

TABLE OF CONTENTS

MEMBERS OF THE B.C. COURT OF APPEAL	2
STAFF OF THE B.C. COURT OF APPEAL	5
SUPERIOR COURTS JUDICIARY STAFF	6
REPORT OF THE HONOURABLE CHIEF JUSTICE FINCH.....	7
COMMITTEE REPORTS	11
Rules Committee	12
Planning Committee.....	14
Judicial Settlement Conference Committee	16
Law Clerk Committee.....	17
Library Committee.....	18
Education Committee.....	20
Pro Bono Committee.....	21
Technology Committee.....	22
Judicial Access Policy Working Committee.....	25
STATISTICS	27
Supreme Court Of Canada	28
B.C. Court of Appeal	29
Appendix 1 - Civil Appeals	33
Appendix 2 - Criminal Appeals	34
Appendix 3 - Total Appeals.....	35

MEMBERS OF THE B.C. COURT OF APPEAL

Chief Justice

The Honourable Chief Justice 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

*The Honourable Mr. Justice Lambert**

July 14, 1978 (Court of Appeal)

June 30, 1995 (Supernumerary)

*The Honourable Mr. Justice Esson**

February 20, 1979 (Supreme Court)

May 5, 1983 (Court of Appeal)

June 30, 1989 (Chief Justice of Supreme Court)

October 2, 1996 (Court of Appeal)

February 12, 2001 (Supernumerary)

The Honourable Madam Justice Southin

March 11, 1985 (Supreme Court)

September 8, 1988 (Court of Appeal)

*The Honourable Mr. Justice Hollinrake**

June 1, 1988 (Supreme Court)

February 16, 1990 (Court of Appeal)

September 1, 1999 (Supernumerary)

June 15, 2004, (Retired)

The Honourable Madam Justice Rowles

March 31, 1983 (County Court)

January 1, 1987 (Supreme Court)

October 11, 1991 (Court of Appeal)

The Honourable Madam Justice Prowse

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

The Honourable Madam Justice Ryan

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

The Honourable Mr. Justice Donald

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

The Honourable Madam Justice Newbury

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

The Honourable Madam Justice Huddart*

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

The Honourable Mr. Justice Braidwood*

December 5, 1990 (Supreme Court)
December 19, 1996 (Court of Appeal)
December 29, 2000 (Supernumerary)

The Honourable Mr. Justice Hall

July 11, 1991 (Supreme Court)
December 19, 1996 (Court of Appeal)

The Honourable Mr. Justice Mackenzie

May 5, 1992 (Supreme Court)
June 23, 1998 (Court of Appeal)

The Honourable Madam Justice Saunders

December 23, 1991 (Supreme Court)

July 2, 1999 (Court of Appeal)

The Honourable Mr. Justice Low

March 31, 1977 (County Court)

July 1, 1990 (Supreme Court)

July 28, 2000 (Court of Appeal)

The Honourable Madam Justice Levine

September 26, 1995 (Supreme Court)

February 6, 2001 (Court of Appeal)

The Honourable Mr. Justice Smith

May 31, 1993 (Supreme Court)

October 1, 2001 (Court of Appeal)

The Honourable Mr. Justice Thackray*

February 16, 1990 (Supreme Court)

December 19, 2001 (Court of Appeal)

October 28, 2002 (Supernumerary)

The Honourable Mr. Justice Oppal

April 9, 1981 (County Court)

February 16, 1990 (Supreme Court)

June 18, 2003 (Court of Appeal)

The Honourable Mr. Justice Lowry

October 11, 1991 (Supreme Court)

June 30, 2003 (Court of Appeal)

* Supernumerary

STAFF OF THE B.C. COURT OF APPEAL

Jennifer Jordan	Registrar
Meg Gaily	Law Officer
Jill Leacock	Law Officer
Maria Littlejohn	Associate/Deputy Registrar
Patrick Boyer	Manager/Deputy Registrar
Alix Going	Executive Assistant to Chief Justice Finch
Julie Warren	Executive Secretary to Chief Justice Finch

Law Clerks 2004–2005

Derek Birch
Paul Brackstone
Kathy Grant
Stacey Grubb
Yong-Jae Kim
Sara Knowles
Amber Lepchuk
Pam Murray
Mark Pontin
Maryam Sherkat
Chelsea Wilson

Judicial Staff

Susan Devenish
Elise Du Mont
Jackie Helmersen
Margaret Lewis*
Lorraine Maze
Charmaine McBride
Cherry Mills
Patricia Pang
Sandra Smith*
Teresa Smith

Registry Staff

Kathy Amantea**
Torri Enderton
Judie Epp
Karm Khunguray
Jennifer Rahiman
Diane Schwab
Maira Syring*
Pat White*
Janice Wilson

Ushers

Bill Deans
Thomas Huang
Alex Sashaw

Webmaster

Patricia Pang

*Victoria
**Kamloops

SUPERIOR COURTS JUDICIARY STAFF

Judicial Administration

Alix Campbell	Director, Judicial Administration
Margaret Neuhaus	Manager, Support Services
Bill Prentice	Financial Officer
Colin Sharwood	Manager, Finance and Information Technology
Tammy McCann	Director's Secretary
Yvonne Samek	Finance and Administration Clerk
Michelle Sam	Judicial Administration Clerk

Judges' Library

Angela Allwood
Diane Lemieux
Leaellen Gurney
Myrna Hawes*

Information Technology Consultant

Steve Blanchard

Project Manager WebCATS

Bob Braganza

***Victoria**

REPORT OF THE HONOURABLE CHIEF JUSTICE FINCH

The Court's Complement

The Court's complement of full-time justices remained unchanged in 2004. In addition to the Chief Justice, all 14 positions were occupied by the seven men and seven women who filled those positions at the beginning of the year.

The only change in the Court's complement was the loss of one supernumerary judge. The Honourable Harold Acheson Hollinrake reached the mandatory retirement age on 15 June 2004. Mr. Justice Hollinrake was a member of the Court of Appeal since 1990, electing for supernumerary status in 1999. Prior to his appointment to this Court, Mr. Justice Hollinrake had been a member of the B.C. Supreme Court from 1988 until 1990. All members of the Court will miss Mr. Justice Hollinrake's contributions to the work of the Court and to the jurisprudence. We will also miss his good humour and his genial and collegial manner.

There remain five supernumerary judges on the Court of Appeal, one woman and four men.

We note with sadness the passing in 2004 of two of our former colleagues. The Honourable Henry E. Hutcheon was a member of the B.C. Court of Appeal from 1980 until 1995. Before that he was a member of the B.C. Supreme Court from 1974 to 1980, and of the County Court of Vancouver from 1973 to 1974. Among his many contributions, Mr. Justice

Hutcheon is remembered for his commitment to the national judgment writing program, designed to improve the quality of Reasons for Judgment at all levels of court. He was also the founder of the British Columbia Superior Courts Monthly Dinner Meetings in Vancouver, at which a Superior Court Judge presents a legal paper on a matter of interest to other members of the judiciary. Mr. Justice Hutcheon passed away on 23 August 2004.

The Honourable Reginald Gibbs was a member of the B.C. Court of Appeal from 1989 until 1998. Prior to that he was a member of the B.C. Supreme Court from 1983 until 1989. Mr. Justice Gibbs passed away on 16 November 2004. A Special Sitting of the Court was held on 14 December 2004 to honour his memory, and to recognize his contributions to the law in British Columbia. Members of the bar who addressed the Court recalled Reg Gibbs' superior abilities as counsel, his role as a "natural mentor" to younger counsel, and the breadth of his knowledge as evidenced in his Reasons for Judgment.

The Work of the Court

The usual criminal and civil law case statistics for 2004, and comparative numbers since 1995, are attached to this Report as Appendices. These statistics continue to reflect a decreasing number of new appeals filed over preceding years.

We are unable to identify the cause or causes of diminishing access to the

appellate process. There is, however, anecdotal evidence to suggest that at least one major cause is the cost of legal services. On the positive side of the ledger, this may mean that fewer appeals with doubtful prospects of success are being launched. On the negative side, it may mean that appeals with substantial merit are not pursued because, even if successful, the cost of pursuing the appeal renders the project uneconomic. No doubt other factors, such as the use of various alternate dispute resolution options, may also be responsible for the decrease in new filings.

As in past years, the number of judgments taken on reserve remains virtually unchanged. In 2004, the Court reserved judgment in a total of 293 cases, 200 civil and 93 criminal. By comparison, the total number of reserved judgments in 2003 was 290, and in 1995, 280.

In addition, in 2004, the Court gave written Reasons for Judgment in 126 reserved chambers applications.

Apart from time spent hearing appeals, judges spend most of their time in the research for, and preparation of, written reserve Reasons for Judgment. As a result, despite the decrease in new filings, the workload of the judges remains essentially unchanged. The constant number of reserved judgments suggests that the Court receives more or less the same number of appeals raising difficult or substantial issues as in past years.

Sittings of the Court

In 2004, Division 1 sat for 39 weeks, including two weeks during the summer; Division 2 sat for 36 weeks; and Division

3 sat for 9 weeks. In addition, the Court sat for 8 weeks in Victoria, one week in Kamloops, one week in Kelowna and one week in the Yukon. The total number of sitting Divisions/weeks was 95. This is an increase of 5 Divisions over 2003.

Timeliness of Judgments

The Canadian Judicial Council sets six months as a guideline maximum for the time from the date of hearing within which reserved Reasons for Judgment should be pronounced.

The Court met this timeline in all criminal sentence appeals, and in all but one criminal conviction appeal. On the civil side, judgments were delivered within the six month guideline in all but approximately 5% of cases taken under reserve. The Court continues to strive for 100% compliance with the six month guideline, but in some few cases, it is impossible to achieve.

Finality

Our statistics do not permit an accurate annual comparison of cases where leave to appeal to the Supreme Court of Canada has been granted, as against the total number of dispositions made by the Court of Appeal during the period when the Court decided those cases where leave is granted.

However, the statistics available indicate that leave to appeal to the Supreme Court of Canada is granted in only a very small percentage of cases. In 2004, the Supreme Court of Canada considered 75 applications for leave to appeal from judgments pronounced by the B.C. Court of Appeal. Leave was granted in 14 cases,

51 applications were dismissed, and 9 applications were still pending decision at the end of 2004.

Taking the total number of dispositions in 2003, 585, as the basis for comparison, just over 2% of B.C. appeals resulted in successful leave applications. Even if all 9 pending applications for leave are successful, leave will have been granted in less than 4% of cases decided by the B.C. Court of Appeal in the preceding year. This means that the B.C. Court of Appeal is the Court of final resort for over 95% of all appeals heard.

According to Supreme Court of Canada statistics for 2004 (not attached), applications for leave to appeal from British Columbia accounted for about 13% of all leave applications received by the Supreme Court of Canada. Of the 83 appeals heard by the Supreme Court of Canada in 2004, 11 originated in British Columbia, or about 13% of the total.

Self-Represented Litigants and Pro Bono Assistance

The Court again expresses its gratitude to those members of the bar who have participated in the Pro Bono Project, and who have provided free legal advice or representation to persons unable to afford lawyers' services, and who do not qualify for government funded legal aid. The number of persons who have qualified for pro bono assistance is not great, but every case taken by a lawyer without a fee represents a valued contribution by that member of the bar to the better functioning of our judicial system.

In 2004, approximately 20% of appeals filed involved a self-represented litigant

(see statistical charts at p.32). In many instances, such cases are a significant challenge to Registry staff, who are often asked for, but are not able to give, legal advice; and to the Court, which is designed to function on an adversarial basis, where lawyers are a necessary and integral part of the appeal process in identifying legal issues, marshalling evidence, and providing legal research and analysis.

As mentioned earlier in these comments, it may well be that the cost of legal services is a significant factor in the continuing number of litigants who are self-represented.

Electronic Filing and Case Tracking

In 2004, the Court of Appeal implemented a new internal case tracking system known as WebCATS (Web Court of Appeal Tracking System). The program provides information on appeals including lower court information, filings, court and chamber appearances and results. In addition, the program offers a "rota" component which displays the schedule of judges as well as a scheduling component for the Court of Appeal staff. Historic data has been transferred into this new system, giving the Court of Appeal an index of all civil and criminal appeals filed since 1986. Registry staff and judicial staff use this system in their daily work. The judges are also becoming familiar with this system. Many judges check their schedule on-line. Future plans are to combine the schedule in WebCATS with a judge's Outlook calendar.

Court Services On-Line (CSO) is a planned project which will offer selected case information in the Court of Appeal tracking system to the public over the

internet for a fee. This information will include both civil and criminal case information such as Court and Chambers appearances, as well as up-to-date filings on an appeal. This “CSO Search” will be available in the spring of 2005.

Future plans also include electronic filing of selected Court of Appeal documents. Documents such as Notices of Appeal, Appearances, Notices of Motion and Certificates of Readiness may be filed electronically by parties if they so choose, but electronic filing will not be mandatory. The Court Services Project will begin in the Provincial Court and Supreme Court of British Columbia, and will expand to the Court of Appeal in 2006. Some documents will be excluded from electronic filing, such as Transcripts and Factums. The Court of Appeal judges have decided that they will still require paper copies of large documents in preparing for and hearing an appeal. The intent, however, is to create an electronic file of all Court of Appeal documents. Counsel will be encouraged to file both an electronic version and a paper copy of their documents in the registry.

Electronic Filing Project Rules, prepared by a Joint Rules Committee consisting of members of all three levels of Court as well as representatives from the bar, were approved by the Court of Appeal in 2004 and will be brought into force in July 2005. The pilot project for electronic filing will last for two years.

Security

In recent years, there has been an increased awareness that litigants, court staff and the public must have safe and secure courthouses and courtrooms.

Security requirements are monitored in Vancouver by a committee established for that purpose.

Security for the Courts in British Columbia is provided by Sheriff Services, a Division of B.C. Court Services. We are very grateful to the Sheriffs for providing professional, efficient, and unobtrusive protection for all our facilities, and those who use them.

Registry and Staff

There have been no permanent changes in the senior staff positions in the Court of Appeal Registry. Maria Littlejohn continues as the Associate/Deputy Registrar of the Court of Appeal. Patrick Boyer has continued as the Deputy Registrar/Manager for the Court of Appeal Registry and Jennifer Jordan has continued as the Registrar of the Court, providing invaluable leadership and guidance in all aspects of the Court’s work.

The Court’s Law Officer, Meg Gaily, commenced leave in the summer of 2004. She is expected to return to her position in May 2005. In her absence, the Law Officer position has been filled by Jill Leacock, who has effectively discharged the many duties of this multi-faceted role.

Closing Words

As will be evident from the reports of sub-committees contained herein, and from the statistical information provided, 2004 was once again a busy year for the Court of Appeal. I express my sincere gratitude to all members of the Court for their support and assistance in every aspect of the Court’s work, and in their continuing pursuit of the best in appellate decision-making.

COMMITTEE REPORTS

RULES COMMITTEE

Members

The Honourable Mr. Justice Hall (Chair)
The Honourable Madam Justice Rowles
The Honourable Madam Justice Huddart
The Honourable Mr. Justice Low
The Honourable Mr. Justice Smith
Jennifer Jordan, Registrar
Meg Gaily, Law Officer
Jill Leacock, Law Officer

Meetings

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 Rules***. The Committee reports to the full Court on recommendations for amendments. We consult with members of the bar when there is a proposal that significantly changes the practice and procedure of the Court

Transcript Extracts

A new Practice Directive was circulated allowing for full transcripts to be filed in lieu of transcript extracts where the Registrar approves.

Joint Appeal Books and Transcripts

After a suggestion from counsel, the Court of Appeal Rules Committee has agreed to allow counsel, who are agreeing to filing joint appeal books and transcripts, to also file the appellant's and respondent's factums on the same date. This would allow the parties to include the proper

references in their factums. A Practice Directive has been issued on this matter.

There was further discussion on the format of transcript extracts which the Court might find useful. It was noted that the chronological extracts, where page numbers were sequential, were most helpful for the Court. The index in these extracts sets out the sequence of witnesses and the testimony referred to. Tabs are useful to separate the various witnesses, as well as organizing the in-chief and cross examination sections of the transcript. Further work will be done to determine the best way to present these extracts.

Criminal Factums

A Practice Directive was circulated requiring the civil rules to apply to the format of criminal factums, including the limit of 30 pages. Only a judge in chambers may allow a factum in excess of 30 pages to be filed.

Ineffective Assistance of Counsel

Where there are allegations of ineffective assistance of trial counsel raised as an issue in a Notice of Appeal or a factum on a criminal appeal, the Court is now asking that trial counsel be served with notice of the allegation. The Chief Justice may direct that a case management judge be assigned. In addition, either party may request that a case management judge be assigned. A new Practice Directive was issued on this topic.

Appeals of Master's Orders

The Committee agreed that the Court of Appeal, through jurisprudence and the interpretation of the *Court of Appeal Act*, has the jurisdiction to hear an appeal of a Master's order, even though there is provision in the Supreme Court Rules for appeals to go to a Supreme Court justice. Registry staff was advised that they could not refuse an appeal from a Master's order, although they were to indicate to the party that the option of filing the matter in Supreme Court was also available.

Solicitor's withdrawal from the record

There is no provision in the Court of Appeal Rules providing a procedure for a solicitor to withdraw from the record. The Rules Committee considered whether or not a Practice Directive was required. Because of the various situations which could arise, the Rules Committee decided to keep the status quo and recommended that Chambers judges facing this issue use the Supreme Court Rules as guidance.

Reply factum for cross-appellant

The Court of Appeal Rules do not provide for a reply factum to be filed by a cross-appellant. The Rules Committee agreed

that there should be an amendment to Rule 23 to provide for a cross-appellant to file a reply factum.

E-Filing Rules

The Court of Appeal Rules Committee reviewed the work of the Joint E-Filing Rules Committee (with members from each level of court as well as representation from the profession) and prepared a draft rule for the Court of Appeal. The draft was approved by the Court and forwarded to legislative counsel for enactment with the other e-filing rules. The main thrust of the rule is to exclude large documents from e-filing. Also, documents which the Court will still require in paper copy will not be electronically filed. This does not preclude the Court from asking for an electronic version of the document to be filed with the paper copies.

Electronic Documents

The Committee agreed to amend the Court of Appeal Rules to include a general clause allowing for appeal records and appeal books to be filed in electronic form by including a disk with the filed paper copies. The intent is to create an electronic file of Court of Appeal documents.

Yukon Criminal Appeal Rules 2005

The proposed Yukon Criminal Appeal Rules have been prepared with the assistance of Mr. Justice Veale of the Yukon Supreme Court and a Committee of Yukon lawyers. The Rules have now been translated and are ready for enactment in 2005. The Practice Directives will also be translated for the Yukon.

PLANNING COMMITTEE

Members:

The Honourable Chief Justice (*ex officio*)
The Honourable Mr. Justice Low (Chair)
The Honourable Mr. Justice Donald
The Honourable Mr. Justice Mackenzie
The Honourable Madam Justice Levine
The Honourable Mr. Justice Lowry
Ms. Jennifer Jordan, Registrar
Ms. Meg Gaily, Law Officer
Ms. Jill Leacock, Law Officer

The major focus of this committee has continued to be privacy issues in judgments and the introduction of a Judicial Settlement Conference Pilot Project.

Initials in Family Law Judgments

After the Court meeting in October, 2003 a new Notice to the Profession was circulated returning to the former practice of using full names in family law judgments. The Committee has prepared a set of guidelines for use in writing judgments while respecting individual privacy issues. A Notice to the Profession was issued in June, 2004, explaining the initiative.

Family Law Appeals involving Children

Early in 2004 the Planning Committee issued a Notice to the Profession indicating that where there is delay in filing documents on an appeal involving custody or access, the registry will arrange for a pre-hearing judge to meet with the parties or their counsel and to give

directions on expediting the appeals. Madam Justice Prowse is directing this program.

Videoconferencing

The Court solicited views on the use of videoconferencing for the hearing of appeals. The few letters received from members of the bar were in support of the use of videoconferencing. Arrangements will only be made when the parties ask for videoconferencing. In a criminal case, the use of videoconferencing requires a Court order. A fax machine has been installed in Courtroom 60 to facilitate the exchange of documents during a videoconference appeal.

Protocol for Signing Orders and Judgments

A draft protocol was circulated to the members of the Court along with the form for authorization. This protocol is to cover situations where a judge is unavailable to sign Reasons for Judgment or Orders. The authorization for signing reserve Reasons

for Judgment is to be placed on the Court file.

CSOnline Access to Court Records

Parts of the Court of Appeal tracking system (WebCATS) will soon be available over the internet to members of the public for a fee. The members of the Committee approved the information which would be available to the public. This information includes the Case Profile (style of cause, lower court information such as judge and file numbers); Filings (a list of all the documents filed); and Court and Chambers appearances (which include dates, judges type of appearance and results). Only appeals filed after January, 2004 will be available for viewing.

Complaint about Internet Judgment

A litigant wanted his judgment removed from the Internet because the Court of Appeal acquitted him of the charges. The Committee set a policy that no judgments were to be removed from the Internet. If there are legitimate privacy concerns, the procedure is for the litigant to send his/her concerns to the Registrar and for the Registrar to consult with the judges concerned. The result may be removal of information from the judgment or the use of initials rather than full names.

Tape Recording Court of Appeal Proceedings

There was a request from the press concerning the audio taping of proceedings in the Court of Appeal. The Committee prepared a protocol using the Supreme Court protocol as a guideline. Any member of the press accredited in the Supreme Court may tape-record proceedings in the Court of Appeal on advising the Registrar and on producing confirmation of accreditation.

JUDICIAL SETTLEMENT CONFERENCE COMMITTEE

Members:

The Honourable Chief Justice (Chair)
The Honourable Madam Justice Rowles
The Honourable Madam Justice Prowse
The Honourable Mr. Justice Donald
The Honourable Madam Justice Levine
Ms. Jennifer Jordan, Registrar
Ms. Meg Gaily, Law Officer
Ms. Jill Leacock, Law Officer

In November 2004, the Court of Appeal introduced a pre-hearing judicial settlement conference pilot project. The pilot project will operate for two years with a preliminary review after one year. The purpose of the project is to assist parties in resolving certain appeals at an early stage, to save expense to the parties and to expedite the final resolution of the dispute. The Settlement Conference is conducted by a judicial member of the Committee. All proceedings are in confidence and nothing appears on the Court file to indicate a Judicial Settlement Conference has taken place.

Prior to the introduction of the pilot project, the committee members participated in a mediation training program conducted by Madam Justice Louise Otis of the Quebec Court of Appeal.

The committee members prepared a Practice Directive concerning judicial settlement conferences which may be found on the Court website at www.courts.gov.bc.ca. The committee

also prepared a summary of Frequently Asked Questions relating to settlement conferences, which also appears on the website.

Members of the committee have spoken at several meetings of the Bar to publicize the Court's pilot project and to answer questions from practitioners about Judicial Settlement Conferences.

In the two month interval between the initiation of the pilot project and the end of the year, two requests for Judicial Settlement Conferences were filed.

LAW CLERK COMMITTEE

Members:

The Honourable Madam Justice Saunders (Chair)

The Honourable Mr. Justice Mackenzie

The Honourable Mr. Justice Smith

The law clerks' terms at the Court of Appeal commence in September of each year and finish at the end of June (for those serving a ten-month term) or the end of August (for those serving a twelve-month term). In September 2004, eleven clerks began their clerkships with the Court of Appeal for the 2004-2005 term.

In February 2004, Meg Gaily, Law Officer to the Court of Appeal, and Judith Hoffman, Law Officer to the Supreme Court, received approximately one hundred and one applications for the 28 law clerk positions at the Court of Appeal and Supreme Court for the 2005-2006 term. After reviewing the applications, the Law Officers interviewed many of these candidates during February 2004. Of these candidates, the Court of Appeal Law Clerk Committee interviewed 21 and selected eleven candidates for the law clerk positions for the 2005-2006 term. Of the eleven law clerks who will commence their terms with the Court of Appeal in September 2005, six are graduates of UBC Law School, two are graduates of the University of Victoria Law School, and the remaining law clerks are graduates of Dalhousie, Osgoode, and the University of Toronto. The Law Officers and the members of the law clerk committee

continue to refine the recruitment processes for the Court's law clerks.

In November 2004, Madam Justice Saunders and Mr. Justice Mackenzie, together with members of the Supreme Court law clerk committee, the Law Officers and current law clerks, attended law clerk recruitment information sessions at the Universities of British Columbia and Victoria.

The Committee members wish to thank Ms. Gaily and Ms. Hoffman for their assistance during the year.

LIBRARY COMMITTEE

Members:

The Honourable Madam Justice Newbury (Chair)
The Honourable Mr. Justice Hood
The Honourable Madam Justice Humphries
The Honourable Madam Justice D. Smith
Ms. Diane Lemieux

In 2004, technology continued to make its way into the Judges' Library with the implementation of *LawSource*, a WestlaweCARSWELL product, and the related training of judicial staff. *LawSource* includes all decisions published in the various Carswell law reports, plus many unreported decisions, Canadian legislation, the *Canadian Encyclopedic Digest*, and the *Canadian Abridgment*. Along with the use of the longstanding on-line legal source, *Quicklaw*, the new availability of *LawSource* will enable us to provide prompt and efficient service.

On the legislative side, the groundwork was laid for the acquisition of QP LegalEze, a web-based subscription service to the current laws of British Columbia. Produced in partnership with the Ministry of Attorney General and the Legislative Assembly, this product of the Queen's Printer will provide our judicial staff access to online sources such as the statutes and regulations, and also the British Columbia Gazette Part II and full text Orders-in-Council. Training will begin in early spring 2005.

We also negotiated a licence agreement with Canada Law Book for on-line access to the Dominion Law Reports in our Vancouver and Victoria locations. Various law report and information digests are now being e-mailed directly to participating recipients.

Along with our fingertip access to on-line information, our dedication to print remains. Hardcover textbooks continue to hold their place on our shelves, although loose-leaf editions seem to have become the norm of the legal publishing world as publishers try to minimize costs and maximize accuracy and currency. Although we are limited by budget constraints, we continue to purchase library materials, but not without great consideration of our judges' needs first and foremost.

Before we purchase a new text or edition of an existing text, we carefully consider whether it is truly necessary in our library system. Preference is usually given to purchasing legal texts in subject areas which are frequently perused, but suggestions for purchase may also be made to the Library Committee for items from the new areas of the law. With the

costs of subscriptions continually rising, we are especially grateful to those judges who, through benevolent donations to the library, help in the purchasing of new law books and library resources.

On a practical note, we have designated a central location in the Judges' Library for the communal use of a scanner and colour printer supplied by our information technology group for judges and judicial administrative staff. The scanner has proved to be an item of great usefulness, enabling the transfer of a photo, newspaper clipping or printed document to be made into a file format which in turn can be e-mailed to others or saved onto one's computer. This has made the transfer of information from one location to another all the more effective, especially with our judges in locations outside of Vancouver.

Although the downsizing of libraries is imminent as on-line sources evolve, the focus for the time being will continue to be on the balance of electronic and printed materials. While printed case-law reporters are inching closer to extinction with the higher costs being spread among fewer buyers, other products do not lend themselves well to perusing on a desktop. The task will be to find out where the continued reliance on print remains, before we leave the "paper age" behind.

EDUCATION COMMITTEE

Members:

The Honourable Madam Justice Huddart
Then Honourable Madam Justice Levine

The education program for the Court has two basic components: “Law at Lunch” and an education feature at each of the semi-annual 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.

In 2004, the topics included several speakers on international issues, including “Muslims and the West”, international trade agreements, human rights in South Korea, the Gacaca Process in Rwanda, and the United Nations Committee on Torture. Other topics included “Information Technology, Health Care and Health Care Law”, the new British Columbia *Securities Act*, and the proper use of judicial computers.

The judges of the Court occasionally attend similar programs offered by the Supreme Court of British Columbia. In 2004, Dean Mary Anne Bobinski of the Faculty of Law of the University of British Columbia addressed both courts on her vision for the future of the law school.

At the 2004 Court meetings, Professor Edward Berry of the University of

Victoria presented a program on “Judgment Writing and Privacy Concerns, and Mr. Frank Falzon of Victoria spoke on the new British Columbia *Administrative Tribunals Act*.

Judges of the Court are offered 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 some of the broader issues that are part of the background to the work that we do.

PRO BONO COMMITTEE

Members:

The Honourable Chief Justice Finch
The Honourable Mr. Justice Donald
The Honourable Madam Justice Levine
Meg Gaily, Law Officer
Jill Leacock, Law Officer

The Pro Bono Project for appeals to the Court of Appeal expanded this year to include additional coverage. A group of Vancouver Island practitioners volunteered to provide pro bono services for appeals arising from litigation on the Island. The Canadian Bar Association – BC Branch has agreed to participate in the Court's Judicial Settlement Conference Pilot Project by providing assistance, where appropriate, to unrepresented parties who wish to engage in this form of alternative dispute resolution.

Pro Bono Net BC undertook a survey in October to evaluate the project and its report is expected in 2005.

The Committee wishes to thank those who have contributed to the program:

Central Coordinator

John Pavey, Salvation Army Pro Bono

Participating Lawyers (Vancouver)

Stephen Antle
Rose-Mary Liu Basham, Q.C.
Meera Bawa
Thomas Berger, Q.C.
Marilyn Bjelos
Michelle Booker
Peter Brown

Jeffrey Campbell
Carolyn Christiansen
Simon Coval
D. Geoffrey Cowper, Q.C.
Craig Ferris
Betty Gabriel
Nikos Harris
John Hunter, Q.C.
Peter Juk
Georgiale Lang
April Lee
Elizabeth Liu
James C. MacInnis
George Macintosh, Q.C.
David Mackenzie
Lorne MacLean
Andrew Nathanson
Alison Ouellet
Richard Peck, Q.C.
Errin Poyner
K. Michael Stephens
Paul Walker, Q.C.
Lisa Warren
Josiah Wood, Q.C.

Participating Lawyers (Victoria)

Anthony Borzoni
John Jordan
David MacLeod
Eugene Raponi

TECHNOLOGY COMMITTEE

Members:

The Honourable Mr. Justice Tysoe (Chair)
The Honourable Mr. Justice Mackenzie
The Honourable Mr. Justice Pitfield
The Honourable Madam Justice Boyd
The Honourable Mr. Justice Groberman
Alix Campbell, Director, Judicial Administration
Colin Sharwood, Manager, Information Technology
Jennifer Jordan, Registrar, B.C. Court of Appeal
Judith Hoffman, Law Officer Supreme Court
Cindy Friesen, Manager, Trial Coordinators
Steve Blanchard, IT Consultant

Mandate of the Committee

The mandate of the Technology Committee is to deal with the technology requirements of judges, including software and hardware, and security concerns arising from use of the judicial network, including the e-mail system. The Committee meets generally once a month. The following topics were discussed at the meetings over the past year.

Mr. Justice Pitfield retired in 2004 from this Committee and he was thanked for his long service and dedication to assisting with technology issues. The Committee welcomed his replacement, Mr. Justice Groberman.

Security of E-mail Transmissions

Issues about the security of e-mail transmissions were raised and discussed. The e-mails within VLC were secure and e-mails using VPN were secure. However,

e-mails sent from one courthouse to another were less secure. IT Services implemented encryption on all judicial computers. It is transparent to the user but results in the security of all e-mail transmissions. When sending e-mail from home computers, Web Outlook should be used. All transmissions will also be encrypted.

Computer Replacement Schedule

Beginning in the new budget year 2005/2006, the judicial computer replacement program will provide laptops and docking stations for all superior court judges. This decision was made to improve the portability of the judicial workstation. It will also provide a more efficient way of insuring that all judicial computers have the most current software and security systems, including the latest anti-virus software

WebCATS

The Court of Appeal registry staff switched to WebCATS (Web-based Court of Appeal Tracking system) in January, 2004. There were certain migration issues with the historical information being transferred to WebCATS. However, the new cases for 2004 include more information and a better rota and scheduling system than the older dos-based system (which was installed in 1986). Anyone searching historical information may still use the old CATS system.

CSONline

The chair of the Technology Committee reviewed screen designs for the display of information which will be made available to the public through the Court Services Online program. This is an internet based system where the user will pay for searches and reports from the civil case tracking system known as CEIS. The same search capability will be available from WebCATS, where the search will also cover criminal appeal information.

Electronic Filing

The Technology Committees and Rules Committees from all three levels of courts had a demonstration of the proposed e-filing system. This was in anticipation of the work being undertaken by the Rules Committees on e-filing rules.

Report from IT Services

- IT Services has been running an after hours service pilot. Demand for the service has not been high. This program needs to be reviewed to determine how to provide the best service within certain budget constraints.

- IT Services implemented a security enhancement program in March, 2004.
- IT Services Policies have been prepared and reviewed by the Committee. The policies have drawn from the Blueprint for the Security of Judicial Information, a document from the Canadian Judicial Council. Security education sessions were held at the bi-annual court meetings in both the Court of Appeal and Supreme Court.
- The Committee also considered an Acceptable Use Policy for staff. The policy has been circulated to staff.
- Subsequent to the education session for judges on computer security policies, a brochure setting out the main security policies was distributed to all judicial users. The full document setting out all of the security policies is also available on the intranet.
- The design and redevelopment of the new Court website was completed and implemented in February, 2004.

Bulk Access Agreements

The Technology Committee will have a continuing role in these agreements which are made by Court Services. The agreements cover access to court record information which is requested by search companies and credit agencies. The provisions of the *Credit Reporting Act* apply to the agencies in their use of the disclosed information. The Judicial Access Policy Working Group will review applications for bulk access and refer any new issues raised by the applications to the Technology Committee.

Judgment Standards

The Committee discussed the use of Courier font in the production of reasons for judgment. It was noted that the Courier font slows down the application of computer voice dictation programs. A memo on the various font options was prepared and circulated to both courts. Judges, Masters and Registrars were asked to cast their vote on new fonts. (Those considered were Times New Roman, Arial and Verdana). Arial was the favourite of a majority of the judges. Implementation of the font change took place in early 2005.

Citation of Decisions

The Committee would like to find a way of encouraging the use of neutral citations. Law clerks use the McGill Guide, which has a direction similar to the Court of Appeal Practice Direction on the use of neutral citations. The Judge's Manual will also be amended to stress the importance of using neutral citations.

Use of Computers by Juries

Increasingly jurors are bringing their laptops into jury trials. The Committee has proposed a memorandum which will be circulated to the Supreme Court justices pointing out the security issues inherent in permitting a juror access to a laptop.

Access to Criminal Information JUSTIN

There are currently several groups which want access to criminal information in the Supreme and Provincial Courts to be offered in the same way as civil information is available. The Criminal Law Committee in the Supreme Court is discussing this request with input from the Technology Committee. Several concerns about privacy issues have been raised by the judges.

Judges Technology Advisory Committee Report to the Technology Committee

- The Canadian Judicial Council has launched a new website. Changes to the website include a secure section for committee use; secure access to daily news for council members; and the ability to register for notification of news releases and inquiry reports.
- The Blueprint for the Security of Judicial Information is in its final form and will be sent to Council for approval.
- Contractors will be producing model guidelines for access to electronic court records which will be available to jurisdictions struggling with issues of electronic access.
- JTAC is exploring the feasibility of a Canadian Centre for Court Technology (CCCT).

JTAC has asked Council to ask courts to adopt a proposal that "All courts should adopt a rule or practice direction requiring counsel to include a neutral citation (if available) for cases cited to the court".

Acknowledgments

The Committee wishes to thank Steve Blanchard for his successful effort in transforming the Judicial IT Services into a professional and enviable IT Services organization. With the help of Mark Hujanen and the other Microserve contractors, IT Services has been re-created into a model organization meeting the needs of the judges and staff while at the same time improving the security infrastructure and establishing policies for all to follow.

JUDICIAL ACCESS POLICY WORKING COMMITTEE

Members:

Jennifer Jordan, Registrar, Court of Appeal (Chair)
Alix Campbell, Director Judicial Administration, Superior Courts
Virginia Day, Director, Business Development and Change Management, Court Services
Meg Gaily, Law Officer, Court of Appeal
Jill Leacock, Law Officer, Court of Appeal
Judith Hoffman, Law Officer, Supreme Court
Gene Jamieson, Legal Officer, Provincial Court
Mike Smith, Director Judicial Administration, Provincial Court
Kathryn Thomson, Legal Policy Consultant

Mandate of the Committee

In 2004 work of this Committee revolved around issues consequent on the electronic access offered to the public through CSONline. The initial access is to the Provincial Court and Supreme Court civil electronic information system (CEIS) which went online in late 2004. Access to the Court of Appeal case tracking system will be offered in 2005. With the introduction of public access to electronic case tracking and the future plan to introduce electronic filing, it was necessary to consider the development of policies relating to access to court record information by the public and other interested parties. Since the judiciary creates policies governing access to this information, while Court Services is charged with the collection and storage of this information, a joint committee was contemplated which would bring together all three levels of courts. The Committee is a working group which develops draft policies and interacts with the various court committees, seeking guidance and approval for the draft policies. The Chief

Justices and Chief Judge are consulted before a policy is adopted. In addition to the policy work, the Committee also reviews access applications for those seeking bulk access to court information.

Work of the Committee

In 2004 the Committee, which meets monthly, was involved in several requests relating to access to court record information. The Committee also reviewed proposals relating to specific topics which need further investigation in the electronic world. What follows is a small list of items considered:

- Renewal of Bulk Search agreements with credit reporting agencies using the new application procedure and the new agreement template;
- Continuing discussion about access to criminal court record information;
- Confirmation of information to be available to the public through CSONline.

- Discussion about access to court lists online and the appropriate information to be included on the online list
- Review of requests for information and requests for access to the systems received from Corrections, Drug Treatment Court, the Vancouver Court Sentencing Study, Crime Victim Assistance Program, and conservation officers from the Ministry of Water, Land and Air Protection.
- A review and refusal of a library request for exemption of fees for access to CEIS as the library was acting on behalf of the public in requesting information from CEIS
- Discussion and clarification of the Committee's position regarding access to pardoned offences pursuant to the *Criminal Records Review Act*;
- Work on an in court module for CEIS for court clerks;
- Work has also begun on a judicial module for judges who will be dealing with electronically filed documents, with the assistance of a judicial/court services working group.
- Consultations concerning the requirements for electronic signatures in the e-filing world;
- Review by the Committee with input from the judiciary on a document by document basis of privacy considerations relating to access to electronic court documents.

STATISTICS

There were 76 applications for leave to appeal from decisions of our Court filed with the Supreme Court of Canada in 2004.

The Supreme Court considered 75 applications for leave to appeal and 1 extension of time was dismissed. Of these applications, 14 were granted, 51 were dismissed and there are 9 decisions pending at the end of 2004.

In 2004, the Supreme Court of Canada heard 11 appeals from B.C. cases. Of these appeals, 5 appeals were allowed, 2 appeals were dismissed and there were 4 reserve judgments pending at the end of 2004. In addition to these decisions, another 13 judgments were rendered in B.C. cases which had been heard in previous years. Of these, 9 appeals were allowed and 3 appeals were dismissed, with one case remanded to the B.C. courts.

B.C. Court of Appeal Statistics

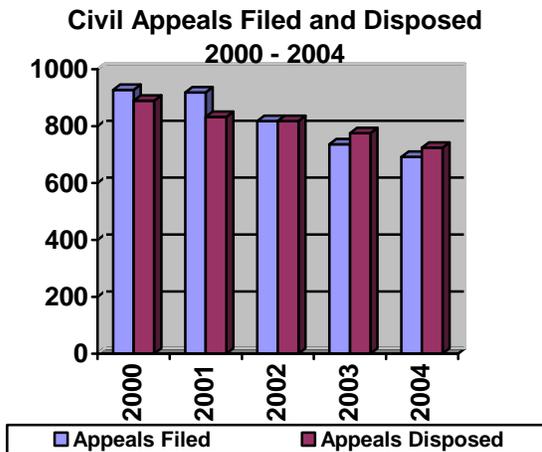
*Volume of Litigation**

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 for the years 2000 - 2004.

Civil

Figure 1 demonstrates the decline in the number of civil appeals filed and disposed over the last five years. This figure also shows that 2004 was successful in having the number of dispositions slightly exceed the number of filings. As Appendix 1 indicates, dispositions were 105% of the filings for civil appeals.

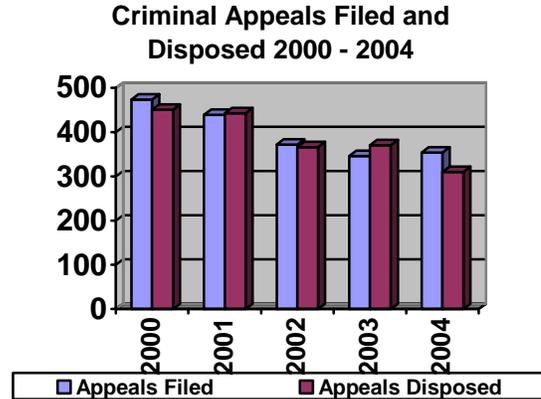
Figure 1



Criminal

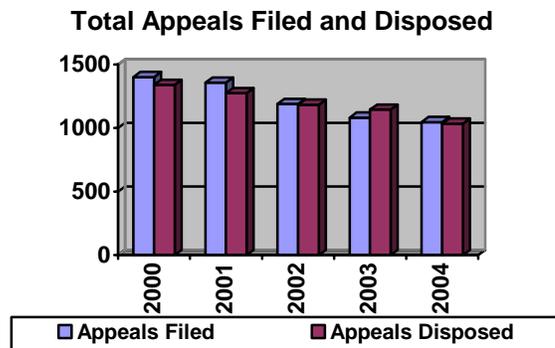
Criminal filings amount to half the number of civil filings. Figure 2 shows that the number of criminal appeals disposed of failed to exceed the number of appeals filed, which results in a growing backlog of criminal appeals. For 2004, dispositions were 88% of filings (see Appendix 2).

Figure 2



For a more complete picture of total court activity, Figure 3 combines the civil and criminal filings and dispositions. As is evident, there has been a slower decrease, over the last 3 years of both filings and dispositions. 2004 is similar to the last 2 years in having the dispositions coming close to equaling the filings.

Figure 3

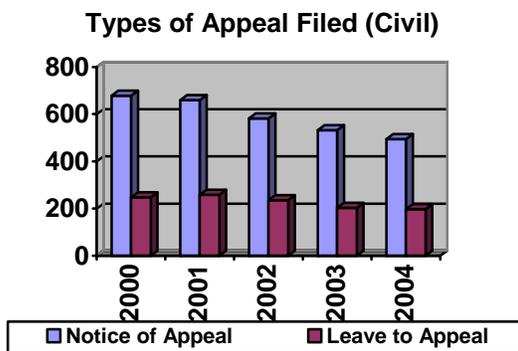


*Please refer to the appendices for the actual numbers in these charts.

Types of Appeals Filed

About 30% of the civil appeals filed in 2004 were applications for leave to appeal. These appeals require the permission of a justice before they can be heard by a panel of three judges. In 2004, over 80% 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.

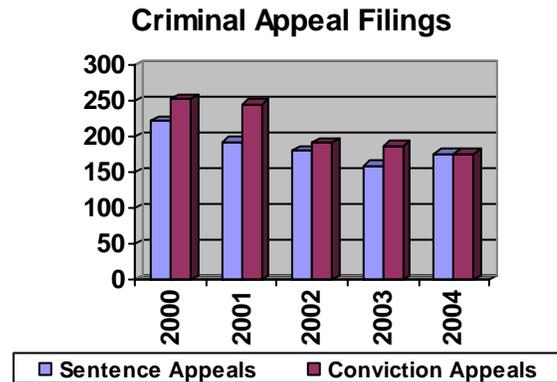
Figure 4



Criminal Case Types

In criminal appeals, 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 2000 and 2004. Sentence appeals amount to just less than half (42%) of the total criminal appeals filed.

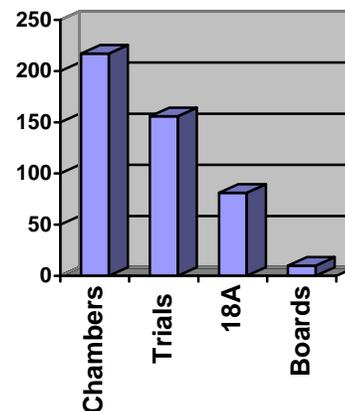
Figure 5



Origin of Appeals

Another way to categorize the civil work of the court is to look at the type of proceeding which gave rise to the appeal. The majority of appeals arise from chambers matters and summary trials. The 2004 figures show there were substantially more appeals from chambers matters and 18A appeals as there were appeals from trials. Figure 6 shows the types of appeals according to the initiating proceeding.

Figure 6

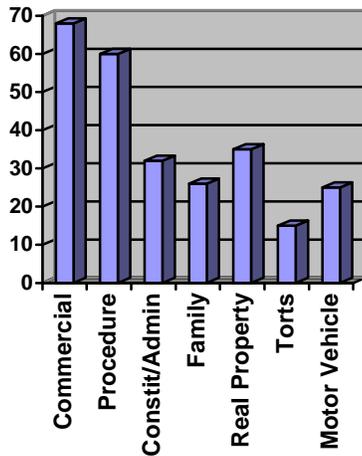


Civil Case Categories

In addition to the origin of civil appeals, there are nine 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 Categories Appeals Heard 2004

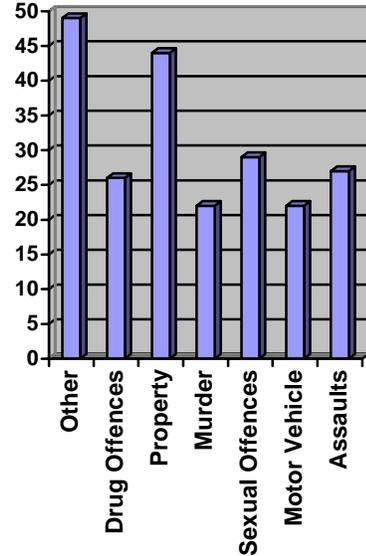


Criminal Case Categories

Another interesting breakdown is for the types of criminal cases which are dealt with by the Court. Property offences form the largest category of criminal appeals, amounting to 20% of the cases before the Court. "Other" covers various offences (such as arson, mischief, extradition and habeas corpus cases). Figure 8 gives the top seven distinct categories.

Figure 8

Criminal Categories Appeals Heard 2004



Appeals Allowed

The rate of civil and criminal appeals allowed over the past five years remained relatively constant until this year, where the rate increased from 32% to 40%. Figure 9 shows the number of civil appeals allowed and Figure 10 shows the number of criminal appeals allowed.

Figure 9

Civil Appeals Allowed/Dismissed 2000 - 2004

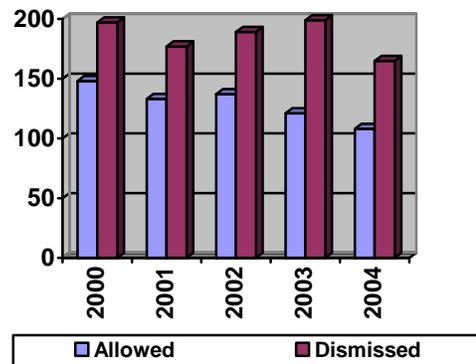
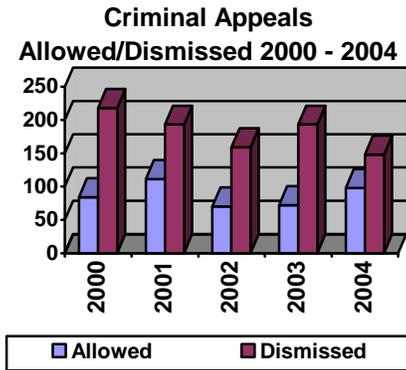


Figure 10



The largest fluctuation over the years is the difference in the number of criminal appeals allowed. The percentage comparison is 28% allowed in 2000 and 40% in 2004. The statistics take into account partial appeals allowed as well as the substantial appeals where new trials may be ordered.

Self-Represented Litigants

Figure 11

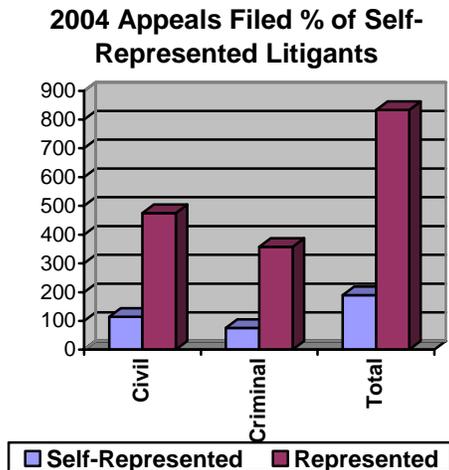


Figure 11 represents the percentage of self-represented litigants out of the total number of litigants, who filed appeals in 2004. This number does not capture those litigants who file their own appeal but subsequently retain counsel. There is no comparative information available for previous years, but this percentage of self-represented litigants is considered quite high.

Figure 12

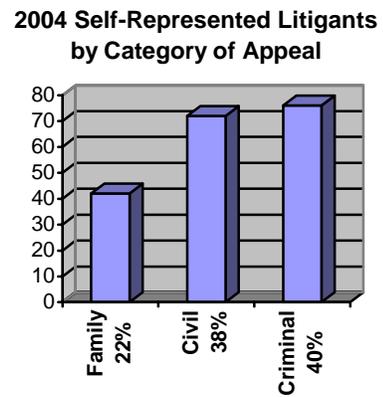


Figure 12 represents the percentage of self-represented litigants, by category, out of the total number of self-represented litigants.

Appendix 1

Civil Statistics 1995-2004

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
APPEALS FILED:										
Notice of Appeal	929	902	854	822	787	679	660	582	532	494
Leave to Appeal	355	272	273	272	224	248	258	236	204	198
TOTAL FILED	1284	1174	1127	1094	1011	927	918	818	736	692
COURT DISPOSITIONS:										
Appeals Allowed	146	174	159	142	151	148	133	137	121	108
Appeals Allowed %	38%	39%	39%	37%	43%	42%	43%	42%	38%	40%
Appeals Dismissed	237	271	250	241	196	197	177	189	199	165
Appeals Dismissed %	62%	61%	61%	63%	57%	58%	57%	58%	62%	60%
TOTAL COURT DISPOSITIONS	383	445	409	383	347	345	310	326	320	273
Appeals Concluded in Chambers or Abandoned	559	1055	988	744	673	544	522	492	455	451
TOTAL DISPOSITIONS	942	1500	1397	1127	1020	889	832	818	775	724
Dispositions as % of Filings	73%	128%	124%	103%	101%	96%	91%	100%	105%	105%
Judgments Reserved (Court)	179	210	188	182	174	197	178	193	181	200
Judgments Reserved (Cham)										104
Appeals with 5 Judges	10	27	3	5	3	12	16	10	16	4
Court Motions: Reviews	11	8	10	13	16	10	7	17	13	14
Granted	9	4	5	6	0	3	6	2	7	3
Refused	2	4	5	7	16	7	1	15	6	11
Chambers Motions	745	736	643	664	568	530	419	427	451	397
LEAVE TO APPEAL										
Granted	86	95	74	65	18	80	75	65	56	47
Refused	51	76	71	48	39	37	35	26	30	11
Total	137	171	145	113	57	117	110	91	86	58

Appendix 2

Criminal Statistics 1995-2004

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
APPEALS FILED:										
Sentence	237	207	249	219	199	182	156	133	126	150
Conviction	232	220	232	231	203	174	177	128	130	124
Summary Conviction	44	29	48	54	39	40	37	47	33	27
Acquittal & Other	77	69	50	63	68	78	69	64	57	53
TOTAL FILED	590	525	579	567	509	474	439	372	346	354
COURT DISPOSITIONS:										
Appeals Allowed	127	92	115	127	103	84	111	70	72	98
Appeals Allowed %	33%	26%	31%	31%	29%	28%	37%	31%	27%	40%
Appeals Dismissed	254	266	253	283	248	218	193	159	193	148
Appeals Dismissed %	67%	74%	69%	69%	71%	72%	63%	69%	73%	60%
TOTAL	381	358	368	410	351	302	304	229	265	246
Summary Dismissals Abandonments in Court/Chambers	317	176	193	134	118	149	139	137	105	64
TOTAL DISPOSITIONS	698	534	561	544	469	451	443	366	370	310
Appeals Disposed % of Filings	118%	102%	97%	96%	92%	95%	101%	98%	107%	88%
Appeals Heard by 5 Judges	2	2	3	3	4	5	5	0	1	0
Judgments Reserved (Court)	101	92	116	117	78	89	89	86	109	93
Judgments Reserved (Cham)										22
Chambers Motions	329	302	332	316	305	218	260	230	219	172

Appendix 3

Total Appeals Filed and Disposed 1995-2004

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
APPEALS FILED:	1874	1699	1706	1661	1520	1401	1357	1190	1082	1046
COURT DISPOSITIONS:	764	803	777	793	698	647	614	555	562	519
Appeals Allowed	273	266	274	269	254	232	244	207	179	206
Appeals Allowed %	36%	33%	35%	34%	36%	36%	40%	37%	32%	40%
Appeals Dismissed	491	537	503	524	444	415	370	348	383	313
Appeals Dismissed %	64%	67%	65%	66%	64%	64%	60%	63%	68%	60%
TOTAL	764	803	777	793	698	647	614	555	562	519
Appeals Concluded in Chambers or Abandoned	876	1231	1181	878	791	693	661	629	560	515
TOTAL DISPOSITIONS	1640	2034	1958	1671	1489	1340	1275	1184	1145	1034
Dispositions as % of Filings	88%	120%	115%	101%	98%	96%	94%	99%	106%	99%
Judgments Reserved (Court)	280	302	304	299	252	286	267	279	290	293
Judgments Reserved (Cham)										126
Appeals with 5 Judges	12	29	6	8	7	17	21	10	17	4
Chambers Motions	1074	1038	975	980	873	748	679	657	670	569