McLeod

Court of Appeal Coordinators

The Court of Appeal coordinators who put many volunteer hours into reviewing cases for merit are:

Simon Coval (civil)
Georgiale Lang (family)
Rick Peck, Q.C. (criminal)
John Jordan (Vancouver Island)

STATISTICS

SUPREME COURT OF CANADA

There were 72 applications for leave to appeal from decisions of the Court filed with the Supreme Court of Canada in 2010.

The Supreme Court of Canada considered 66 applications for leave to appeal (some of these were from 2009 filings). Of these applications, 10 were granted, 46 were dismissed, and there were seven decisions pending at the end of 2010. The other three include one extension of time dismissed; one discontinued and one oral hearing ordered.

In 2010, the Supreme Court of Canada heard 13 appeals from B.C. cases. Of these appeals, four appeals were allowed, two were dismissed and there were seven reserved judgments pending at the end of 2010. In addition to these decisions, another 10 judgments were rendered in B.C. cases which had been heard in previous years. Of these, five appeals were allowed and five appeals were dismissed.

In 2010, 15% of the applications for leave to appeal to the Supreme Court of Canada were from the Court. Of the judgments rendered in 2010, 14% were appeals from the Court.

B.C. COURT OF APPEAL

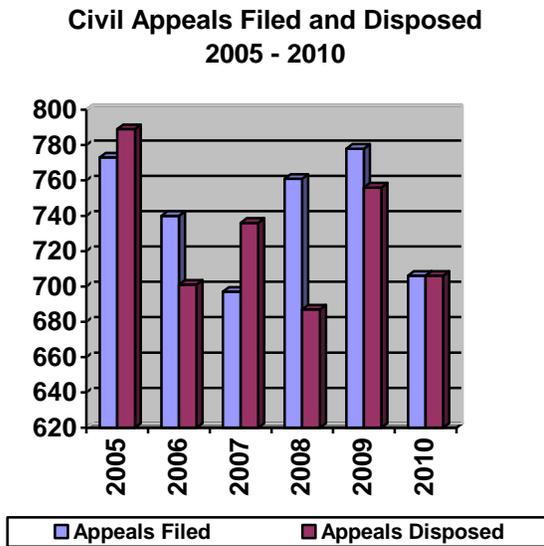
The charts on this page show the volume of litigation and compare the number of appeals filed, both civil and criminal, and the number of appeals disposed of for the period 2005 - 2010.

Please refer to the appendices for the actual numbers applicable to these charts.

Civil

Figure 1 demonstrates the general increase in appeals filed from 2005 to 2009, with a substantial drop in filings in 2007 and 2010. The disposed appeals dropped in 2006 and 2008, but otherwise have been close or exceeded filings. The disposition rate for appeals in 2010 was 100% of filings (Appendix 1).

Figure 1

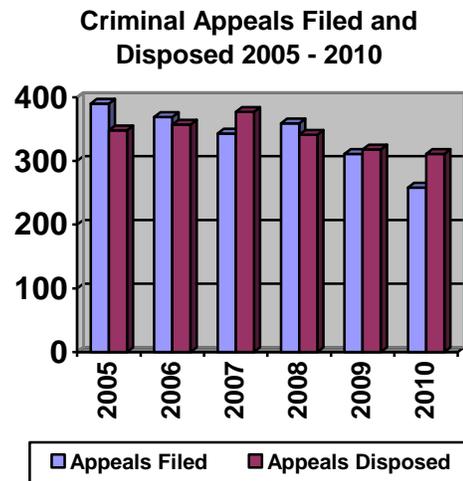


Criminal

There are substantially fewer criminal appeals filed as compared to civil appeals. Figure 2 shows that the number of

criminal appeals disposed of recently is slightly more than the number of criminal appeals filed, which assists in reducing the backlog of criminal appeals which had accumulated in the earlier years. For 2010, there was a noticeable decrease in filings while the number of criminal dispositions remained stable, resulting in a disposition rate of 121% of filings (Appendix 2).

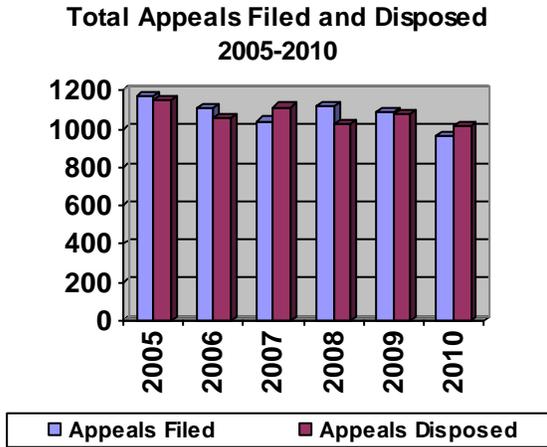
Figure 2



Global

For a more complete picture of total activity, Figure 3 combines the civil and criminal filings and dispositions. The clearing rate for appeals over the last two years has been less than 100%, so this year's clearing rate of 106% has assisted in clearing up the backlog of appeals (Appendix 3).

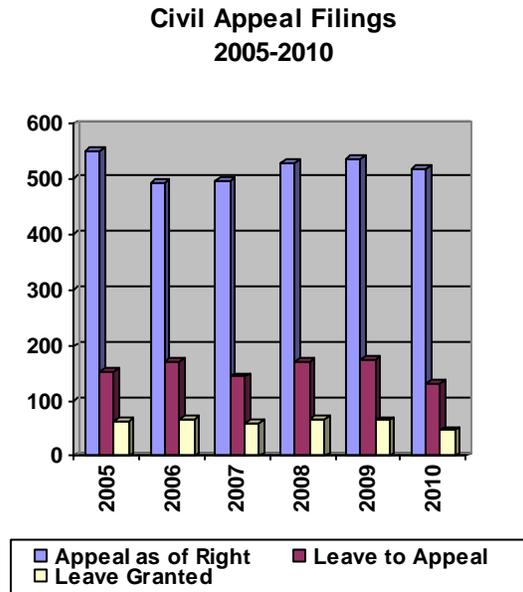
Figure 3



Types of Civil Appeals Filed

Of the civil appeals initiated in 2010, 23% were by applications for leave to appeal. These appeals require the permission of a justice before they can be heard by a division of three judges. In 2010, 64% of the applications for leave to appeal were granted. Figure 4 shows the comparison of applications for leave to appeal with appeals as of right (Appendix 1).

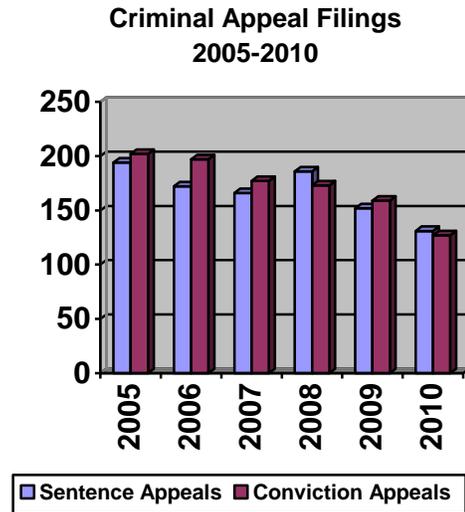
Figure 4



Types of Criminal Appeals Filed

In criminal matters, appeals from convictions and acquittals take up most of the hearing time of the Court, while sentence appeals and summary conviction appeals require less time. Figure 5 gives a comparison of criminal appeals filed between 2005 and 2010. Sentence and summary conviction appeals amount to about half (50%) of the total criminal appeals filed (Appendix 2).

Figure 5

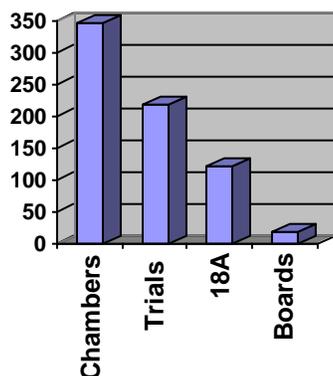


Origin of Appeals

Another way to categorize the civil work of the Court is to look at the type of proceeding that gave rise to the appeal. The majority of appeals arise from chambers matters and summary trials under Rule 18A (now Rule 9-7). The 2010 figures show there were substantially more appeals from chambers matters and Rule 18A summary trials than appeals from trials. Figure 6 shows the types of appeals according to the underlying proceeding. Over 67% of appeals filed were from non-trials.

Figure 6

Origin of Appeals 2010

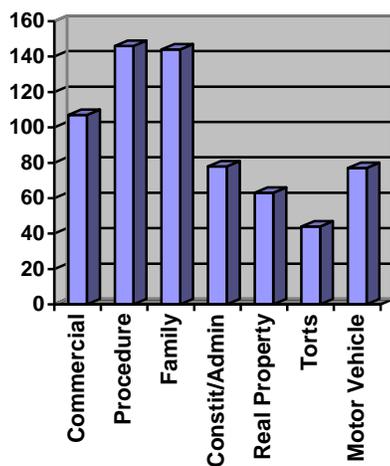


Civil Case Categories

In addition to the origin of civil appeals, there are seven broad categories of civil appeals. Figure 7 gives a flavour of the variety of cases which are heard by the Court of Appeal.

Figure 7

Civil Case Categories 2010



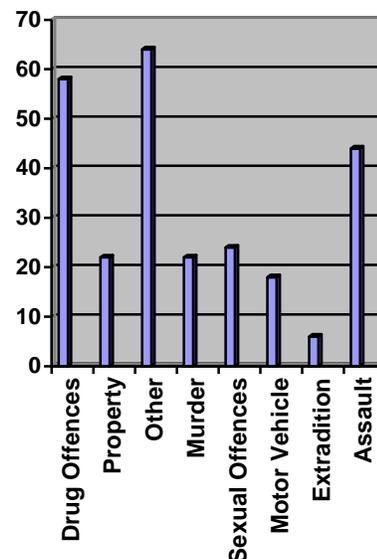
Criminal Case Categories

Another interesting breakdown is for the types of criminal cases that are dealt with

by the Court. Drug and assault offences form the largest categories of criminal appeals this year, amounting to almost 40% of the cases before the Court. “Other” covers various offences such as arson, mischief, and *habeas corpus* cases. Figure 8 shows the top eight categories.

Figure 8

Criminal Categories Appeals 2010



Appeals Allowed/Dismissed

The rate of civil and criminal appeals allowed over the past six years has varied. In 2010 the proportion of civil appeals allowed was 45% of the total civil appeals heard. For criminal appeals, the figure was 28% allowed of all criminal appeals heard. The “allowed” statistics encompass partial appeals allowed (i.e. any variations in the order) as well as appeals where new trials were ordered.

Figure 9 shows the number of civil appeals allowed and dismissed and Figure 10 shows the number of criminal appeals allowed and dismissed. (Appendices 1 & 2)

Figure 9

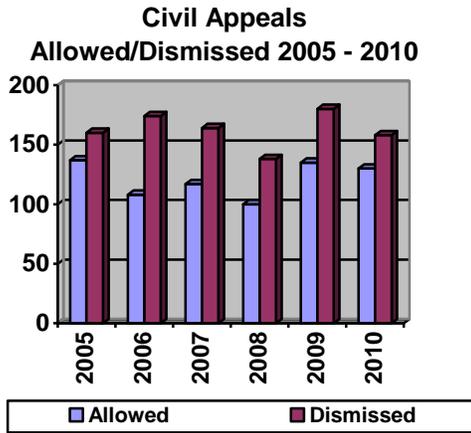
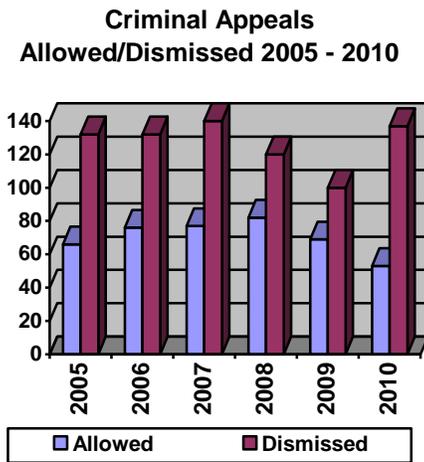


Figure 10



Self-Represented Litigants

Figure 11 shows the number of self-represented litigants compared to the number of represented litigants who filed appeals in 2010. This number does not capture those litigants who file their own appeal but subsequently retain counsel; nor does it show the change where counsel cease to act. In 2010 the percentage of

civil filings for self-represented litigants was 28% and the percentage of criminal self-represented litigants amounted to 13% of all the appeals filed.

Figure 12 represents the number of self-represented litigants, by category, compared to the represented litigants in that category. It is interesting to note that almost 50% of family law appeals involve at least one self-represented litigant.

Figure 11

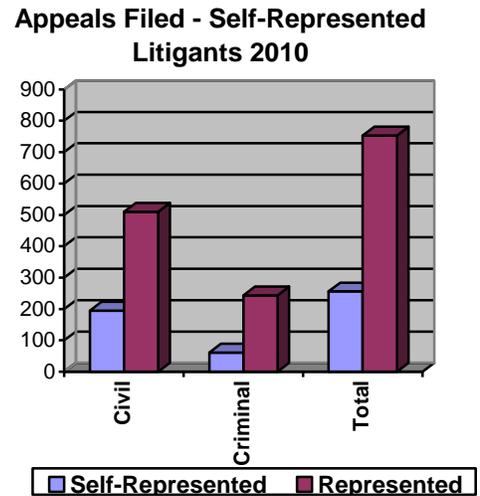
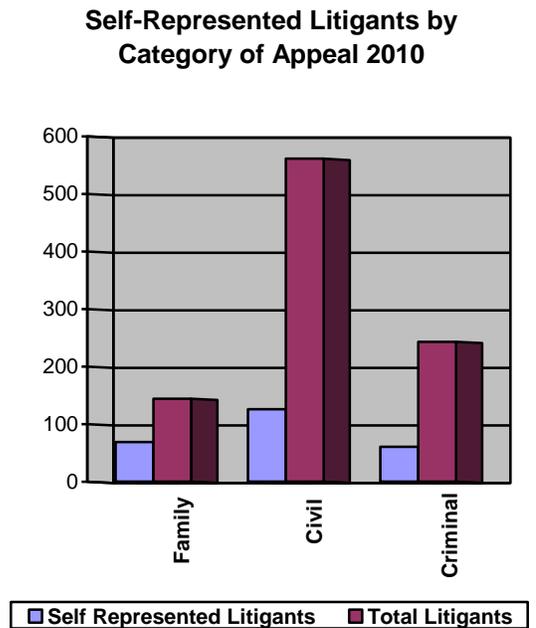


Figure 12



Appendix 1
Civil Statistics 1999-2010*

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
APPEALS FILED:												
Notice of Appeal	787	679	660	582	532	468	550	494	498	530	538	519
Leave to Appeal	224	248	258	236	204	171	154	170	144	172	175	131
Notice of Appeal and Leave						54	69	76	55	59	65	55
TOTAL FILED	1011	927	918	818	736	693	773	740	697	761	778	705
COURT DISPOSITIONS:												
Appeals Allowed	151	148	133	137	121	112	137	108	117	100	135	130
Appeals Allowed %	43%	42%	43%	42%	38%	40%	46%	38%	42%	42%	43%	45%
Appeals Dismissed	196	197	177	189	199	168	160	174	164	138	180	159
Appeals Dismissed %	57%	58%	57%	58%	62%	60%	54%	62%	58%	58%	57%	55%
TOTAL COURT DISPOSITIONS	347	345	310	326	320	280	297	282	281	238	315	289
Appeals Concluded in Chambers or Abandoned	673	544	522	492	455	498	492	419	455	449	441	419
TOTAL DISPOSITIONS	1020	889	832	818	775	778	789	701	736	687	756	708
Dispositions as % of Filings	101%	96%	91%	100%	105%	112%	102%	95%	106%	90%	97%	100%
Judgments Reserved (Court)	174	197	178	193	181	210	197	221	197	192	245	233
Judgments Reserved (Cham)	n/a	n/a	n/a	n/a	n/a	99	66	79	88	87	63	62
Appeals with 5 Judges	3	12	16	10	16	4	1	1	3	2	7	1
Court Motions: Reviews	16	10	7	17	13	15	13	19	13	14	20	25
Granted	0	3	6	2	7	3	5	5	2	2	4	3
Refused	16	7	1	15	6	12	8	14	11	12	16	22
Chambers Motions	568	530	419	427	451	494	435	426	423	423	539	503
LEAVE TO APPEAL												
Granted	18	80	75	65	56	60	62	66	58	66	65	47
Refused	39	37	35	26	30	56	42	38	42	47	51	30
Total	57	117	110	91	86	116	104	104	100	113	116	77

*The numbers for 2004-2010 have been revised

Appendix 2
*Criminal Statistics 1999-2010**

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
APPEALS FILED:												
Sentence	199	182	156	133	126	162	176	157	149	163	140	114
Conviction	203	174	177	128	130	137	142	147	116	123	115	99
Summary Conviction	39	40	37	47	33	41	18	15	17	23	12	16
Acquittal & Other	68	78	69	64	57	69	60	50	61	50	44	28
TOTAL FILED	509	474	439	372	346	409	396	369	343	359	311	257
COURT DISPOSITIONS:												
Appeals Allowed	103	84	111	70	72	82	66	76	77	82	69	52
Appeals Allowed %	29%	28%	37%	31%	27%	40%	33%	37%	35%	41%	41%	28%
Appeals Dismissed	248	218	193	159	193	124	132	132	140	120	100	137
Appeals Dismissed %	71%	72%	63%	69%	73%	60%	67%	63%	65%	59%	59%	72%
TOTAL	351	302	304	229	265	206	198	208	217	202	169	189
Summary Dismissals Abandonments in Court/Chambers	118	149	139	137	105	140	161	149	160	139	149	121
TOTAL DISPOSITIONS	469	451	443	366	370	346	359	357	377	341	318	310
Appeals Disposed % of Filings	92%	95%	101%	98%	107%	85%	91%	97%	110%	95%	102%	121%
Appeals Heard by 5 Judges	4	5	5	0	1	0	1	0	0	2	0	1
Judgments Reserved	78	89	89	86	109	84	85	85	81	76	88	88
Judgments Reserved Chambers	n/a	n/a	n/a	n/a	n/a	21	10	10	28	11	11	13
Chambers Motions	305	218	260	230	219	244	275	298	248	242	265	272

* The numbers from 2004-2010 have been revised

Appendix 3
Total Appeals Filed and Disposed 1999-2010**

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
APPEALS FILED:	1520	1401	1357	1190	1082	1102	1169	1109	1040	1120	1089	962
COURT DISPOSITIONS:	698	647	614	555	585	486	495	490	498	440	484	478
Appeals Allowed	254	232	244	207	179	194	203	184	194	182	204	182
Appeals Allowed %	36%	36%	40%	37%	32%	40%	41%	38%	39%	41%	42%	38%
Appeals Dismissed	444	415	370	348	383	292	292	306	304	258	280	296
Appeals Dismissed %	64%	64%	60%	63%	68%	60%	59%	62%	61%	59%	58%	62%
TOTAL	698	647	614	555	562	486	495	490	498	440	484	478
Appeals Concluded in Chambers or Abandoned	791	693	661	629	560	638	653	568	615	588	590	540
TOTAL DISPOSITIONS	1489	1340	1275	1184	1145	1124	1148	1058	1113	1028	1074	1018
Dispositions as % of Filings	98%	96%	94%	99%	106%	102%	98%	95%	107%	92%	99%	106%
Judgments Reserved	252	286	267	279	290	414*	358*	395*	394*	366*	407*	396*
Appeals with 5 Judges	7	17	21	10	17	4	2	2	3	4	7	2
Chambers Motions	873	748	679	657	670	738	710	724	671	665	804	775

*Now includes chambers reserved judgments

**The numbers from 2004-2010 have been revised