

**B.C. COURT OF APPEAL
2011 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)
- January 1, 2012 (Retired)

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)
- January 1, 2012 (Retired)

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)
- January 1, 2012 (Retired)

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)
- January 1, 2012 (Supernumerary)

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)
- January 1, 2011 (Supernumerary)

Madam Justice Pamela A. Kirkpatrick

- November 20, 1989 (Supreme Court Master)
- November 27, 1992 (Supreme Court)
- June 2, 2005 (Court of Appeal)
- January 1, 2012 (Supernumerary)

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)
- January 1, 2012 (Supernumerary)

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)

Madam Justice Anne W. MacKenzie

- July 5, 1990 (Provincial Court)
- June 20, 1996 (Supreme Court)
- April 23, 2010 (Associate Chief Justice Supreme Court)
- December 31, 2011 (Court of Appeal)

STAFF OF THE B.C. COURT OF APPEAL

Jennifer Jordan	Registrar
Timothy Outerbridge	Law Officer
Linda Rainaldi	Law Officer
Maria Littlejohn	Associate/Deputy Registrar
Vicki Jang	Manager/Deputy Registrar
Alix Going	Executive Assistant to Chief Justice Finch

Law Clerks 2011-2012

Ryan Androsoff
Katharine Bond
Krysta Cochrane
Allan Doolittle
Kimberley Fenwick
Skye Friesen
Yun Li
Jessica Lithwick
Kathryn McGoldrick
Nicholas Melling
Lauren Witten
Mark Witten

Judicial Staff

Val Belina
Cathy Clough
Linda Danners
Susan Devenish
Elise Du Mont
Bonnie Marcaccini*
Susan McEvoy
Cherry Mills
Barbara Moss
Victoria Osborne-Hughes*

* Victoria

Registry Staff

Jaclyn Burgoyne*
Shelly Ducharme**
Steven Evans*
Torri Enderton
Shayna Irvine
Sue Lang
Barry Lai
Wendy MacKenzie*
Christina McKenzie**
Erica McCuaig
Sarah Pinkney
Jennifer Rahiman
Diane Schwab
Moira Syring*
Darryl Wong

* Victoria

** Kamloops

Ushers

Bill Deans
David O'Brien
Susan Brokenshire
Max Pearce

SUPERIOR COURTS JUDICIARY STAFF

Judicial Administration

Frank Kraemer, Q.C.	Senior Counsel & Executive Director
Kory Bonhomme	Director of Human Resources and Support Services
Michelle McConnachie	Director of Human Resources and Support Services
Kevin Arens	Director of Information Technology and Finance
Tammy McCullough	Assistant to Senior Counsel & Executive Director
Cheryl Steele	Finance and Administration Clerk
Michelle Sam	Judicial Assistant

Judges' Library Diane Lemieux

Library Technician Sarah Preston/Connie Kang

Website Administrator Mary Falck

IT Services *(provided by Microserve Business Computer Services)*

Mark Hujanen, Service Delivery Manager

David Chow, Help Desk Lead Technician

Simon Kim, Help Desk Lead Technician

Eddie Chan, Help Desk Technician

William Huang, Help Desk Technician

Jason Lui, Help Desk Technician

Michael Gou, Help Desk Technician

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 British Columbia 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 and assessing bills of costs.

The Court's Complement

At the beginning of 2011 there was one vacancy in the Court arising from the election of Mr. Justice Lowry to supernumerary status. That vacancy remained until the end of 2011.

Effective 31 December 2011, the vacancy was filled by the appointment of the Honourable Madam Justice Anne Winter MacKenzie. Prior to her appointment, Justice MacKenzie had served as the Associate Chief Justice of the Supreme Court of British Columbia since 23 April 2010. Her role as Associate Chief Justice was preceded by a long and distinguished career at the bar and in the courts.

Justice MacKenzie grew up in Mission, British Columbia. At the University of British Columbia she studied French, English and psychology, and completed her undergraduate degree at the University of Calgary in 1973.

Justice MacKenzie returned to British Columbia, and soon after enrolled at the University of British Columbia Law School. She graduated with her LL.B. in 1977, articulated at Guild Yule & Co., and was called to the bar in 1978. She joined the criminal law section of the Department of Justice (now the Public Prosecution Service of Canada) where she practised in all levels of courts, in a wide range of prosecutions.

In 1990, Justice MacKenzie was appointed a judge of the Provincial Court of British Columbia. In that capacity she heard the full range of cases tried in that Court, and her criminal law background was fully utilized. As well, her facility in the French language enabled her to preside over several criminal trials in Canada's second official language.

In 1996, Justice MacKenzie was appointed a justice of the Supreme Court of British Columbia. Sitting first at New Westminster, she presided over all manner of cases, including

criminal jury trials conducted in French. She was later transferred to Vancouver where she was called on to hear some lengthy, difficult and complex criminal cases.

While in the Supreme Court she served on that Court's Criminal Law and Executive Committees, and made significant contributions to continuing education programs for both the bench and bar. Her many talents, including her calm and courteous judicial temperament, her easy and respectful manner of dealing with witnesses, litigants, lawyers and judicial colleagues, were recognized by her appointment as Associate Chief Justice in 2010.

In addition to a full and active life in the law, Justice MacKenzie is a well-rounded and balanced person. She is the mother of three children and stepmother to two more. She and her partner Ira Nadel enjoy music, art, travel, swimming and walking.

All members of the Court of Appeal were delighted by her appointment to this Court. Her intelligence, experience, work ethic, good humour and collegiality will make her a strong addition to the Court.

There were other changes to the Court's complement at the end of 2011. The Honourable Justices Risa Levine, Pamela Kirkpatrick and David Tysoe all elected supernumerary status. While the Court will continue to have the benefit of their services on a part-time basis, their elections have created three more vacancies.

Three long-serving justices of the Court announced their retirements effective 1 January 2012, namely: the Honourable Justices Anne Rowles, Carol Huddart and Kenneth Mackenzie.

The Honourable Madam Justice Anne Rowles

Effective 1 January 2012, Madam Justice Mildred Anne Rowles retired from the Court of Appeal, ending a judicial career spanning more than 28 years. Justice Rowles was appointed in April 1983 to the County Court of Vancouver, then to the Supreme Court of British Columbia in January 1987, and finally to the British Columbia Court of Appeal in October 1991. Her keen intellect, deep sense of fairness and practical common sense enabled her to deliver judgments that were analytically satisfying, and at the same time fully responsive to the issues in dispute.

Justice Rowles was born in Empress, Alberta, and attended elementary and high school in Kelowna, British Columbia. She obtained a Bachelor of Arts degree from the University of British Columbia in 1965, and graduated from the University of British Columbia Law School in 1968. In her last year there she was the editor of the UBC Law Review.

Justice Rowles articulated with the late John Milne and practised in his smaller firm until 1976. That practice gave her extensive experience in a wide range of real life problems, and also gave her a deep understanding of the human condition. In 1977, she moved her practice to associate with others, and developed a practice focused on matrimonial law.

During her time at the bar, Justice Rowles was a Director of the Vancouver Community Legal Assistance Society, served on the executive of the Vancouver Bar Association, led the domestic relations tutorial for the bar admissions course and served as a bencher of the Law Society of British Columbia and as a Director of the Legal Services Society. As a justice of the Court of Appeal, Justice Rowles wrote judgments in difficult cases in all areas of the law.

At the Court's ceremony to mark her retirement along with two of her judicial colleagues, one of her former colleagues, the Honourable Tom Berger, Q.C. said:

Justice Rowles always had the common touch and an abundance of common sense and yet her intellectual gifts, her capacity for clear and concise judgments have been recognized throughout her career.

Justice Rowles' judgments have always looked to the practical side of things and yet she's made a remarkable contribution, especially during these last 20 years to the development of the law in this province on the civil and criminal side as well.

Judge Rowles has been married for over 40 years to Afton Cayford, recently retired as a Professor of Mathematics at the University of British Columbia. Anne goes to her own well-earned retirement with the good wishes and deep gratitude of the bar and of her colleagues in the courts.

The Honourable Madam Justice Carol Mahood Huddart

Justice Huddart also retired from the Court of Appeal effective 1 January 2012, after serving in the courts of this province for over 30 years. She was first appointed to the County Court of Vancouver in September 1981, then to the Supreme Court of British Columbia in May 1987 and finally to the British Columbia Court of Appeal in March 1996. At the Court of Appeal's ceremony to honour her retirement and that of her two colleagues, she stated that when she was first appointed:

I was hopeful about what my life as a judge would bring. I promised to bring an open mind to each case, to imagine myself in the shoes of those before me, and to do the job the best way I knew. Thirty years later I remain hopeful about what the future will bring knowing that I have tried to fulfil that promise.

Her record of service has surpassed by far her own modest aspirations. Justice Huddart graduated from the University of Toronto in 1959 with an Honours Degree in Political Science. She studied law at Osgoode Hall and graduated with her LL.B in 1963.

She worked as a law clerk with two Toronto law firms during her law school years, and joined the firm of Howell, Fleming on her call to the bar in 1965. She practised there until 1969, and then for a short period was legal counsel to the Honourable R.K. Andras, Minister of State for Housing in the federal government.

In 1970, while travelling in Colombia, Judge Huddart met and married Larry Huddart and became mother to Larry's four children, subsequently living in Colombia, Australia and Europe.

In 1974, Larry Huddart took a position at Lester B. Pearson College of the Pacific, near Victoria. Justice Huddart and her family moved with him and Justice Huddart articulated to become qualified to practice law in British Columbia with Crease and Company, and then practised with that firm until 1979, focusing on matrimonial law.

In 1979, Justice Huddart joined the firm of Buckler Fast Brown and Smith. She was Chair of the Victoria Family Law Subsection of the British Columbia Branch of the Canadian Bar Association and frequently lectured and wrote on family law matters. She was a Director of the YM/YWCA and founding President of the Divorce Lifeline of Victoria, a society that provides counselling to separated and divorced persons.

Justice Huddart was a hard-working, collegial member of the Court of Appeal. Her retirement will give her more time to travel, and to enjoy life on the family farm in Peterborough, Ontario. The good wishes and gratitude of the bar and of her colleagues in the courts go with her.

The Honourable Mr. Justice Kenneth Charles Mackenzie

Justice Mackenzie is the third of the Court's judges to retire effective 1 January 2012. He was appointed to the British Columbia Supreme Court in May 1992, where he served until his appointment to the British Columbia Court of Appeal in June 1998.

Justice Mackenzie grew up in Princeton, B.C. where his father worked for the Canadian Pacific Railroad. He graduated from the University of British Columbia with a B.Com degree in 1960 and an LL.B degree in 1961. He then took an LL.M and S. JD at the University of Michigan Law School in 1962 and 1968 respectively.

Justice Mackenzie commenced articles at Guild Yule & Co. in 1962 and was called to the bar in 1963. He taught law at the University of British Columbia Faculty of Law from 1964 to 1969 when he returned to practice at the same firm.

His scholarship, legal acumen and practical common sense led him to become leading general counsel during his time at the bar. In addition to the insurance law practice engaged in by many at Guild Yule, he undertook utility regulatory work and other administrative law briefs. He was counsel in a case which arose out of the financial collapse of the Teachers' Investment and Housing Cooperative in 1985 in which there were hundreds of plaintiffs and massive amounts of documentation. The case settled shortly before his appointment to the Supreme Court of British Columbia. Justice Mackenzie was also appointed arbitrator under the British Columbia Coastal Forestry Agreement. As well, he served on the British Columbia Law Reform Commission for some years and was appointed Queen's Counsel in 1988.

During his time in practice, Justice Mackenzie continued to teach tort law and damages at the University of British Columbia Law School. As a trial judge, Justice Mackenzie rendered some important decisions that helped to establish the ground rules that would apply to the new class proceedings legislation.

In the Court of Appeal, Justice Mackenzie wrote more than his fair share of judgments in all areas of the law, demonstrating his scholarship, broad perspective and sound judgment. His gentle, quiet manner, both in and out of court, his collegiality, and his good humour contributed much to the life of the Court.

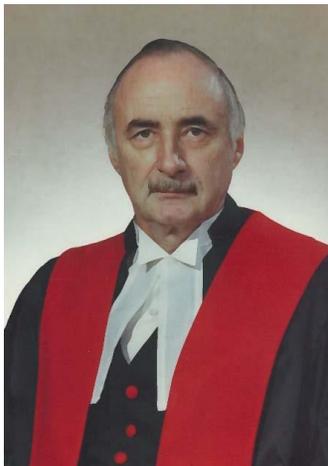
Justice Mackenzie and his wife Donna have three sons and three grandchildren. One son, David, practises law in Toronto. The others, John and Peter, reside in British Columbia. The Mackenzies have maintained a farm on Prince Edward Island, which has been in Donna's family for many years.

It would appear that at least some part of Justice Mackenzie's retirement years will be spent in transcontinental travel.

Justice Mackenzie has made a very significant contribution to the law in British Columbia as a lawyer, teacher and judge. All members of the bar, and judicial colleagues wish him a long, happy and fulfilling retirement.

In Memoriam

The Honourable Charles Conrad Locke



Justice Charles (Charlie) Locke passed away on 24 September 2011, at the age of 94. He was the grandson of Corbet Locke, a County Court judge in Manitoba, and the son of Charles Holland Locke, a Justice of the Supreme Court of Canada. Charles Holland Locke had a distinguished career as leading counsel in Vancouver prior to his appointment.

Justice Locke attended UBC and obtained a B. A. in 1938. He then enrolled as an articling student to his father, in the days before there was a law school in British Columbia. He worked in his father's office (then known as Locke, Lane, Guild & Sheppard) until February 1941 when he joined the Canadian Army to serve in World War II. He became a member of the British Columbia bar on 14 March 1942, but did not commence practice until the war's end.

In all he served five and one-half years with the Royal Canadian Artillery, and retired from the service with the rank of Captain in 1946.

From 1946 to 1956 Justice Locke practiced at Guild Yule & Co. (the successor firm to Locke, Lane et al.), and then from 1956 until 1978 he practiced with the firm of Ladner Downs (now Borden Ladner Gervais). He was appointed Queen's Counsel in 1960 and was elected a bencher of the Law Society of British Columbia in 1961. He was elected Treasurer of the

Law Society in June 1971, for the ensuing year. He also served as an executive member of the Canadian Bar Association and its Vice-President for British Columbia from 1968 to 1969.

Justice Locke was appointed as a Justice of the Supreme Court of British Columbia in 1978 and as a Justice of the Court of Appeal in 1987. He served there until reaching the mandatory retirement age in 1992.

At the Court's ceremony to honour his retirement from the Court of Appeal on 25 September 1992, Chief Justice McEachern said this in his opening remarks:

Charles, old friend, you have been a dear colleague and we are all grateful for the opportunity we have enjoyed serving with you on the courts of this Province. I speak for all of the judges when I say that we have thoroughly enjoyed every minute of our association with you. Go your new way now and enjoy your new life as much as I know you have enjoyed what we have been doing together. I have only one last assignment for you, Charles, and that is that you hearken quietly to what counsel have to say and then you can respond for as long as you wish, but most of us will have to leave at about eleven o'clock.

The latter comment is a reference to Justice Locke's fondness for storytelling, without too much regard for the passing of time. When his turn came to speak during the ceremony, Justice Locke reflected on the 50 years since his call to the bar:

When I came back from the War there were six judges in the Court of Appeal. There were six judges in the Supreme Court. There were sixteen County Court judges. There were four magistrates in the City of Vancouver, and the prosecutorial staff consisted of three prosecutors and one secretary. They handled all the criminal business in the City of Vancouver. The leaders at the Bar: nearly all the lawyers, know their names: Senator Farris, Alfred Bull, Neil Hossie. Later in terms of age, Doug Brown started to make his way, John Farris, M.M. Macfarlane, C.W. Tysoe, and then the redoubtable T.G. Norris who many more will know, Claude McAlpine and Angelo Branca were shining at the Criminal Bar at that time.

And further:

Now it is time to say goodbye. I will say this: that while the criticisms that the Bench are under are more frequent, I do not detect in anything that I read, any attack upon the integrity of the judges or the principles which Lord Atkin pressed upon us. The comments seem to be confined to attitudes, to form, to language used: [not] to fundamentals. As I said before, with all the great changes that I have briefly touched on, the one thing has remained the same and that is the law. Keech v. Sanford is still good law, Derry v. Peek tells us about fraud. The law of contract hasn't changed very much. This extraordinary mistress, the law which we serve, is able to adapt itself to the

changing work conditions and the cataclysms I have mentioned. The judges try to do their part.

Charlie was the consummate professional, a leader at the bar, a learned and thoughtful judge and a great friend, colleague and mentor.

The Work of the Court

In 2011 the Court delivered reserved (written) judgments in 293 appeals and 105 chambers applications. In addition, the Court pronounced judgment with oral reasons in a further 103 appeals, and in most chambers applications.

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

Most of the justices' non-sitting time is spent researching and writing reserved judgments or preparing for upcoming appeals. Law clerks assist the justices in these tasks. Responsibility for writing reserved judgments is shared among judges hearing each appeal.

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 76 reserved criminal judgments rendered in 2011, 94% were pronounced within the guideline. On the civil side, of the 217 reserved judgments delivered in 2011, 87% were pronounced within the guideline. Of all reserved judgments, both civil and criminal, 61% were rendered within three months or less of the hearing date.

Appeals to the Supreme Court of Canada

The statistics indicate that the Court remains the "court of last resort" for litigants in British Columbia. As shown under the "Supreme Court of Canada" heading of the statistics section of this report, only 34 applications for leave to appeal were filed in the Supreme Court of Canada from judgments of this Court, and only five applications were granted. This is about half the number compared to 2010.

Self Represented Litigants

As noted in the Registrar's Report, the Court hears many appeals involving self-represented litigants. The number of civil filings for self-represented litigants decreased 3% over last year and the number of civil hearings involving self-represented litigants slightly decreased over last year. However, the number of criminal appeals filed and heard, where at least one party was self-represented, both increased compared to 2010.

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. Please see more on the *Pro Bono* representation in the *Pro Bono* Committee Report below.

Extra-Judicial Appointments and 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 2011 justices of the Court held positions on various bodies such as:

- Vancouver Institute
- Justice Education Society
- Canadian Superior Courts Judges Association – 2012 Quadrennial Commission
- Dean's Advisory Committee, National Centre for Business Law, UBC Faculty of Law
- Publication Ban Working Group
- Judges' Dinner Committee (Hutcheon Papers)
- Canadian Judicial Council Jury Instruction Committee
- BC Courthouse Library Society
- BC Judicial Appointments Advisory Committee
- Allocations Committee, Jewish Federation of Greater Vancouver
- Honorary Board of Governors, Vancouver Foundation
- Bench and Bar Committee on Family Law

Interpreters:

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

Attended seminars either as speakers or audience members:

- Atlantic Courts Education Seminar
- NJI planning workshop on self-represented litigants
- Computer Forensics Seminar
- Criminal Law Course Newly Appointed Federal Judges
- Federation of Law Societies National Criminal Law Program
- Canadian Bar Association – Women Lawyer's Forum
- Association of Defence Lawyers Seminar

Wrote and edited books and articles:

- National Judicial Institute Criminal Law eletter
- 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

Visits to the Court

In November, 2011 the Court received a six-person delegation from the High People's Court of Guangdong Province, China, headed by the President of the Court, Mr. Zheng Er. Also in November, two judges from Japan visited the Court: Judge Ryota Ozu, Visting Scholar at the UBC Faculty of Law and Judge of the Sapporo District Court visited with Judge Mitsui of the Sendai High Court, Akita Branch. In December the Court hosted a 20 person delegation from various Courts in Tianjin, China, headed by Ms. Jing Hong and Ms. Zhang Sheng.

Court Meetings

At the spring meeting of the Court in April, 2011, Mr. Justice Jean Côté, Alberta Court of Appeal and Mr. Justice Robert Richards, Saskatchewan Court of Appeal discussed the day-to-day practices of those courts. At the fall meeting of the Court in October, Dr. Barbara McGillivray spoke on scientific advances in the field of reproduction.

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

In 2011, the Court welcomed Timothy Outerbridge as the new Law Officer to the Court. Mr. Outerbridge comes to us from Alexander Holburn Beaudin and Lang, LLP where his practice specialized in litigation, appellate law and legal research.

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.

The Court's Workload

There were 932 filings of new appeals in 2011, a decrease from the 962 new filings in 2010. Although there was a decrease in civil filings, there was an increase in the criminal filings over last year.

Statistics for criminal and civil case loads for 2011, with comparable numbers from 2000 to the present, are attached as appendices to this report.

Sittings of the Court

In 2011, division one sat for 41 weeks, division two sat for 37 weeks and division three sat for 8 weeks. The Court also sat two divisions in the summer months. In addition, the Court sat for eight weeks in Victoria and one week in the Yukon Territory. The Court also sat two days in Kelowna, three days in Kamloops and one day in Prince George. The Court sat a total of 98 divisions in 2011, three divisions less than the number of divisions in 2010. The reduction in the number of third divisions has allowed the court clerks to keep up with the registry backlog in work.

Self-Represented Litigants

In 2011, out of 649 civil appeals filed and applications for leave to appeal filed, 161 cases (25%) involved a litigant who was not represented by counsel. Of 274 civil cases disposed of in 2011, 46 (17%) involved at least one in-person litigant. This is a 4% decrease over 2010 of appeals heard involving self-represented litigants.

On the criminal side, there were 283 appeals or applications for leave to appeal filed. Of that total, 44 (16%) were appeals or applications by self-represented litigants. Of the 132 criminal appeals heard in 2011, 20 (15%) appeals involved self-represented litigants. The number of self represented litigants in criminal appeals has increased over 2010 for both appeals filed and appeals heard.

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 2011 we said good-bye to Erica McCuaig and Barry Lai, who both left clerking in the Court of Appeal to pursue other positions within the justice system. We welcomed Sarah Pinkney and Darryl Wong as court clerks. Both Sarah and Darryl come to us fresh from post-secondary experiences.

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.

Court of Appeal efilings were unofficially implemented in the summer of 2011. The number of documents received since the initiation of efilings to the end of the year is 152.

In addition to efilings, there is a small amount of scanning which is adding certain documents electronically to the court file. In the future there will be a set of electronic documents which will be available through Court Services Online (such as initiating documents and orders). Currently only documents which are efiled are available electronically.

Certain documents will not be available online. Family file documents are not viewable as well as all affidavits. These are the same rules as those in the Supreme Court.

For WebCATS, the major change in 2011 was to clean up the law firm table which contains the addresses of the law firms, enabling the electronic preparation of standard letters. The table contained many duplicates. The clean-up also involved implementing changes in who could add and change the addresses.

Registrar's Hearings

In 2011, the Registrar conducted 66 hearings out of a total of 98 scheduled hearings. Of those 66 hearings, 29 were for the assessment of costs, 22 were to settle orders, and 12 were hearings combining the settling of the order with the assessment of costs. There were also 3 appointments to settle the contents of the transcript or appeal book. Thirty-two appointments were either adjourned or settled.

COMMITTEE REPORTS

PLANNING COMMITTEE

Members:

Chief Justice Finch (Chair)
Madam Justice Saunders
Mr. Justice Chiasson
Madam Justice Neilson
Mr. Justice Tysoe
Mr. Justice Groberman
Frank Kraemer, Q.C., Senior Counsel & Director of Judicial Administration
Jennifer Jordan, Registrar
Timothy Outerbridge, 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 2011:

Self-represented litigants

The number of self-represented litigants appearing before the Court remains a growing concern. The Committee approved several initiatives to assist self-represented litigants, such as registry assistance for ordering reasons for judgment. The Pro Bono Committee continues to identify problems that arise and develop proposals for the Court's consideration.

Access Policy

The Court of Appeal is developing an access policy that will provide guidance to the public on both principles of courtroom access, such as the use of handheld devices and the broadcasting of proceedings as well as access to Court records.

Foreign Delegations

An interim protocol for managing requests by foreign delegations to visit the Court was approved. The Committee will work with other courts across the country and the Office of the Commissioner for Federal Judicial Affairs to develop a protocol that will ensure the Court's security needs are met.

Canadian Bar Association of British Columbia – Appellate Advocacy Section

The Committee welcomed the creation of this section of the Canadian Bar Association of British Columbia. The Court’s Law Officer will attend section meetings and report to the Committee any issues raised by the Bar that are of importance to the Court.

Registry Practice

The Committee agreed that the Court should no longer continue to mail out oral reasons for judgment to the parties. A practice note was approved and circulated entitled “Obtaining Oral Reasons for Judgment (Civil & Criminal Practice Note, 19 September 2011)”. Other forms of distribution of the Courts reasons in paper are being phased out.

RULES COMMITTEE REPORT

Members

The Honourable Chief Justice Finch
The Honourable Madam Justice Prowse (Chair)
The Honourable Mr. Justice Frankel
The Honourable Madam Justice Garson
The Honourable Madam Justice Bennett
The Honourable Mr. Justice Hinkson
Jennifer Jordan, Registrar
Timothy Outerbridge, 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 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.

Court of Appeal Act

Issues over the application of the Leave to Appeal section in the *Court of Appeal Act* and Rules led the Rules Committee to form a subcommittee with the aim of improving access to justice by substantially reducing the number of orders that require leave to appeal. The Committee found that a large amount of litigant time and money was being expended on leave to appeal applications. For the judges as well, leave applications were often long and complicated hearings where the initial question argued was whether or not leave was required. The case law reviewing the distinction between interlocutory and final orders spans decades and has resulted in inconsistent jurisprudence.

The objective of the amendments is to restrict leave applications primarily to pretrial matters. The proposal includes a list of civil and family orders where leave is required. It is anticipated that this format should result in a clear indication of appeals where leave is required and should largely eliminate the need for directions in chambers.

The subcommittee, composed of Madam Justice Prowse, Mr. Justice Lowry and Madam Justice Garson (chair), consulted with Ken Downing, Senior Legislative Counsel, as well as with members of the bar who regularly appear in Court of Appeal chambers. The subcommittee also presented its proposed amendment to a Supreme Court Committee for review.

The proposal went before the full Court of Appeal for discussion at the Court meetings in April and October 2011 and, after approval in October, was forwarded to Victoria to be placed on the legislative agenda. There is no definite indication when the amendments will be presented for First Reading.

Criminal Appeal Rules

Pilot Project for Conviction Appeals

The Pilot Project to reduce delay in the prosecution of criminal conviction and acquittal appeals commenced on September 7, 2010. By the end of December, 2011, there were 152 appeals which had been included in the Pilot. Of these appeals, 11 had been heard and disposed of, 11 had been abandoned and 9 had been heard and were on reserve. The intent of the Pilot is to have the majority of these appeals heard within one year of the filing of the appeal, or as soon as possible thereafter. The results so far are promising, but it is too early to draw any statistically significant conclusions.

A timeline has been established, with the cooperation of counsel, which sets time limits for the preparation and filing of transcripts, appeal books and factums. For appeals where there are initial problems complying with time limits, case management judges have been assigned to assist with issues as they arise. Madam Justice Prowse, Mr. Justice Frankel and Madam Justice Bennett have been doing the majority of the case management.

The Pilot Project will be extended for another year to January 31, 2013 in order to gather more complete information on the effect of the Pilot in reducing delays. Included in the assessment of the Pilot will be comments from the participants, which are being collected through questionnaires.

It is anticipated that lessons learned from the Pilot Project will be incorporated in the draft Criminal Appeal Rules, which are on hold until the Pilot Project concludes.

Bail when New Trial Granted

A proposed Practice Directive has been reviewed by the Court as well as an advisory committee of Crown and defence lawyers. The purpose of this practice directive is to ensure that an appellant who is in custody when a new trial is ordered: (a) is not released from custody until the matter of bail pending the new trial has been dealt with; and (b) appears before the trial court in a timely way.

Bail on Extradition Appeals

Consultation has also taken place on the procedure where an appeal has been filed, the subject is out on bail and the Minister issues an order of surrender. Where there is agreement, it should be possible for counsel to agree on the extension of the bail without an appearance. The details of this procedure are still being discussed.

Transcripts in Criminal Appeals

The Court has agreed that the number of copies of transcripts filed in the Court of Appeal on criminal matters should be reduced. This would mean that the judges hearing an appeal would not have individual paper copies of the transcripts, only an electronic copy. The discussion continues, however, on what the judges should use in the courtroom. Further work needs to be done on how to provide the judges with what they need on a file without increasing the work of counsel.

Civil Appeal Rules

Rule 33

Rule 33 is the rule governing applications to a justice in chambers. The rule was amended to provide for five business days' notice of an application. A provision was also added allowing a responding party to file their response two days before the application was scheduled to be heard.

Form 6

Form 6 was amended to allow parties to indicate whether an application will be contested or uncontested.

Practice Directives and Practice Notes

Filing Written Argument in Court of Appeal Chambers

A new Practice Note is in effect for filing written submissions in support of a chambers application where there is no requirement to file an argument under the Rules. The Practice Note urges a page limit of three pages for these submissions and asks the applicant to file these submissions at the same time as the Notice of Motion. The responding party, also limited to 3 pages, should file a response no later than noon the day before the appearance is scheduled to be heard. This Practice Note is restricted to civil matters.

Frequently Cited Authorities

The Practice Note on *Frequently Cited Authorities* was updated in 2011. Additional cases were added to the list. The Court does not require the full reproduction of these authorities in the Book of Authorities. Instead, counsel only need reproduce the headnote and the passage which will be relied upon in submissions.

Consolidation of PD and Notes

The list of Practice Directives and Notes was consolidated in 2011. The Directives and Notes now have a consistent format with a name for citation purposes and a history of amendments.

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

Timothy Outerbridge, 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.

Work in 2011 revolved around the concept of moving the Court of Appeal to an electronic environment in relation to the appeals that are filed and heard in this Court.

As part of this project, the Committee approved the creation of a Court of Appeal E Appeal Working Group, consisting of representatives of the judiciary, including the law officer, registrar and judicial IT supervisor; representatives of Court Services, including the director of business transformation, a senior policy analyst as well as consultants in the technology and business areas.

The Court of Appeal Technology Committee itself met twice during the year, along with the E Appeal Working Group. The first meeting was to document workflows from the judge's point of view. The workflows were divided into pre hearing, in court, and post hearing components.

The second meeting was held to discuss the ways in which an electronic court could improve both access to justice for the public as well as how an electronic court would improve the ability of the judges to do their job. The discussion led to the preparation of a way to measure whether the introduction of technology into the process was successful in meeting the goals of improving access and improving the work environment for judges.

The rest of the meetings during the year were held by the E Appeal Working Group and focused on developing the infrastructure of an electronic court. The Committee was not involved in this aspect of the planning.

The registry staff were also involved in workshops to document the current practices of filing, storing, retrieving and archiving documents. This process was a necessary step in planning future procedures.

To move the Court of Appeal into an electronic court, the E Appeal Working Group has identified the following areas for attention:

- Document format has to be standardized, documented and disseminated
- A person has to be identified as the manager of the electronic records
- Transmission of electronic documents to the Court must be facilitated, possibly part of the existing Court Services Online portal
- The storage of electronic documents has to be accommodated by Court Services
- Archiving standards must be set by the government
- Legislation to make the electronic document the original filed document must be drafted
- Electronic transcript standards must be prepared
- Performance standards for moving from the paper world to the electronic world must be identified
- Courtrooms must be equipped to manage electronic appeals

The format of documents will be tested at the next stage, where a large electronic appeal from the Supreme Court has been identified as the next electronic appeal for the Court. It is anticipated that from this hearing there will be standards for the preparation of appeal material as well as some guidance for the equipment needed in the courtroom. The appeal will be heard in the fall of 2012.

A records manager position has been created by the judiciary and the position will be filled in 2012. It is anticipated that storage, transmission and archiving of documents will be included in the work of the records manager.

Once the procedures have been confirmed by the Court, the task of amending the *Court of Appeal Act* and Rules will be forwarded to the Rules Committee.

EDUCATION COMMITTEE

Members:

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

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 our work as judges and its impact on others. Programs of greater length are presented at the semi-annual meetings.

Law at Lunch speakers included Justices Bennett and MacKenzie on the complex criminal trial; Dr. Julio Montaner and colleagues on the prevention and treatment of HIV/AIDS; Judge Tom Gove on the Vancouver Community Court; Timothy Outerbridge, Law Officer, on social media and the courts; and Dana Sullivant of the Vancouver Art Gallery on the needs and aspirations of the Gallery.

At the spring meeting of the Court in April, Justices Jean Coté and Robert Richards of the Courts of Appeal of Alberta and Saskatchewan respectively discussed the day-to-day practices of those courts.

At the fall meeting of the Court in October, Dr. Barbara McGillivray spoke on scientific advances in the field of reproduction.

One Law at Lunch date in the spring and another in the fall are set aside with an open agenda to discuss issues of concern to the judges.

The Committee has taken on two new projects. It has assumed responsibility for the annual revision of the Orientation Manual, the Chambers Manual, and the Appellate Review Principles Manual. In addition, it has undertaken the development of an orientation plan for new judges, including a voluntary mentoring scheme. Approval of the plan in principle will be sought at the spring 2012 Meeting of the Court.

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 education activities are designed to assist judges to remain current in our 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 Adair

The Honourable Madam Justice Boyd

The Honourable Mr. Justice Myers

The Honourable Mr. Justice Rogers

Master Baker

Jennifer Jordan, Registrar Court of Appeal

Frank Kraemer, Q. C., Senior Counsel & Executive Director, Judicial Administration

Kevin Arens, Director, Information Technology & Finance

Cindy Friesen, Director, Supreme Court Scheduling

Timothy Outerbridge, Law Officer

Heidi McBride, Law Officer

In 2011, the Committee continued to review various technology initiatives. They included the Integrated Electronic Courts project, the replacement of laptops for the judiciary in 2012, updating for circulation a survey of the judiciary in regard to computer replacement, the court of appeal E-filing project, SCSS/CEIS interface development, and Judicial Module tools. The committee also finalized its terms of reference. The committee notes the positive adoption of technology by the judiciary continues in various areas.

JUDICIAL ACCESS POLICY WORKING GROUP

Members:

Jennifer Jordan, Registrar, Court of Appeal (Chair)
Frank Kraemer, Q. C., Executive Director & Senior Counsel, Judicial Administration
Trish Shwart, Executive Director Business Transformation and Corporate Planning
Dan Chiddell, Director Strategic Information & Business Applications
Kashmiro Cheemo, Acting Director, Court Reform (to September 2011)
Wendy Harrison, Senior Analyst, Court Services Branch (From December 2011)
Jan Rossley, Executive Director Judicial Administration, Provincial Court
Timothy Outerbridge, Court of Appeal Law Officer
Heidi McBride, Supreme Court Law Officer
Gene Jamieson, Q. C., 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 give approval 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

Access to Documents and Court Record Information

In 2011, the work of the Committee continued to deal with the list of documents available to be viewed through Court Services Online (CSO). The judiciary is responsible for setting the policy in this area.

As well, the Committee has been reviewing a number of requests for bulk access to the courts' information and trying to balance the principle of facilitating the conduct of civil proceedings and improving access to court record information where the public interest is served with the commercial aspect of the requests.

Access Policies

The [Supreme Court](#) and [Provincial Court](#) have both prepared and disseminated access policies. The Court of Appeal is currently working on its access policy.

SOIRA Orders

The Supreme Court and Provincial Court confirmed that SOIRA orders (orders made pursuant to the *Sex Offender Information Registration Act*) are available from the Court file at the registry counter.

Court Record

The Committee also worked on a definition of “Court Record” in anticipation of a change to the *Freedom of Information and Protection of Privacy Act*.

Sealing Orders

Another issue raised to the Committee was the procedure to follow when there is an application to seal documents or a file. The process in the Supreme Court currently has many of the documents being available online before the application is brought. The Committee is discussing options with the judiciary. The consensus was that this issue should be brought to the attention of members of the bar so that they can properly deal with their sealing applications.

Access Applications

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 fulfilling their statutory mandate. There were also applications to access information for research purposes. Such a request is encouraged where there is no collection of individual identifiers. The Committee also had occasion to withdraw its permission for access for failure of the organization to comply with access conditions.

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
Timothy Outerbridge, 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 January 2011, the law officer of the Court of Appeal and the law officers of the Supreme Court received 102 applications for the 30 clerk positions available in the two courts for the 2012 – 2013 term. Most were students from 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 2011, the law officers interviewed 78 of those applicants. Subsequently, the judges of the Court of Appeal Law Clerk Committee interviewed 17 candidates and selected 12 for the positions in the Court of Appeal. In September 2011, 12 clerks began their clerkships at the Court of Appeal for the 2011 – 2012 term. Of the clerks starting in September, there are four from the University of British Columbia, three from the University of Victoria, two from the University of Toronto, one from McGill and two from Dalhousie University.

In November 2011, Madam Justice 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, Timothy Outerbridge, Law Officer for the Court of Appeal, and to Susan Devenish and Krystal Mason, for their assistance.

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., Executive Director & Senior Counsel, Judicial Administration

Diane Lemieux, Librarian

The Library continues to find ways to keep expenses within budget and allow all users to access required resources. In a [news release](#) dated February 17, 2012, CanLII stated “There are now one million Canadian court and tribunal decisions freely available over the internet.”

The library has continued to update its subscriptions and encourage the use of electronic products, such as statutes, regulations and web based programs such as BC Laws, CanLII, and QP LegalEze that offer up-to-date consolidations and historical information. Many case digests that were previously photocopied and distributed are now available electronically. For instance, one of the Court of Appeal’s most used criminal texts, the five volume 2nd edition of E.G. Ewaschuk’s Criminal Pleadings & Practice in Canada is now purchased by twenty-one judges in a DVD or online format rather than in print.

HeinOnline, a program described as the world’s largest image-based legal research database, provides more than 1,600 law and law-related periodicals in portable document format. Hein’s Scholar Check allows users, to see a list of articles that cite articles or documents being reviewed. Courthouse Libraries BC has also introduced “the Reading Room,” an online library that BC lawyers can access for free.

As always, the majority (85%) of the Library budget is consumed by expenses paid to the top three legal publishers for bound books, loose-leaf services, law reports and journals, and standing orders. The Library still receives annual print copies of the Acts of the Parliament of Canada as well as the Statutes of British Columbia. Because funding is always constrained, careful consideration must be given to requests for library purchases. In 2011, the Library acquired 95 new publications.

The budget may also be affected by a change to loose-leaf subscriptions. This year, Carswell initiated a “Contents Only Policy” disallowing the practice of annually replacing the entire contents of loose-leaf titles without subscription. This change has made it more difficult to gauge the number and price of annual updates.

The judicial members of the Library Committee thank the staff for their continued commitment to the operation of the Judges’ Library.

Members:

The Honourable Mr. Justice Donald (Chair)
The Honourable Mr. Justice K. Mackenzie
The Honourable Madam Justice Levine
The Honourable Madam Justice Neilson
Jennifer Jordan, Registrar
Timothy Outerbridge, Law Officer

The *Pro Bono* Committee is responsible for overseeing Court initiatives that provide *pro bono* assistance to self-represented litigants and liaising with other organisations outside of the Court that provide similar assistance.

Self Represented Litigants

The Committee has continued to implement the Court's initiative of 2010 that aims to improve assistance to self-represented litigants. In 2010, it was recognised that 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. Part of that initiative involved reviewing and revising guidebooks provided to self-represented litigants. The guidebook project has proceeded more slowly than anticipated due to funding constraints. However, under the supervision of the Committee, the Court's Law Officers have now developed a set of revised guidebooks for civil matters. These guidebooks will soon be in the format of clickable web pages that will appear on an entirely new self-help website, which will be designed by the Justice Education Society. The goal will be to reapply for funding in 2012 to facilitate the creation of a more robust website that will include instructional videos, backgrounders and court forms as well as improved criminal guidebooks. The Committee has also met with organisations such as *amici curiae*, a program affiliated with the Law Courts Centre Legal Education Program, which enlists the assistance of paralegals in preparing court documents for self-represented litigants.

Access Pro Bono

The Court continued to involve Access Pro Bono in addressing the needs of self-represented litigants. Access Pro Bono is an organisation where *pro bono* lawyers provide summary legal advice to low- and modest-income individuals on a wide range of legal issues, including family, immigration, criminal, and civil law (such as debt, employment, welfare, and housing). Access Pro Bono offers the following services:

- ❖ 99 summary legal advice clinics in communities across BC in community centres, churches, social agencies and courthouses, and serving remote communities by televideo;
- ❖ a province-wide Roster Program that matches pro bono lawyers with individuals and non-profit organizations of limited means for the purpose of representation in six areas (BC Court of Appeal Program, Judicial Review Program, Federal Court Program, Wills & Estates Program, Family Law Program and the Solicitor's Program);
- ❖ a superior court Civil Chambers Duty Counsel Program in the Vancouver courthouse; and
- ❖ a Children's Lawyer Program in Nanaimo.

The lawyers in the Roster Program who provided pro bono services on Court of Appeal cases in 2011 are:

Jonathon Aiyadurai
Greg Allen
John Green
Claire Hunter
Gavin Laird
Richard Lindsay
Kevin Makanishi
Sharon Matthews
David McWhinnie
Brent Olthuis

The Court of Appeal Roster Program coordinators also put in many volunteer hours reviewing cases for merit. These coordinators are Angus Gunn (Civil), Simon Coval (civil), Richard Peck (criminal) and Georgiale Lang (family).

The services of all these lawyers, without fee, are of great assistance to the Court, and are very much appreciated.

STATISTICS

SUPREME COURT OF CANADA

There were 34 applications for leave to appeal from decisions of the Court filed with the Supreme Court of Canada in 2011.

The Supreme Court of Canada considered 34 applications for leave to appeal. Of these applications, five were granted, 27 were dismissed, and there were two decisions pending at the end of 2011.

In 2011, the Supreme Court of Canada heard 13 appeals from B.C. cases. Of these appeals, three appeals were allowed, four were dismissed and there were six reserved judgments pending at the end of 2011.

In 2011, 6% of the applications for leave to appeal to the Supreme Court of Canada were from the BC Court of Appeal. Of the judgments rendered in 2011, 18% were appeals from the BC Court of Appeal.

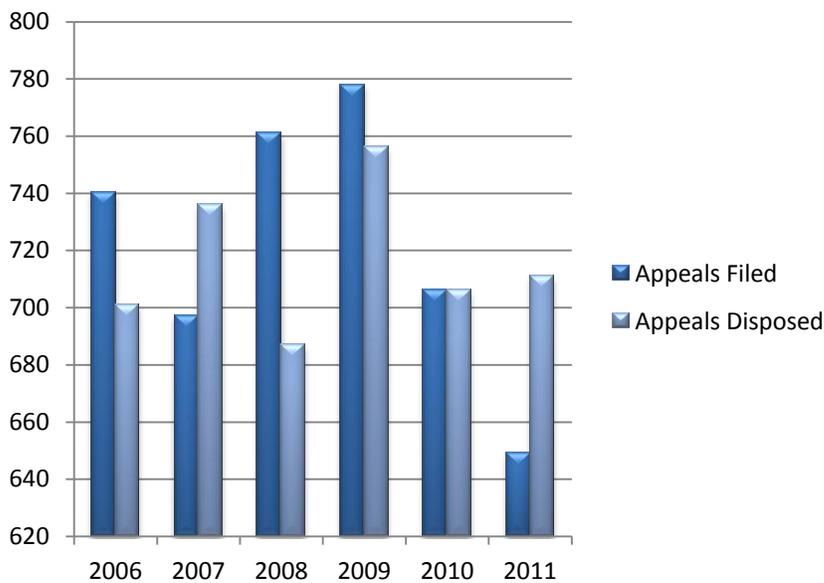
The charts on this page show the volume of litigation and compare the number of appeals filed, both civil and criminal, and the number of appeals disposed of for the period 2006 - 2011. Please refer to the appendices for the actual numbers applicable to these charts.

Civil

Figure 1 demonstrates the general increase in appeals filed from 2006 to 2009, with a substantial drop in filings over the last two years. The disposed appeals dropped in 2006 and 2008, but otherwise have been close or exceeded filings. The disposition rate for appeals in 2011 was 110% of filings (Appendix 1).

Figure 1

Civil Appeals Filed and Disposed 2006 - 2011

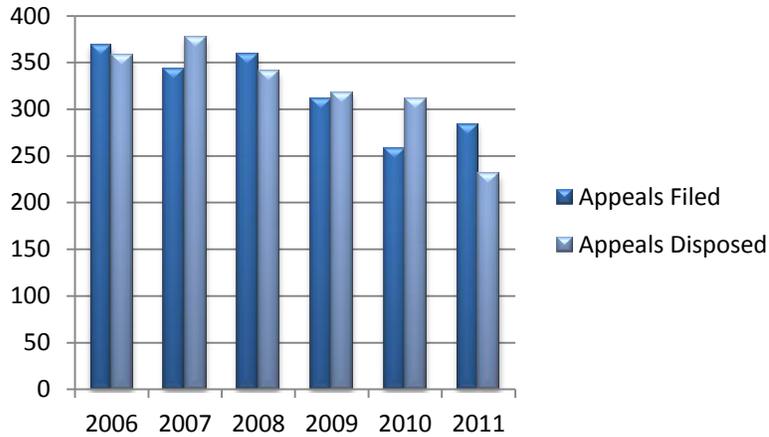


Criminal

There are substantially fewer criminal appeals filed as compared to civil appeals. Figure 2 shows that, except for the last year, the number of criminal appeals disposed of 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 2011, there was an increase in filings while the number of criminal dispositions was reduced, resulting in a disposition rate of 82% of filings (Appendix 2).

Figure 2

Criminal Appeals Filed and Disposed 2006 - 2011

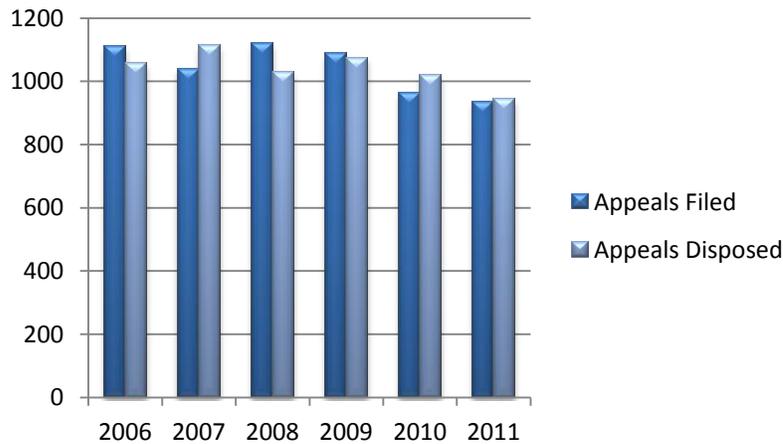


Global

For a more complete picture of total activity, Figure 3 combines the civil and criminal filings and dispositions. The number of filings and dispositions was relatively equal for 2011 (Appendix 3).

Figure 3

Total Appeals Filed and Disposed 2006 – 2011

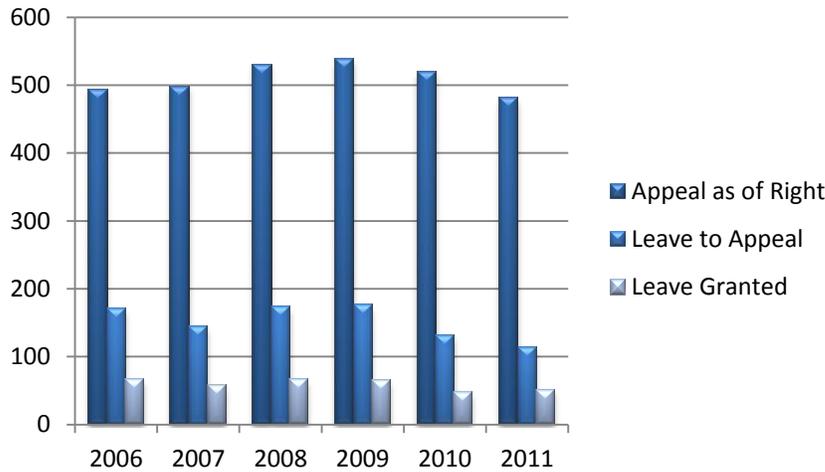


Types of Civil Appeals Filed

Of the civil appeals initiated in 2011, 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 2011, 45% 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

Civil Appeal Filings 2006 – 2011

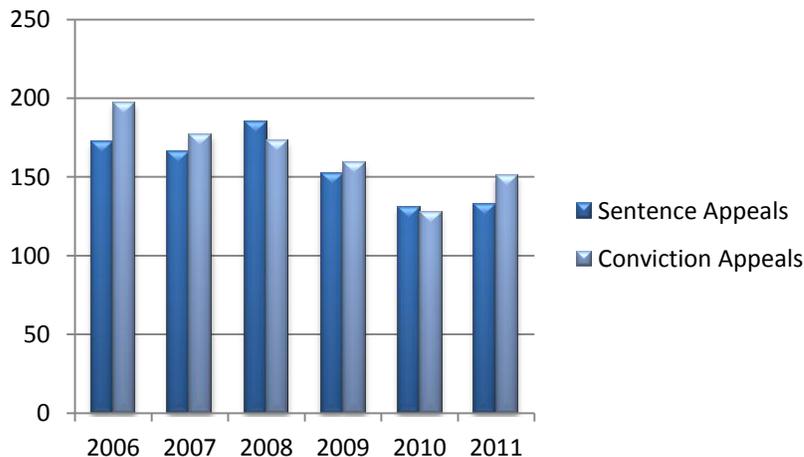


Types of Criminal Appeals Filed

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 2006 and 2011. Sentence and summary conviction appeals amount to about half (48%) of the total criminal appeals filed (Appendix 2).

Figure 5

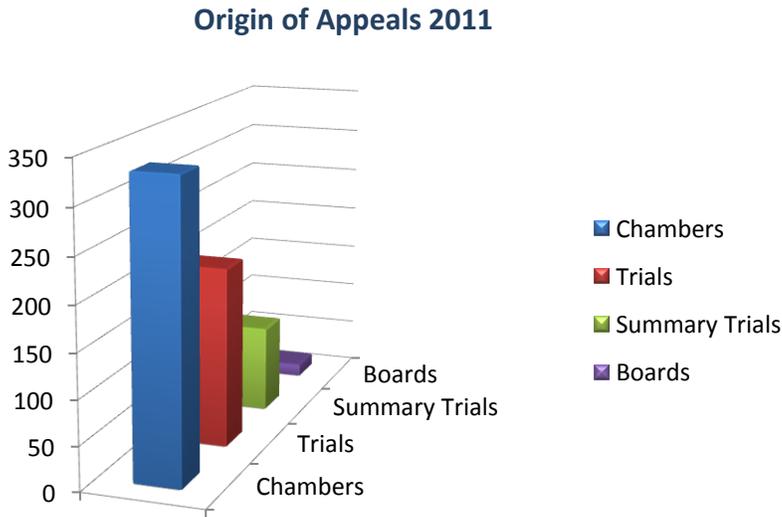
Criminal Appeal Filings 2006 – 2011



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. The 2011 figures show there were substantially more appeals from chambers matters and summary trials than appeals from trials. Figure 6 shows the types of appeals according to the underlying proceeding. Over 69% of appeals filed were from non-trials.

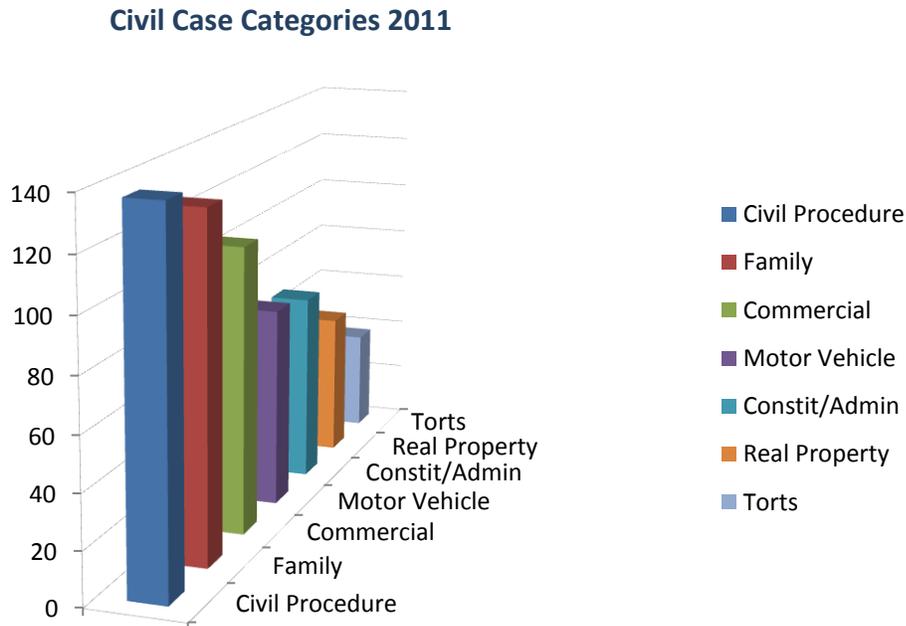
Figure 6



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

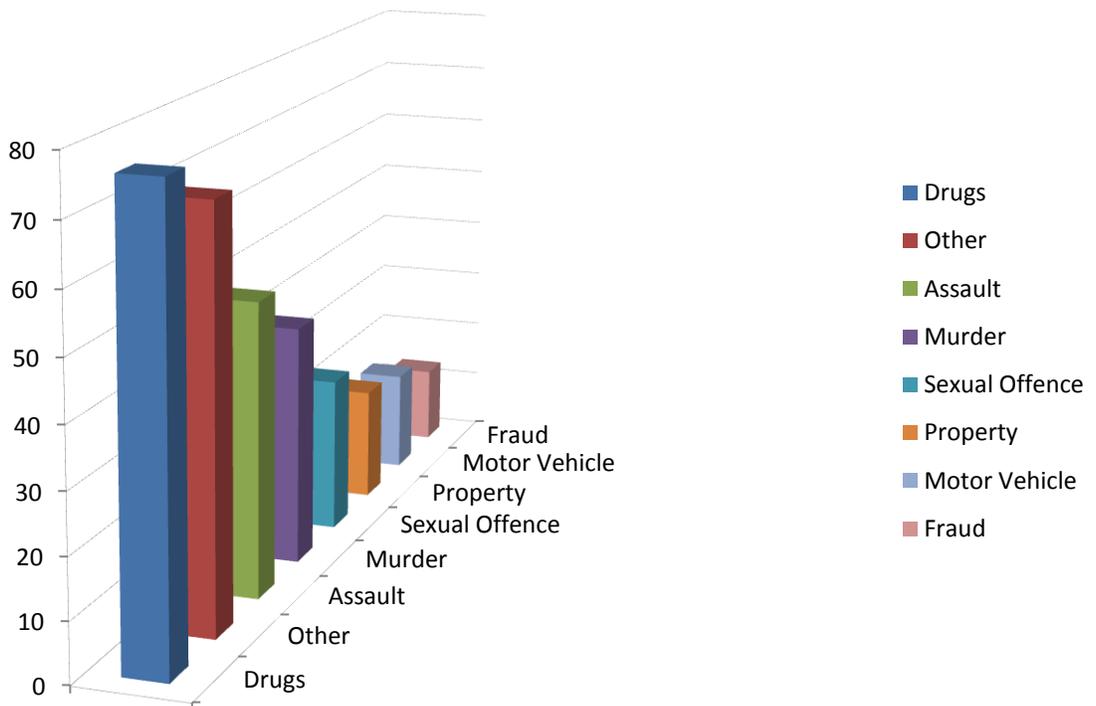


Criminal Case Categories

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, extradition, and *habeas corpus* cases. Figure 8 shows the top eight categories.

Figure 8

Criminal Categories Appeals 2011



Appeals Allowed/Dismissed

The rate of civil and criminal appeals allowed over the past six years has varied. In 2011 the proportion of civil appeals allowed was 42% of the total civil appeals heard. For criminal appeals, the figure was 31% 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

Civil Appeals Allowed/Dismissed 2006 - 2011

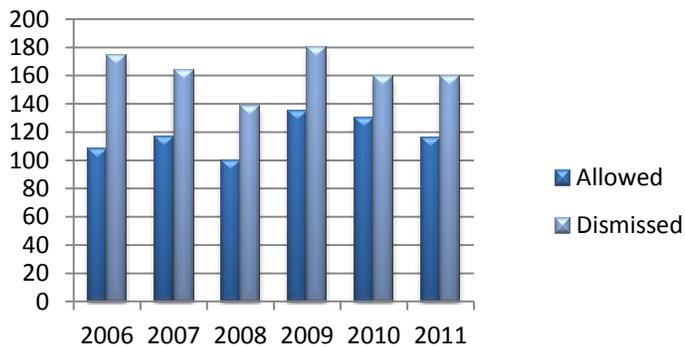
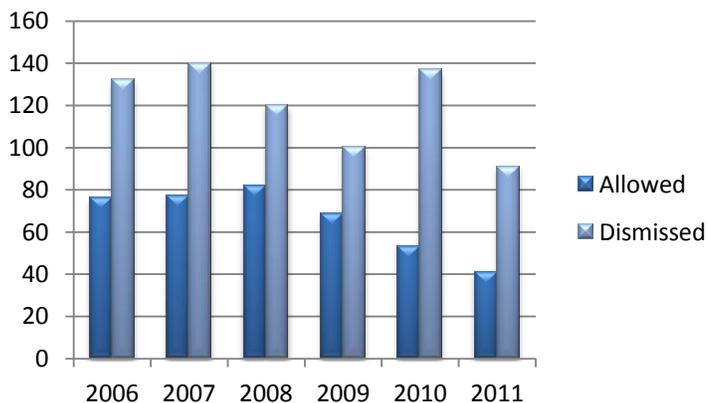


Figure 10

Criminal Appeals Allowed/Dismissed 2006 – 2011



Self-Represented Litigants

Figure 11 shows the number of self-represented litigants compared to the number of represented litigants who filed appeals in 2011. This number does not capture those litigants who file their own appeal but subsequently retain counsel; nor does it show the change where counsel ceases to act. In 2011 the percentage of civil filings for self-represented litigants was 25% and the percentage of criminal self-represented litigants amounted to 17% of all the appeals filed.

Figure 11

Appeals Filed – Self-Represented Litigants 2011

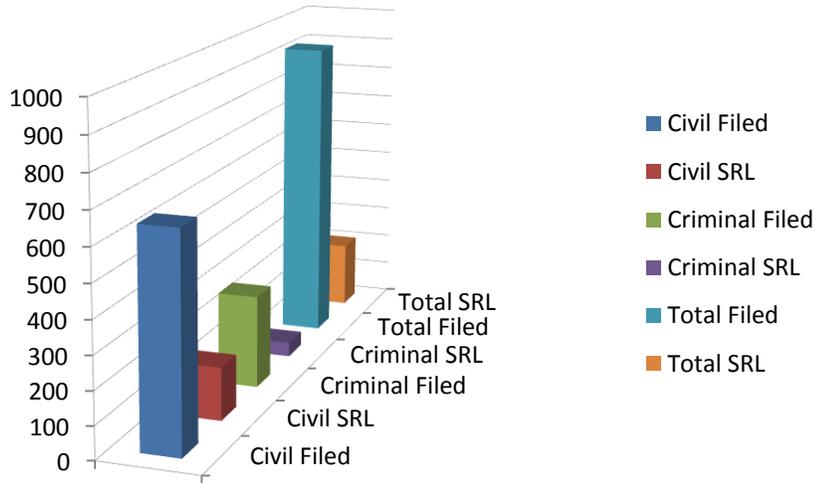
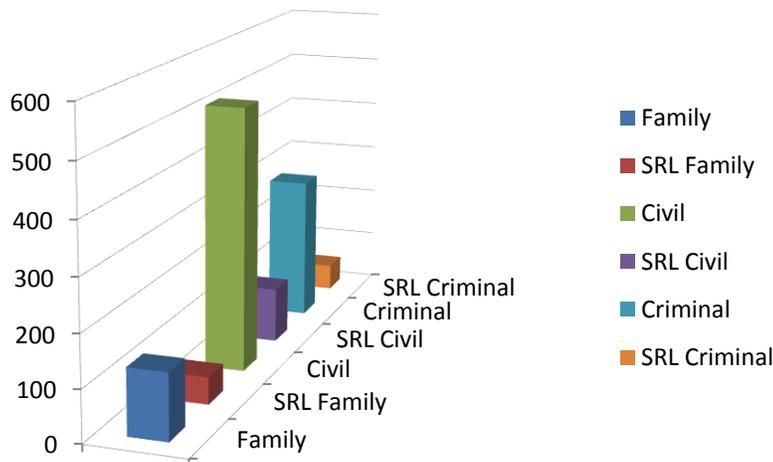


Figure 12 represents the number of self-represented litigants, by category, compared to the represented litigants in that category. It is interesting to note that almost 50% of family law appeals involve at least one self-represented litigant.

Figure 12

Self-Represented Litigants by Category of Appeal 2011



Appendix 1
*Civil Statistics 2000-2011**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
APPEALS FILED:												
Notice of Appeal	679	660	582	532	468	550	494	498	530	538	519	480
Leave to Appeal	248	258	236	204	171	154	170	144	172	175	131	114
Notice of Appeal and Leave					54	69	76	55	59	65	55	55
TOTAL FILED	927	918	818	736	693	773	740	697	761	778	705	649
COURT DISPOSITIONS:												
Appeals Allowed	148	133	137	121	112	137	108	117	100	135	130	116
Appeals Allowed %	42%	43%	42%	38%	40%	46%	38%	42%	42%	43%	45%	42%
Appeals Dismissed	197	177	189	199	168	160	174	164	138	180	159	159
Appeals Dismissed %	58%	57%	58%	62%	60%	54%	62%	58%	58%	57%	55%	58%
TOTAL COURT DISPOSITIONS	345	310	326	320	280	297	282	281	238	315	289	275
Appeals Concluded in Chambers or Abandoned	544	522	492	455	498	492	419	455	449	441	419	436
TOTAL DISPOSITIONS	889	832	818	775	778	789	701	736	687	756	708	711
Dispositions as % of Filings	96%	91%	100%	105%	112%	102%	95%	106%	90%	97%	100%	110%
Judgments Reserved (Court)	197	178	193	181	210	197	221	197	192	245	233	241
Judgments Reserved (Cham)	n/a	n/a	n/a	n/a	99	66	79	88	87	63	62	83
Appeals with 5 Judges	12	16	10	16	4	1	1	3	2	7	1	3
Court Motions: Reviews	10	7	17	13	15	13	19	13	14	20	25	28
Granted	3	6	2	7	3	5	5	2	2	4	3	8
Refused	7	1	15	6	12	8	14	11	12	16	22	20
Chambers Motions	530	419	427	451	494	435	426	423	423	539	503	537
LEAVE TO APPEAL												
Granted	80	75	65	56	60	62	66	58	66	65	47	51
Refused	37	35	26	30	56	42	38	42	47	51	30	55
Total	117	110	91	86	116	104	104	100	113	116	77	106

*The numbers for 2004-2010 have been revised

Appendix 2
*Criminal Statistics 2000-2011**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
APPEALS FILED:												
Sentence	182	156	133	126	162	176	157	149	163	140	114	110
Conviction	174	177	128	130	137	142	147	116	123	115	99	112
Summary Conviction	40	37	47	33	41	18	15	17	23	12	16	24
Acquittal & Other	78	69	64	57	69	60	50	61	50	44	28	37
TOTAL FILED	474	439	372	346	409	396	369	343	359	311	257	283
COURT DISPOSITIONS:												
Appeals Allowed	84	111	70	72	82	66	76	77	82	69	52	41
Appeals Allowed %	28%	37%	31%	27%	40%	33%	37%	35%	41%	41%	28%	31%
Appeals Dismissed	218	193	159	193	124	132	132	140	120	100	137	91
Appeals Dismissed %	72%	63%	69%	73%	60%	67%	63%	65%	59%	59%	72%	69%
TOTAL	302	304	229	265	206	198	208	217	202	169	189	132
Summary Dismissals Abandonments in Court/Chambers	149	139	137	105	140	161	149	160	139	149	121	99
TOTAL DISPOSITIONS	451	443	366	370	346	359	357	377	341	318	310	231
Appeals Disposed % of Filings	95%	101%	98%	107%	85%	91%	97%	110%	95%	102%	121%	82%
Appeals Heard by 5 Judges	5	5	0	1	0	1	0	0	2	0	1	1
Judgments Reserved	89	89	86	109	84	85	85	81	76	88	88	82
Judgments Reserved Chambers	n/a	n/a	n/a	n/a	21	10	10	28	11	11	13	22
Chambers Motions	218	260	230	219	244	275	298	248	242	265	272	210

* The numbers from 2004-2010 have been revised

Appendix 3
Total Appeals Filed and Disposed 2000-2011**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
APPEALS FILED:	1401	1357	1190	1082	1102	1169	1109	1040	1120	1089	962	932
COURT DISPOSITIONS:	647	614	555	585	486	495	490	498	440	484	478	407
Appeals Allowed	232	244	207	179	194	203	184	194	182	204	182	157
Appeals Allowed %	36%	40%	37%	32%	40%	41%	38%	39%	41%	42%	38%	39%
Appeals Dismissed	415	370	348	383	292	292	306	304	258	280	296	250
Appeals Dismissed %	64%	60%	63%	68%	60%	59%	62%	61%	59%	58%	62%	61%
TOTAL	647	614	555	562	486	495	490	498	440	484	478	407
Appeals Concluded in Chambers or Abandoned	693	661	629	560	638	653	568	615	588	590	540	535
TOTAL DISPOSITIONS	1340	1275	1184	1145	1124	1148	1058	1113	1028	1074	1018	942
Dispositions as % of Filings	96%	94%	99%	106%	102%	98%	95%	107%	92%	99%	106%	101%
Judgments Reserved	286	267	279	290	414*	358*	395*	394*	366*	407*	396*	426*
Appeals with 5 Judges	17	21	10	17	4	2	2	3	4	7	2	4
Chambers Motions	748	679	657	670	738	710	724	671	665	804	775	747

*Now includes chambers reserved judgments

**The numbers from 2004-2010 have been revised