

**B.C. COURT OF APPEAL**  
**2006**  
**ANNUAL REPORT**

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# 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 Madam Justice Southin*

March 11, 1985 (Supreme Court)  
September 8, 1988 (Court of Appeal)  
October, 2006 (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 Hall***

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

***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 Lowry***

October 11, 1991 (Supreme Court)

June 30, 2003 (Court of Appeal)

***The Honourable Madam Justice Kirkpatrick***

November 20, 1989 (Supreme Court Master)

November 27, 1992 (Supreme Court)

June 2, 2005 (Court of Appeal)

***The Honourable Mr. Justice Chiasson***

September 14, 2006 (Court of Appeal)

## STAFF OF THE B.C. COURT OF APPEAL

Jennifer Jordan	Registrar
Meg Gaily	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 2006–2007*

Wayne Benedict  
Olga Bochkaryova  
Raewyn Brewer  
Devyn Cousineau  
Keri Gammon  
Chris Jackson  
Vivian Kung  
Joanne Lynch  
Mohammad Manki  
Micah Rankin  
Sally Rudolf

### *Judicial Staff*

Diane Berry  
Susan Devenish  
Victoria Osborne-Hughes\*  
Elise Du Mont  
Jackie Mangan  
Cherry Mills  
Sandra Smith\*

\* **Victoria**  
\*\* **Kamloops**

### *Registry Staff*

Kathy Amantea\*\*  
Torri Enderton  
Steven Evans\*  
Karm Khunguray  
Katherine Meek  
Diane Schwab  
Maira Syring\*  
Pat White\*

### *Ushers*

Bill Deans  
David O'Brien

### *Webmaster*

Angela Allwood  
Susan Devenish

## **SUPERIOR COURTS JUDICIARY STAFF**

### ***Judicial Administration***

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

### ***Judges' Library***

Diane Lemieux  
Angela Allwood  
Myrna Hawes\*

### **\*Victoria**

### ***Manager, Project Management Office***

Bob Braganza

### ***IT Services***

Mark Hujanen, Service Delivery Manager

# REPORT OF THE HONOURABLE CHIEF JUSTICE FINCH

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## *The Court's Complement*

There were three changes to the Court's complement in 2006.

On 16 October 2006 the Honourable Mary Frances Southin reached the mandatory retirement age. Her first appointment was to the Supreme Court of British Columbia on 11 March 1985, where she served until her appointment to the B.C. Court of Appeal in September 1988. Her Ladyship served as a full-time member of the Court until her retirement, declining to elect supernumerary status, although eligible to do so for the last six years of her service.

As a lawyer, Mary Southin had a remarkable career. She was elected a Bencher of the Law Society in 1971 and became its Treasurer in 1977, the first woman in the British Commonwealth to achieve that distinction (she did not approve the profession's subsequent decision to change the title of the Bencher's top office from "Treasurer" to "President").

Mary Southin was counsel in a wide variety of difficult cases, and was appointed Queen's Counsel in 1969. As the first woman in British Columbia to achieve prominence in the legal profession, she was an example and role model of professionalism to all who followed her.

Madam Justice Southin was an extremely industrious judge, and a prolific author of countless carefully reasoned and thoughtful decisions, in all fields of law. Her colleagues in the Court wish her all happiness and satisfaction in her retirement.

The Honourable Mr. Justice Hall elected supernumerary status in August 2006. He was appointed as a justice of the B.C. Supreme Court in July 1991, and then as a justice of the B.C. Court of Appeal in December 1996. Mr. Justice Hall came to the courts with a long experience in criminal law, on both the Crown and defence sides, and also as general counsel in private practice.

The Court is very pleased that we will continue to have the benefit of Mr. Justice Hall's wisdom and experience in his new role as a supernumerary judge.

The Honourable Mr. Justice Edward Chiasson was appointed to fill the vacancy created by Mr. Justice Hall's election to supernumerary status. Mr. Justice Chiasson was sworn into office and commenced sitting in October 2006.

The new judge was appointed to the Court directly from the practicing bar, the first such appointment for many years. Ed Chiasson was called to the bar in 1967, and became leading counsel in commercial litigation.

For many years prior to his appointment, the new judge developed an expertise in alternate dispute resolution, and acted variously as counsel, arbitrator or mediator in both domestic and international proceedings, covering a wide range of substantive issues.

Mr. Justice Chiasson is a Fellow of the American College of Trial Lawyers, and a member of many professional associations for arbitrators. He has appeared as counsel in courts at all levels in British Columbia, Alberta and the Yukon, as well as in the

Federal Court of Canada and the Supreme Court of Canada. He is a most welcome addition to the Court of Appeal.

As at year end, the Court's complement was 14 full-time judges and three supernumerary judges. There was one vacancy, no appointment having been made to fill the vacancy created by Madam Justice Southin's retirement. Of the 17 judges in the Court, there are nine men and eight women.

The year 2006 was marked by the death of a former distinguished member of the Court, the Honourable Meredith Milner McFarlane, who passed away in November, in his 98<sup>th</sup> year. "Med" McFarlane was called to the bar in 1931. During World War II he served in the Military Services Branch of the Canadian Army both in Canada and overseas.

Med McFarlane was appointed Queen's Counsel in 1957, and was named to the B.C. Supreme Court in May 1964. He was elevated to the Court of Appeal in 1965, and served in this Court until his mandatory retirement in April 1983, on his 75<sup>th</sup> birthday.

Med McFarlane was the very model of a judge – patient, thoughtful, analytical and decisive. His reasons for judgment were careful and concise, whether written or oral. He had a commanding judicial presence in the courtroom, and brought calmness to even the most troubled and stressful proceedings.

Everyone who had the pleasure of knowing Med McFarlane remembers him as a true professional and an outstanding lawyer and judge.

### *The Work of the Court*

In 2006, the pace of work in the Court continued undiminished. The Court

delivered reserved judgments in 262 appeals, and a further 87 reserved judgments on chambers applications. These figures represent a slight increase over 2005, when the corresponding numbers were 251 reserved judgments on appeal and 74 reserved judgments on chambers applications.

The research for and writing of reserved judgments (along with preparation for upcoming appeals) occupies most of the judges' non-sitting time. The number of reserved judgments has remained more or less constant, at between 250 and 300 per year, for the last 10 years. Unfortunately, the numbers of our supernumerary judges have decreased significantly over that period of time, so that the burden of writing has fallen to fewer judges than were previously available.

In addition, of course, the Court pronounced judgment with oral reasons in a further 175 appeals and in the vast majority of chambers applications.

There were 1,111 filings of new appeals in 2006, down slightly from 1,169 filed in 2005.

Statistics for criminal and civil caseloads for 2006, with comparable numbers from 1995 to the present, are attached as appendices to this report.

### *Sittings of the Court*

In 2006, Division 1 sat for 41 weeks, Division 2 sat for 32 weeks and Division 3 sat for four weeks. In addition, the Court sat for six weeks in Victoria, one week in the Yukon, and two weeks in the interior. The total number of sitting divisions/weeks was 86. While the Court sat more weeks with two divisions in 2006 than in 2005, there was a loss of third division sittings because of the lower number of

available justices in 2006. In addition, there were two less divisions sitting in Victoria due to lack of cases ready for hearing.

### *Timeliness of Judgments*

The Court continues to work towards full compliance with the guidelines set by the Canadian Judicial Council for pronouncement of reserved judgments within six months from the date of hearing. Out of the total of 75 reserved criminal judgments rendered in 2006, 93% were pronounced within the six months guideline. On the civil side, of the 171 reserved judgments delivered in 2006, 90% were pronounced within the six months guideline. Of all reserved judgments, both civil and criminal, 76% were rendered within three months or less of the hearing date.

These statistics concerning timeliness of judgments are very comparable to those of 2005. Given the diminished number of judges available to write judgments, and given the continuing high volume of appeals heard, the Court considers that some measure of success has been realized in this area.

### *Finality*

There were 81 applications for leave to appeal from decisions of our Court filed with the Supreme Court of Canada in 2006.

The Supreme Court considered 75 applications for leave to appeal (some of these were from 2005 filings). Of these applications, 7 were granted, 53 were dismissed and there are 12 decisions pending at the end of 2006.

In 2006, the Supreme Court of Canada heard 9 appeals from B.C. cases. Of these

appeals, 1 appeal was allowed, 2 appeals were dismissed and there were 6 reserve judgments pending at the end of 2006. In addition to these decisions, another 9 judgments were rendered in B.C. cases which had been heard in previous years. Of these, 5 appeals were allowed and 4 appeals were dismissed.

In 2006, 16% of the applications for leave to appeal to the Supreme Court of Canada were from B.C. appeals. Of the judgments rendered in 2006, 11% of the judgments rendered were appeals from B.C.

### *Self-Represented Litigants and Pro Bono Assistance*

In 2006, out of 746 civil appeals filed, 143 cases, or 19%, involved a litigant who was not represented by counsel. The same ratio exists with respect to judgments rendered in civil appeals. Of 244 civil cases disposed of in 2006, 48, or 20%, involved at least one in person litigant.

On the criminal side, there were 361 appeals or applications for leave to appeal filed. Of that total 39, or 11%, were appeals or applications by self-represented litigants. Of criminal appeals heard in 2006, 19 out of 193, or 10%, involved in person litigants.

The smaller proportion of criminal appeals brought by self-represented persons is likely a reflection of the greater availability of legal aid in criminal cases.

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, counsel, or other assistance to needy litigants in the appeal process.

## ***100<sup>th</sup> Anniversary of the Court of Appeal***

The Court together with members of the bar continues to plan for a celebration of its 100<sup>th</sup> Anniversary in 2010. Two projects have been initiated. The first is a history of the B.C. Court of Appeal, which is to be written by a respected historian, Christopher Moore, of Toronto. Funding for the work on this book has been provided by a generous grant from the Law Foundation of British Columbia.

The second project is being undertaken by the Law Courts Education Society, which in partnership with the Knowledge Network of British Columbia, is going to produce an educational video concerning the role of the Court of Appeal in B.C.'s legal system. The video will be suitable for television viewing, and for secondary school classes. Resources for this project are being provided by the Knowledge Network, again with generous support from the Law Foundation.

### ***Electronic Factums and Case Filings***

In 2006, the weekly lists of appeals set for hearing appearing on the internet have included a summary of the cases to be heard as well as the names of the judges who will hear the appeals. This information is in addition to the daily court list which appears through Court Services Online at:

<https://eservice.ag.gov.bc.ca/cso/index.do>

In 2006 the Court issued a new practice direction requiring electronic factums to be filed with the paper factum. These factums are available to the judges of the Court to assist in their review before the hearing of the appeal and in the preparation of judgments.

## ***Registry and Staff***

The senior staff positions in the Court of Appeal Registry remained unchanged in 2006. Jennifer Jordan has continued to serve as the Registrar of the Court providing effective leadership, especially in the emerging area of electronic technology. Maria Littlejohn continues as Associate/Deputy Registrar of the Court, and Patrick Boyer continues as the Deputy Registrar/Manager for the Court. The Court's Law Officer, Meg Gaily continues to perform a myriad of tasks all aimed at reducing the time judges have to spend on administrative tasks. We are appreciative of the efforts on our behalf.

In addition to these dedicated public servants, the Court is also served by a body of fine personnel in the Court Registry, in the courtrooms, and by their judicial assistants and law clerks.

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

And to all members of the Court, I give my sincere thanks for another year of tireless effort in the cause of justice.

## **COMMITTEE REPORTS**

## ***RULES COMMITTEE***

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### ***Members:***

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

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### ***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.

### ***Amendment to the Court of Appeal Act***

In an earlier cleanup of language in the Act, there were some words left out of s. 25(5) of the ***Court of Appeal Act***. This matter has been reviewed and the amendments will be processed by legislative counsel.

### ***Amendments to the Court of Appeal Rules***

The following amendments have been made to the Court of Appeal Rules:

- a. Notice of Hearing - Rule 28(7)(a) and (b) is amended to allow for the filing of a Notice of Hearing in Form 34 and the form is included;

- b. Opening Statement – Form 10 is amended to limit the opening statement to one page;
- c. Transcript Extracts – Form 13 is amended to provide for transcript references being bound in chronological order, with or without tabs.
- d. Form Heading – Form 28 is amended to allow for the heading “Consent Order”.

### ***New Practice Directives***

The package of amended and new practice directives was published in December 2005. Along with the request for electronic factums, there were slight amendments to the Citation of Authorities and the Practice Note on Leave to Appeal.

The Criminal Practice Directive on Appointment of Counsel was changed with the change in Legal Services, where there is no longer a review of the refusal of legal aid. The operative paragraph was removed from the practice directive.

### ***Delay in Criminal Appeals***

A review was undertaken of all the criminal appeals where there are delays in

getting the appeal ready for hearing. The major delays are in the conviction/acquittal and conviction and sentence appeals. A list of outstanding criminal appeals has been created and Ms. Littlejohn, the Deputy Registrar, is monitoring these cases. Part of the issue appears to be the extradition cases, which are not moving along as quickly as they should.

### ***Motion Books Standing as Appeal Books***

A procedure has been established for preserving motion books where there is an order that they stand as appeal books. There is also a review procedure by the deputy registrar when the list is being confirmed.

### ***Criminal Appeal Rules Review***

The Rules Committee has begun a review of the Criminal Appeal Rules with a view to updating the rules according to current practices and procedures. Low JA and M. Gaily have formed a subcommittee to prepare draft Criminal Rule amendments to be considered at a later date. The following research has been completed:

- Law clerks have collected the criminal appeal rules from other jurisdictions and compared the rules, giving a useful review of procedures from other courts;
- Letters have been sent to a selected group of Crown and defence counsel, including federal Crown and a general letter to the criminal sections around the province, asking for any comments on the Criminal Rules which might assist in the review.

### ***Intervenor Status in the Style of Cause***

The registry staff is directed to refuse a notice of appeal which includes an intervenor in the style of cause. The proper procedure is for the proposed intervenor to make an application in the Court of Appeal for intervenor status.

### ***Outstanding Appeals where the Certificate of Readiness has been filed***

There is an issue about whether there is any jurisdiction to conduct a show cause hearing on a civil appeal once a certificate of readiness has been filed. The issue of outstanding appeals which have not been set down but where there is a certificate of readiness filed should be specifically dealt with in s. 25 of the *Act*. The Court has approved the following change:

#### **Inactive appeals or applications for leave to appeal**

**25 (1)** If a certificate of readiness is not filed in accordance with the rules within one year after the filing of the applicable notice of appeal or notice of application for leave to appeal, or if a certificate of readiness has been filed within that period but a notice of hearing has not been filed within one month after the filing of the certificate of readiness, the registrar must...

### ***Condensed Books***

The Committee agreed that condensed books are very useful on the hearing of an appeal. It was suggested that if condensed books were to be filed, the court would not need to have transcript extracts. The idea would be to give counsel a chance to use this procedure before making it a rule or practice directive. It was agreed that a practice note should be prepared approving of the practice of condensed books, at the discretion of counsel. The

use should be entirely voluntary. When preparing the list of appeals set for hearing, counsel in those large cases will be notified by the registry that the Court is open to receiving condensed books. This will apply only to civil appeals. Counsel will be advised that they can forgo the use of transcript extracts if a condensed book is filed.

### ***Residential Tenancy Appeals***

The issue of whether these appeals should come to the Court on leave was discussed. Because of the urgency of these appeals and the need to get before a chambers judge on stays of proceeding, it was decided that the leave process was not appropriate, and like other judicial reviews there should still be a right to appeal to the Court of Appeal.

### ***Form 12***

The Court approved a Committee proposal that Form 12 (form of appeal book) should be amended to indicate that affidavits should be included in the order that they were signed and not the order in which they were filed.

### ***Factums***

There are continuing complaints about the font size and type in factums. The Court has agreed to change the required font type to Arial. Registry staff should reject factums when they are not spaced properly and the font is too small. The Court agreed to the issuance of a practice note requiring that factums be prepared using Arial 12 point font.

### ***Proof of Service***

There is no proof of service required for chambers motions. When an in person litigant appears in chambers and no one

appears on the other side, the judge is placed in a difficult situation unless there is some indication that service has happened. Material will be prepared for the counter staff to give to in person litigants on chambers applications giving instructions on how they should prove service to the judge.

### ***Delivery to Judge of Chambers Material***

Materials are often delivered to the chambers judge on the morning of the hearing of the notice of motion. These materials are received in the registry the night before. A procedure has been adopted by the registry and the ushers to ensure that any material filed will be delivered before the end of the day to the judge sitting in chambers the next morning.

### ***Review Board Status on Mental Incapacity Appeals***

A question arose as to the status of the Review Board on appeals pursuant to the mental incapacity provisions in the Criminal Code. This is a matter which was adjourned for further consideration in the context of the Criminal Appeal Rules review.

## ***PLANNING COMMITTEE***

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### ***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  
Jennifer Jordan, Registrar  
Meg Gaily, Law Officer

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### ***Well Run Appeals***

The Honourable Mr. Justice Coté of the Alberta Court of Appeal prepared a report, *Well Run Appeals*, for the Canadian Judicial Council in September, 2005. The Planning Committee has reviewed all of the 152 recommendations of the Report and is satisfied that the B.C. Court of Appeal has adopted many of the approved practices. The review covered the following topics:

- *Motivation, Incentives and Penalties*
- *Who Polices Progress*
- *Leave to Appeal*
- *The Record from the Tribunal under Appeal*
- *Argument*
- *Issuing Judgments Faster*

The only issues which are being investigated further have to do with hiring more legal staff to assist the judges in their work; better use of law clerks; and a review of whether there should be special case management rules.

### ***Digital Recording Policy in the Court of Appeal***

The Court has approved the Planning Committee's proposal of a digital recording policy which mirrors the current policy for the court. The public document containing the policy, the procedures and the order forms relating to the Court of Appeal Digital Recording Policy are on the internet, available at the registry counter and are also available at the Tape Management counters in Vancouver and Victoria. Tape Management has a computer available for listening to the audio disks.

#### **Digital Recording Policy**

1. Oral judgments are recorded in Court of Appeal court and chambers hearings and are subsequently transcribed by a member of the Court of Appeal staff.
2. The justices of the Court of Appeal generally reserve the right to edit their oral judgments for clarity.
3. There is no public access to the audio recording of oral reasons for judgment.

4. Submissions are recorded in chambers hearings only. If a litigant wants a transcript of submissions made in chambers, he or she may request a transcript from an authorized transcription company. Parties/counsel will **not** be able to obtain disks containing audio submissions.
5. If a party/counsel wishes to review the recorded submissions from chambers before ordering a transcript, arrangements must be made through the Tape Management Office at the law courts in Vancouver or Victoria.
6. Submissions during Court of Appeal hearings **will not** be recorded. If there is a special situation where either the judge or the parties/counsel wish to have the matter recorded, an informal application should be made to the Court at the commencement of the hearing of the appeal.
7. Accredited media representatives will continue to be able to ask the Court for permission to record proceedings (pursuant to the “Recording of Court Proceedings by Accredited Journalists” policy).

### ***Telephone Hearings in Chambers***

Often a telephone hearing is scheduled before other matters in chambers have concluded. The Court has approved the Committee’s proposed new practice, as follows:

#### **Request for Telephone/ Video-conference**

Court of Appeal Chambers  
(Civil and Criminal matters)

Pursuant to Court of Appeal Rule 44(1), a justice may hear an application by telephone or

videoconference if he or she considers it appropriate. The new practice for the conduct of telephone or videoconference hearings in chambers is as follows:

- All telephone and videoconference hearings are to be scheduled at the discretion of the judge hearing the matter.
- The person making the request for a telephone or video conference shall file a written request and all motion material at least 7 days before the matter is scheduled to be heard. The applicant must make it clear in the request why the matter needs to be heard remotely.
- The scheduler will contact the chambers judge sitting on the requested date and deliver the request, the notice of motion and the court file so that the judge can review all of the material.
- If the judge decides that the matter is not to proceed by telephone/videoconference, then the applicant will be informed as soon as is possible in order to make travel arrangements to come to Vancouver/Victoria.
- If the judge decides the matter is appropriate for a telephone/videoconference hearing, the judge will indicate when the matter should be scheduled (e.g. at 9:15 a.m. or at 2 p.m.).
- The scheduler will contact counsel, indicating the time for the telephone/video conference.

### ***Computers in Retirement Rooms***

Computers and printers were installed in retirement rooms 60 and 61 to assist judges in the preparation of notes for oral reasons for judgment. Access for the judge signing in is to the regular judicial desktop and includes WebCATS and internet access.

### ***Frequently Cited Authorities***

*Hunter v. Southam Inc.* (1984) 14 C.C.C. (3d) 97 (S.C.C.) and *R. v. Collins* (1987), 33 C.C.C. (3d) 1 (S.C.C.) have been added to the Court of Appeal's list of frequently cited authorities.

### ***Supreme Court of Canada Survey on Internet Access to Factums***

The Supreme Court of Canada conducted a survey asking for public comments on having the Supreme Court of Canada factums available over the internet. The response was overwhelmingly positive. Some suggestions were made as to how to protect privacy interests. The Planning Committee has considered the report and has decided to wait until the Supreme Court of Canada has formulated its policy before revisiting this issue.

### ***Anonymization of Judgments***

CANLII has provided software which assists in anonymizing a judgment by locating in a judgment the several occurrences of a name, making it easier to change the name to initials. The software will be tested to see if it can be used by the judicial staff for those judgments where privacy interests need to be protected.

### ***Electronic Access Policy***

Through Court Services Online the public is able to search any Court of Appeal file,

both civil and criminal (except those subject to publication bans) for information about filings and appearances. The Electronic Access Policy has been amended to include this change. The Access Policy Working Committee is also working on a public access policy for court records. The Planning Committee will review this document when it is available.

### ***Publication Bans***

The Committee discussed two recent cases in which this Court released reasons for judgment containing information which was the subject of a statutory ban (disclosure of the names of witnesses, offenders and victim in a case involving youth offenders) and which was the subject of a discretionary ban on publication from the lower court (the name of an undercover police officer). The proposal to remedy this situation is to have law clerks note publication bans on the face of the preliminary memos; include all publication bans on the court lists; require counsel to advise the registry of all outstanding discretionary bans on the filing of the appeal as well as mentioning in court which bans counsel seek to continue in the Court of Appeal.

### ***Sittings outside Vancouver***

Sometimes when sitting outside of Vancouver the Court needs to refer to the lower court file. This is a problem when the file is from a registry other than that in which the Court is sitting. Registry staff will be asked to have the file transferred to the registry where the Court is sitting for those files located outside the sitting registry.

### ***Uniform Case Naming Guidelines***

The Committee reviewed the material prepared by the Canadian Citation Committee, under the auspices of the Canadian Judicial Council. This material has been circulated to the judicial administrative assistants and to the registry staff in an effort to standardize the short styles of cause for judgments and in WebCATS.

### ***Supreme Court Oral Judgments***

On appeals from oral Supreme Court judgments, the Court does not have a judgment with a neutral citation (as orals are generally not circulated in the Supreme Court). It would be desirable for the Court to be able to reference the lower court judgment by referring to the neutral citation. A system will be set up where a request is made to the lower court judge to circulate the oral judgment under appeal.

## *LAW CLERK COMMITTEE*

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### *Members:*

The Honourable Madam Justice Ryan  
The Honourable Madam Justice Saunders (Chair)  
The Honourable Mr. Justice Smith  
Meg Gaily, Law Officer

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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 2006, eleven clerks began their clerkships with the Court of Appeal for the 2006-2007 term.

In February 2006, Meg Gaily, Law Officer to the Court of Appeal, and Jill Leacock and Heidi McBride, Law Officers to the Supreme Court, received eighty-seven applications for the 28 law clerk positions at the Court of Appeal and Supreme Court for the 2007-2008 term. After reviewing the applications, the Law Officers interviewed many of these candidates during February 2006. Of these candidates, the Court of Appeal Law Clerk Committee interviewed 22 and selected eleven candidates for the law clerk positions for the 2007-2008 term. Of the eleven law clerks who will commence their terms with the Court of Appeal in September 2007, three are graduates of UBC Law School, four are graduates of the University of Victoria Law School, and the remaining law clerks are graduates of Dalhousie, Osgoode Hall 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 2006, Madam Justice Saunders and Madam Justice Ryan, together with members of the Supreme Court law clerks 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, Ms. Leacock and Ms. McBride for their assistance during the year.

## *LIBRARY COMMITTEE*

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### *Members:*

The Honourable Madam Justice Newbury (Chair)  
The Honourable Mr. Justice Hood  
The Honourable Madam Justice Humphries  
The Honourable Madam Justice D. Smith  
Alix Campbell, Director of Judicial Administration  
Diane Lemieux, Librarian

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Never stagnant, the Judges' Library has continued in its quest over the past year to maintain a balance between implementing technological changes and preserving the history and proven practices of the past.

One of the most creative changes made this year was the addition of the library catalogue to the law courts intranet site. The new Inmagic library application and its associated software, DBTextworks & Web Publisher Pro, were moved into production in late summer. Thanks to the combined efforts of our library staff, a technical consultant from the local Inmagic software partner, and our own information technology group, our judiciary and staff now have desktop access to the online version of the library catalogue.

With the emergence of a new version of Quicklaw this past summer, our staff provided on-site training sessions to all new law clerks, judicial administrative assistants and various judicial staff during the month of September. A "law at lunch" seminar was conducted in October as well for the Superior Court judges interested in learning more about the new LexisNexis internet version of Quicklaw. As the

classic and browser version of Quicklaw will eventually be phased out by the end of the year, it was a necessary measure that we hope will prove to be a useful, time-saving tool similar to its predecessor.

Library staff also continued to cull, revamp and organize judicial library materials at two courthouse locations this past year, and intend to do so at other Supreme Court locations in the next little while. In Kamloops, we did a major re-organization of materials in late August. Law reports were re-arranged, obsolete and unused items were removed, and a general clean-up resulted in the creation of shelf space for a few more years of continued growth. A similar clean-up was done at the New Westminster courthouse, and we hope that the discarding of outdated editions from the collection will free up much-needed space to keep the smaller library up-to-date and current. We will continue to hold historical editions in Vancouver and Victoria.

Usage and cost continue to be factors our committee considers in deciding on whether to renew our ongoing subscriptions. In order to avoid complete cancellations of some looseleaf services,

in some instances we have changed to purchasing new contents once a year. Although there have been no major cancellations of any law reports this year, we will continue to monitor feedback obtained from library committee meetings, user surveys, and patterns in circulation. We consider many factors in deciding on new materials for the Judges' Library, but first and foremost is the goal to make sure that the materials which we provide are current but also cost-effective.

Most recently, consumer demand and a trend towards automation has affected the way our judgments are distributed to various legal publishers. With the electronic availability of the Supreme Court and Court of Appeal decisions on the courts' website 24 hrs. after the time of release, the urgency of providing paper copies diminished dramatically. While the change to electronic distribution was welcomed by publishers, the result on our end was not only a tighter control and streamlining of the release of judgments, but also a reduction of paper and associated mailing costs. In this era of environmental concern that is a good thing.

## *EDUCATION COMMITTEE*

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### *Members:*

The Honourable Madam Justice Huddart  
The Honourable Madam Justice Levine

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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 2006, Law at Lunch programs included a presentation on Elder Law, including an outline of the existing statutory framework and new legislation; issues in post-secondary education, including how increased tuition fees have affected the demographics of the student population; information about the Law Courts Education Society and the Supreme Court Self-Help Centre; and a session on media relations with a view to providing more useful information on Court judgments for the media.

At the 2006 Spring Court meeting, Richard Bergman, Chair of the National DNA Data Bank Advisory Committee and Dr. Ron Fourny, officer in charge of the DNA Data Bank, presented some background on the science of DNA, and discussed the issues surrounding the collection and use of DNA evidence.

At the Fall Court meeting, Professor Peter Maddaugh presented an analytical discussion about the development of and trends in the Law of Restitution.

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 form the background to judicial work.

## *PRO BONO COMMITTEE*

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### *Members:*

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

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The Committee wishes to thank the lawyers who have volunteered their time and expertise in the Pro Bono Program:

Marilyn Bjelos  
Simon R. Coval  
D. Geoffrey Cowper, QC  
Angela Dunn  
Craig Ferris  
Betty Gabriel  
David Hart  
Ludmila B. Herbst  
Trudy Hopman  
John R. Jordan

Randal J. Kaardal  
Georgiale Lang  
Elizabeth S. Liu  
James C. MacInnis  
Lorne M. MacLean  
David MacLeod  
David D. McWhinnie  
Ryan W. Parsons  
Richard C.C. Peck, QC

## ***JOINT COURTS TECHNOLOGY COMMITTEE***

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### ***Members:***

The Honourable Mr. Justice Tysoe (Chair)  
The Honourable Madam Justice Levine  
The Honourable Madam Justice Boyd  
The Honourable Mr. Justice Groberman (New Chair)  
The Honourable Mr. Justice Masuhara  
Alix Campbell, Director, Judicial Administration  
Colin Sharwood, Manager, Information Technology  
Jennifer Jordan, Registrar, B.C. Court of Appeal  
Heidi McBride, Law Officer Supreme Court  
Cindy Friesen, Manager, Trial Coordinators

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The Committee discussed a number of issues and projects at its meetings including hardware and software replacements and improvements; judicial access to DARS; Court Services Online and the development of the Judicial Module; the Electronic Evidence Practice Direction; and the security of the SCJ.

### **Court Services Online**

The Committee discussed the e-filing pilot project which is being piloted in 7 registries including Vancouver and is being used by a select number of law firms and registry agents. The CSO Management Team reported to the Committee that the feedback from pilot participants is good. The final component of Court Services Online is the development of the Judicial Module. Tysoe, Groberman and Myers JJ. (and their JAAs) have been testing the Judicial Module which will enable judges to deal with electronically filed documents and to approve and digitally sign electronically

submitted orders. It is anticipated that the Judicial Module will be piloted in Vancouver in the spring of 2007. Tysoe, Groberman and Myers JJ. (and their JAAs) will be the initial pilot participants and as experience with the Judicial Module is gained, the pilot will be expanded to include other judges, masters and JAAs.

### **Digital Audio Recordings**

The replacement of analog recorders with digital audio recorders (“DARS”) continued throughout the province in 2006. This project is being managed by Court Services. A number of work processes and infrastructure issues which arose during implementation delayed the provincial roll out of DARS; however, it is anticipated that DARS will be completely implemented by the spring of 2007.

### **Electronic Evidence Practice Direction**

The Committee discussed the Electronic Evidence Practice Direction which was issued on July 1, 2006. The Electronic

Evidence Practice Direction was developed through a series of workshops facilitated by a consultant, Sandra Potter, which involved lawyers, litigation support professionals and Court Services employees. Since the implementation of the Electronic Evidence Practice Direction, a number of presentations on the Electronic Evidence Practice Direction have been made by various members of the Committee at the Pacific Legal Technology Conference and to CBA Civil Litigation subsection, individual law firms and legal support staff.

### **IT Services**

Microserve was the successful proponent in an open bid process. A new contract was negotiated with Microserve for a term of one year with an option to renew for each year for seven years.

### **Hardware & Software Upgrades and Changes**

During 2006, most of the desktop PCs in Vancouver were replaced by laptops and a loaner pool of laptops has been made available to visiting judges. In addition, changes have been made to software and hardware to improve the security and speed of the SCJ network.

## *JUDICIAL ACCESS POLICY WORKING COMMITTEE*

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### ***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  
Heidi McBride, Law Officer, Supreme Court  
Gene Jamieson, Legal Officer, Provincial Court  
Mike Smith, Director Judicial Administration, Provincial Court  
Kathryn Thomson, Legal Policy Consultant

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### ***Mandate of the Committee***

The Committee is a joint committee consisting of judicial 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 the draft policies relating to access to court records, specifically in electronic format. The Chief Justices and Chief Judge are consulted before a policy is adopted. In addition to policy work, the Committee also reviews access applications for those seeking bulk access to court record information.

### ***Work of the Committee***

In 2006 work of this Committee revolved around issues relating to the Digital Audio Recording (DARS), continuing discussions about access to criminal record information, and consolidation of the various access policies. The Committee began the work of preparing an access policy which will address access to DARS by the judiciary, Court Services staff, parties, media, members of the public and transcription contractors.

The Committee approved the Electronic Access Policy which is based on the Model Electronic Access Policy. The Model Electronic Access Policy was approved by the Canadian Judicial Council after being developed by the Judicial Technology Advisory Committee (a subcommittee of the Canadian Judicial Council). In addition, the Committee received, considered and granted a number of applications from a variety of government agencies and departments for access to court records for the purpose of fulfilling their statutory mandates.

### ***Looking Forward to 2007***

In addition to considering applications for access to court records, the Committee will continue to work on the Public Access Policy and the DARS Access Policy. The Committee will also continue to work on the development of an Access Policy Manual which is designed to assist Court Services staff in accessing and understanding the Electronic Access Policy and other access policies.

## **STATISTICS**

## *SUPREME COURT OF CANADA*

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There were 81 applications for leave to appeal from decisions of our Court filed with the Supreme Court of Canada in 2006.

The Supreme Court considered 75 applications for leave to appeal (some of these were from 2005 filings). Of these applications, 7 were granted, 53 were dismissed and there are 12 decisions pending at the end of 2006.

In 2006, the Supreme Court of Canada heard 9 appeals from B.C. cases. Of these appeals, 1 appeal was allowed, 2 appeals were dismissed and there were 6 reserve judgments pending at the end of 2006. In addition to these decisions, another 9 judgments were rendered in B.C. cases which had been heard in previous years. Of these, 5 appeals were allowed and 4 appeals were dismissed.

In 2006, 16% of the applications for leave to appeal to the Supreme Court of Canada were from B.C. appeals. Of the judgments rendered in 2006, 11% of the judgments rendered were appeals from B.C.

**B.C. COURT OF APPEAL**

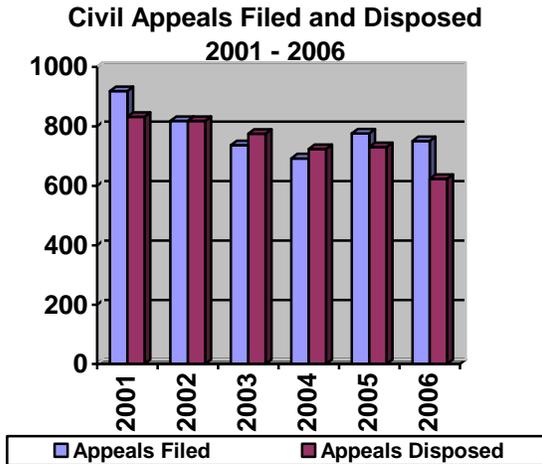
***Volume of Litigation\****

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 2001 - 2006.

***Civil***

Figure 1 demonstrates the declining number of civil appeals filed between 2001 and 2004 and the increase in appeals filed for 2005, and a slight decrease again for 2006. The disposed appeals dropped noticeably in 2006 due to the retirement of Court of Appeal justices and the reduced number of sittings. The result of the increase in filings in 2005 and 2006 and the decrease in dispositions is that the disposition rate for the last two years has been under 100% of filings.

**Figure 1**

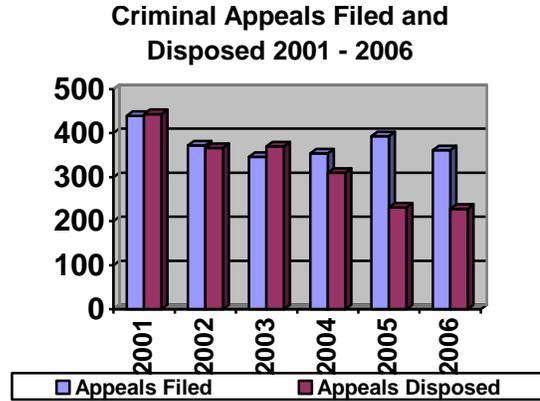


***Criminal***

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

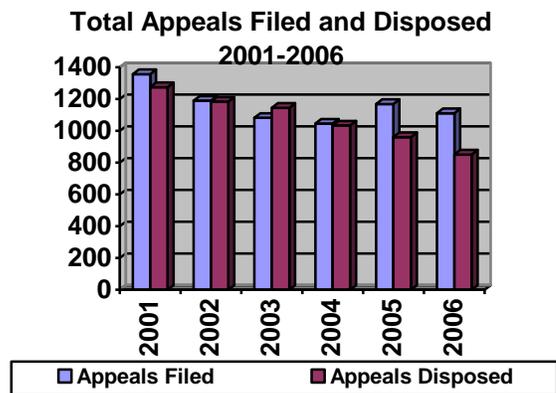
criminal appeals disposed of fails to exceed the number of criminal appeals filed, which results in a growing backlog of criminal appeals. For 2006, dispositions were 63% of filings (see Appendix 2).

**Figure 2**



For a more complete picture of total court activity, Figure 3 combines the civil and criminal filings and dispositions. Over the last two years, the dispositions have not kept pace with the filings.

**Figure 3**

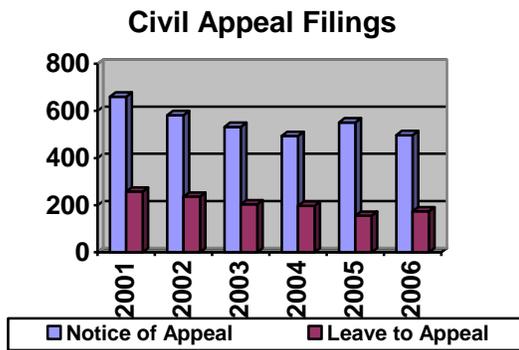


\*Please refer to the appendices for the actual numbers in these charts.

### Types of Appeals Filed

Only 23% of the civil appeals filed in 2006 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 2006, 84% 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.

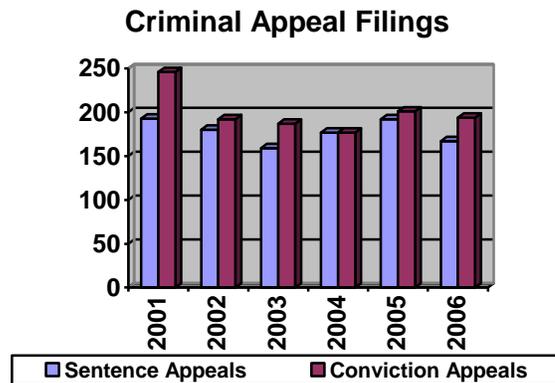
Figure 4



### 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 2001 and 2006. Sentence and summary conviction appeals amount to just under half (46%) of the total criminal appeals filed.

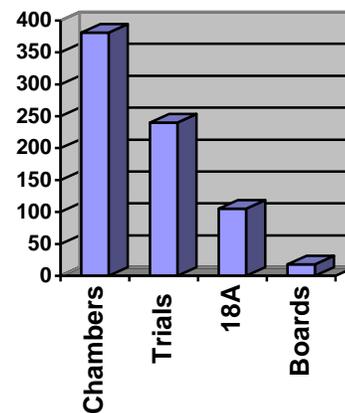
Figure 5



### 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 2006 figures show there were substantially more appeals from chambers matters and summary trials (18A) than there were appeals from trials. Figure 6 shows the types of appeals according to the initiating proceeding. Twice as many appeals are from matters other than trials.

Figure 6

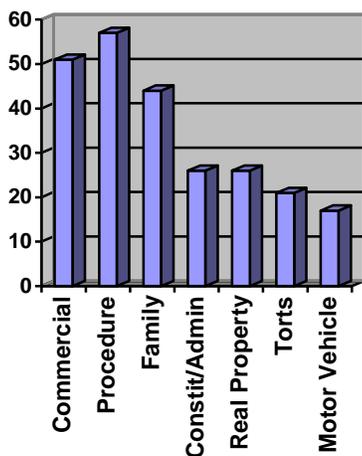


### Civil Case Categories

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

Civil Categories Appeals Heard 2006

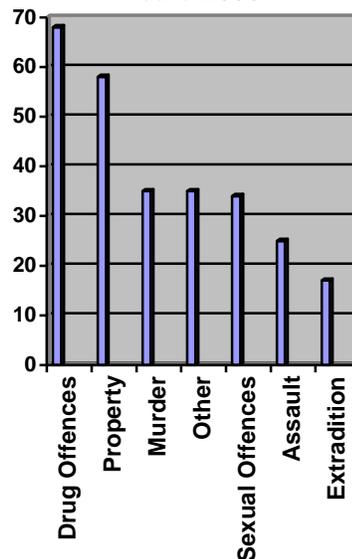


### Criminal Case Categories

Another interesting breakdown is for the types of criminal cases which are dealt with by the Court. Drug offences form the largest category of criminal appeals, amounting to 22% of the cases before the Court, although property offences are a close second at 19% of all dispositions. "Other" covers various offences such as arson, mischief, motor vehicle and habeas corpus cases. Figure 8 gives the top seven distinct categories.

Figure 8

Criminal Categories Appeals Heard 2006

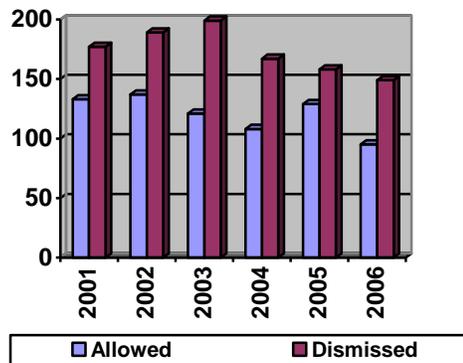


### Appeals Allowed

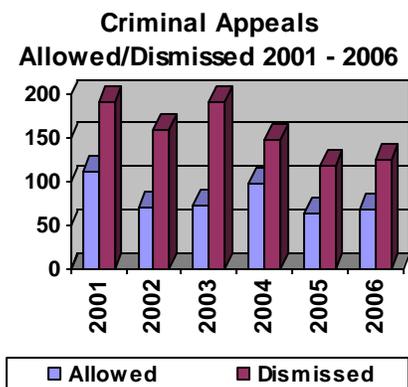
The rate of civil and criminal appeals allowed over the past six years has remained relatively constant and usually falls between 37% to 41% of the appeals heard. Figure 9 shows the number of civil appeals allowed and Figure 10 shows the number of criminal appeals allowed.

Figure 9

Civil Appeals Allowed/Dismissed 2001 - 2006



**Figure 10**



The largest fluctuation over the years is the difference in the number of criminal appeals allowed. The percentage comparison is 27% allowed in 2003 and 40% in 2004. In 2006, the rate dropped to 35%. 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**

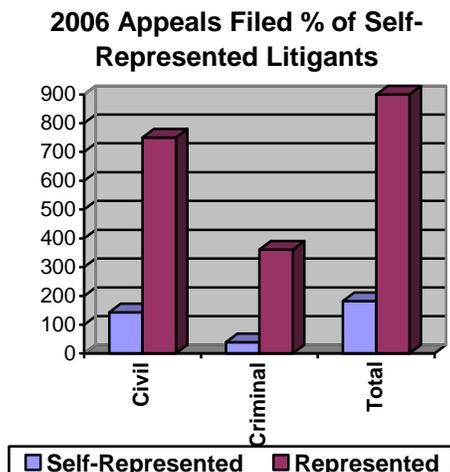


Figure 11 represents the percentage of self-represented litigants out of the total number of litigants, who filed appeals in 2006. This number does not capture those

litigants who file their own appeal but subsequently retain counsel. This year the percentage of civil self-represented litigants is 19%, and the criminal unrepresented litigant amounts to 10% of all the appeals filed, a drop over the 18% filing in 2005.

**Figure 12**

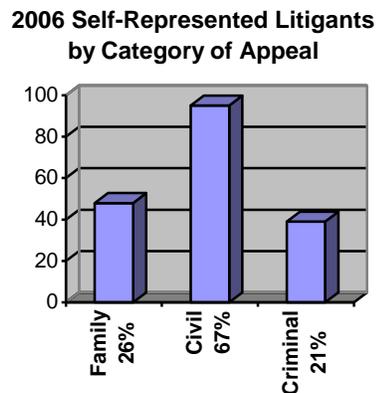


Figure 12 represents the percentage of self-represented litigants, by category, out of the total number of self-represented litigants.

**Appendix 1 - Civil Statistics 1995-2006**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<b>APPEALS FILED:</b>												
Notice of Appeal	929	902	854	822	787	679	660	582	532	494	551	500
Leave to Appeal	355	272	273	272	224	248	258	236	204	198	155	173
Notice of Appeal and Leave											70	76
<b>TOTAL FILED:</b>	1284	1174	1127	1094	1011	927	918	818	736	692	776	749
<b>COURT DISPOSITIONS:</b>												
Appeals Allowed	146	174	159	142	151	148	133	137	121	108	129	95
Appeals Allowed %	38%	39%	39%	37%	43%	42%	43%	42%	38%	40%	45%	39%
Appeals Dismissed	237	271	250	241	196	197	177	189	199	165	158	149
Appeals Dismissed %	62%	61 %	61%	63%	57%	58%	57%	58%	62%	60%	55%	61%
<b>TOTAL COURT DISPOSITIONS:</b>	383	445	409	383	347	345	310	326	320	273	287	244
Appeals Concluded in Chambers or Abandoned	559	1055	988	744	673	544	522	492	455	451	443	378
<b>TOTAL DISPOSITIONS:</b>	942	1500	1397	1127	1020	889	832	818	775	724	730	622
Dispositions as % of Filings	73%	128%	124%	103%	101%	96%	91%	100%	105%	105%	94%	83%
Judgments Reserved (Court)	179	210	188	182	174	197	178	193	181	200	166	177
Judgments Reserved (Cham)										104	64	75
Appeals with 5 Judges	10	27	3	5	3	12	16	10	16	4	1	0
Court Motions: Reviews	11	8	10	13	16	10	7	17	13	14	13	18
Granted	9	4	5	6	0	3	6	2	7	3	5	4
Refused	2	4	5	7	16	7	1	15	6	11	8	14
Chambers Motions	745	736	643	664	568	530	419	427	451	397	298	277
<b>LEAVE TO APPEAL:</b>												
Granted	86	95	74	65	18	80	75	65	56	47	46	37
Refused	51	76	71	48	39	37	35	26	30	11	8	7
<b>TOTAL:</b>	137	171	145	113	57	117	110	91	86	58	54	44

**Appendix 2 - Criminal Statistics 1995-2006**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<b>APPEALS FILED:</b>												
Sentence	237	207	249	219	199	182	156	133	126	150	175	152
Conviction	232	220	232	231	203	174	177	128	130	124	137	145
Summary Conviction	44	29	48	54	39	40	37	47	33	27	17	15
Acquittal & Other	77	69	50	63	68	78	69	64	57	53	64	48
<b>TOTAL FILED</b>	590	525	579	567	509	474	439	372	346	354	393	360
<b>COURT DISPOSITIONS:</b>												
Appeals Allowed	127	92	115	127	103	84	111	70	72	98	66	66
Appeals Allowed %	33%	26%	31%	31%	29 %	28%	37%	31%	27%	40%	36%	38%
Appeals Dismissed	254	266	253	283	248	218	193	159	193	148	118	106
Appeals Dismissed %	67%	74%	69%	69%	71%	72%	63%	69%	73%	60%	64%	62%
<b>TOTAL:</b>	381	358	368	410	351	302	304	229	265	246	184	172
Summary Dismissals Abandonments in Court/Chambers	317	176	193	134	118	149	139	137	105	64	47	35
<b>TOTAL DISPOSITIONS</b>	698	534	561	544	469	451	443	366	370	310	231	207
Appeals Disposed % of Filings	118%	102%	97%	96%	92%	95%	101%	98%	107%	88%	59%	58%
Appeals Heard by 5 Judges	2	2	3	3	4	5	5	0	1	0	1	0
Judgments Reserved	101	92	116	117	78	89	89	86	109	93	85	85
Judgments Reserved Chambers											10	12
Chambers Motions	329	302	332	316	305	218	260	230	219	172	137	151

**Appendix 3 - Total Appeals**  
Filed and Disposed 1995-2006

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<b>APPEALS FILED:</b>	1874	1699	1706	1661	1520	1401	1357	1190	1082	1046	1169	1109
<b>COURT DISPOSITIONS:</b>	764	803	777	793	698	647	614	555	562	519	471	416
Appeals Allowed	273	266	274	269	254	232	244	207	179	206	195	161
Appeals Allowed %	36%	33%	35%	34%	36%	36%	40%	37%	32%	40%	41%	39%
Appeals Dismissed	491	537	503	524	444	415	370	348	383	313	276	255
Appeals Dismissed %	64%	67%	65%	66%	64%	64%	60%	63%	68%	60%	59%	61%
<b>TOTAL</b>	764	803	777	793	698	647	614	555	562	519	471	416
Appeals Concluded in Chambers or Abandoned	876	1231	1181	878	791	693	661	629	560	515	490	413
<b>TOTAL DISPOSITIONS</b>	1640	2034	1958	1671	1489	1340	1275	1184	1145	1034	961	829
Dispositions as % of Filings	88%	120%	115%	101%	98%	96%	94%	99%	106%	99%	82%	75%
Judgments Reserved	280	302	304	299	252	286	267	279	290	397*	325*	349*
Appeals with 5 Judges	12	29	6	8	7	17	21	10	17	4	2	0
Chambers Motions	1074	1038	975	980	873	748	679	657	670	569	435	428

\*Now includes chambers reserved judgments