



**B.C. COURT OF APPEAL
2009
ANNUAL REPORT**



Dave Roels Photographer

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MEMBERS OF THE B.C. COURT OF APPEAL

Chief Justice

Chief Justice Lance S.G. Finch

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

Justices of the Court of Appeal

Madam Justice M. Anne Rowles

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

Madam Justice Jo-Ann E. Prowse

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

Madam Justice Catherine A. Ryan

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

Mr. Justice Ian T. Donald

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

Madam Justice Mary V. Newbury

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

Madam Justice Carol M. Huddart

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

Mr. Justice John E. Hall

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

Mr. Justice Kenneth C. Mackenzie

May 5, 1992 (Supreme Court)
June 23, 1998 (Court of Appeal)
May 6, 2007 (Supernumerary)

Madam Justice Mary E. Saunders

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

Mr. Justice Richard T.A. Low

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

Madam Justice Risa E. Levine

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

Mr. Justice Kenneth J. Smith

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

Mr. Justice Peter D. Lowry

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

Madam Justice Pamela A. Kirkpatrick

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

Mr. Justice Edward C. Chiasson

September 14, 2006 (Court of Appeal)

Mr. Justice S. David Frankel

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

Mr. Justice David F. Tysoe

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

Mr. Justice Robert J. Bauman

June 20, 1996 (Supreme Court)
February 20, 2008 (Court of Appeal)
September 9, 2009 (Chief Justice of the
Supreme Court)

Madam Justice Daphne M. Smith

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

Madam Justice Kathryn E. Neilson

July 2, 1999 (Supreme Court)
May 8, 2008 (Court of Appeal)

Mr. Justice Harvey M. Groberman

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

Madam Justice Elizabeth A. Bennett

August 27, 1996 (Supreme Court)
May 14, 2009 (Court of Appeal)

Madam Justice Nicole J. Garson

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

STAFF OF THE B.C. COURT OF APPEAL

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

Law Clerks 2009-2010

Mat Brechtel
Shea Coulson
Mathew Good
Nicholas Isaac
Krista Johanson
Eileen Keast
Peter Millerd
Joel Payne
Oliver Pulleyblank
Peter Senkpiel
Aileen Smith
Lyndsay Watson

Judicial Staff

Cathy Clough
Susan Devenish
Elise Du Mont
Jackie Mangan
Bonnie Marcaccini*
Susan McEvoy
Cherry Mills
Barbara Moss
Victoria Osborne-Hughes*

* **Victoria**
** **Kamloops**

Registry Staff

Jaclyn Burgoyne*
Shelly Ducharme**
Matt Dykeman
Steven Evans*
Torri Enderton
Shayna Irvine
Sue Lang
Christina McKenzie**
Jennifer Rahiman
Merle Sandell*
Diane Schwab
Moirra Syring*

Ushers

Bill Deans
David O'Brien
Susan Brokenshire

SUPERIOR COURTS JUDICIARY STAFF

Judicial Administration

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

Judges' Library Diane Lemieux

Library Technician Sarah Preston

Website Administrator Mary Falck

Webmaster Susan Devenish

Judgment Clerk Heidi Hoeffner

IT Services Mark Hujanen, Service Delivery Manager

REPORT OF THE HONOURABLE CHIEF JUSTICE FINCH

General

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

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

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

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

The Court's Complement

At the start of 2009, there were two unfilled positions in the Court. These vacancies resulted from the election of supernumerary status by the Honourable Mr. Justice Richard Low on 1 April 2008 and by the Honourable Mr. Justice Kenneth Smith on 28 May 2008.

New Appointments

The first of these positions was filled with the appointment of Madam Justice Elizabeth Bennett on 14 May 2009. Madam Justice Bennett obtained her LL.B. at U.B.C., graduating in 1981, and articulated with the law firm of Doust & Smith (the latter to become the Honourable Mr. Justice Kenneth Smith). In 1982, Madam Justice Bennett commenced her career with the Ministry of the Attorney General, Criminal Justice Branch, as trial counsel. In 1987, she moved to the Criminal Appeals Branch where she remained for the duration of her career at the bar, except for a two year interlude at the private bar, when she practiced with Richard Peck Q.C. and Mike Tammen from 1994 to 1996. Justice Bennett was appointed Queen's Counsel in 1994.

In 1997, Madam Justice Bennett was appointed to the Supreme Court of British Columbia where she served until May 2009, hearing cases of all sorts, including many difficult criminal trials.

Madam Justice Bennett has devoted, and continues to devote, much time, energy and expertise to legal and judicial education. For many years she has taught at the School for New Judges presented by the National Judicial Institute, been a leader in the Criminal Law Program presented by the Federation of Law Societies, and in addition has served as a member of the Criminal Jury Charge Committee for the Canadian Judicial Council.

Madam Justice Bennett has two sons.

The Honourable Madam Justice Nicole Garson was the second appointment to the Court of Appeal, on 14 May 2009. She studied law at the College of Law, University of Saskatchewan, and at Dalhousie Law School, graduating with an LL.B. in 1975. She first articulated in Ontario, and then moved to Manitoba where she was called to the bar in 1977.

In 1981, Madam Justice Garson moved to Vancouver, and commenced practice with Boughton Peterson Yang Anderson, where she later became a partner. Her practice specialized in commercial and insurance litigation.

In 1995, Madam Justice Garson moved her practice to Campney & Murphy. She was appointed Queen's Counsel in 1999.

In May 2001, Madam Justice Garson was appointed to the Supreme Court of British Columbia, where she served with distinction until her appointment to the Court of Appeal in May 2009. She has been a frequent contributor to Continuing Legal Education programs in civil litigation. Madam Justice Garson is married and has two children.

The Court's complement was full, and stable, for almost four months in 2009. And then on 9 September 2009, the Honourable Mr. Justice Robert J. Bauman left his position in the Court of Appeal to become the Chief Justice of the Supreme Court of British Columbia.

Chief Justice Bauman was first appointed to that Court on 20 June 1996. He was appointed to the Court of Appeal on 20 February 2008. While his tenure as an appellate judge was brief (little more than 18 months) he proved himself an extremely able and hard-working member of the Court, and a good-humoured and personable colleague. All members of the

Court of Appeal join in wishing Chief Justice Bauman every success and satisfaction in his demanding new role as leader of the province's superior trial court.

At the end of 2009, there was one vacancy in the Court of Appeal, created by the departure of Chief Justice Bauman. There were 13 full-time justices, and nine supernumerary justices, in addition to the Chief Justice.

The number of supernumerary judges has varied dramatically in the Court over the years. For example, in 1993, when there were 13 full-time judges, there were 10 supernumerary judges. By 2005-06 the number of supernumerary judges had fallen to two.

By long tradition, supernumerary judges have been scheduled to hear cases 50% of the time that is scheduled for full-time judges. In addition to that commitment, supernumerary judges have made themselves readily available to hear cases as required when regularly scheduled judges were unavailable, when additional judges are required to make up a five judge division, and in other exigent circumstances.

The very small number of supernumerary judges in the Court three or four years ago limited the number of divisions the Court could schedule during the course of the year, and placed an increased burden on the full-time judges in order to meet reasonable expectations of service. Return to a larger complement of supernumerary judges, as was the case in earlier years, is a welcome relief from the demands experienced when there were as few as two.

In Memoriam

The Honourable William Rogers McIntyre

Our former distinguished colleague Bill McIntyre passed away on 14 June 2009 at the age of 91. Bill is remembered by all who knew him as a fine lawyer, a great judge, and a man of warmth, wit and substance.

Bill was born in Lachine, Quebec, but spent his early years in Moose Jaw, Saskatchewan. He graduated from the University of Saskatchewan in 1939 with a Bachelor of Arts degree. His law school education was interrupted in 1941 when he enlisted in the army, serving overseas during World War II. He returned to Saskatchewan in 1946 and completed his law degree.

A year later, Bill moved to Victoria where he practiced for 20 years before his appointment to the Supreme Court of British Columbia in 1967. He served as a trial judge until his appointment to the B.C. Court of Appeal and the Yukon Court of Appeal in 1973, where he served for five years.

Bill was then appointed to the Supreme Court of Canada in December 1978, and held office in that Court until his retirement in 1989.

Bill's biographer, W.K. McConnell, Professor of Law Emeritus at the University of Saskatchewan, has written of him:

As a judge he was fair-minded, painstaking, and lucid in writing his opinions. He always prepared thoroughly, and believed in brevity and clarity of expression: those who read an opinion are entitled to understand what the law is. His

view of the judicial function was that judges should exercise self-restraint and not intrude into areas of policy making appropriate for resolution by cabinet or legislature.

...

McIntyre's judgments...were models of precision, clarity, and succinctness. With an economy of words, in a style that was lucid rather than elegant, they were written with the express purpose of assisting lawyers and judges to comprehend and apply the legal principles enunciated.

The B.C. lawyer and historian, David Ricardo Williams Q.C., is quoted as saying of Bill:

He didn't say very much. He was a cerebral type both on the bench and off it. He didn't interrupt you and you seldom heard any jokes or quips from him. He was the best-read judge on the bench of his time, I would say, not only in the law, but in subjects outside the law. He would converse on any topic in literature and would always have an informed view. It made him a bit of an oddity in a way. Outside the courtroom he was a very agreeable companion. He enjoyed good food and good wine. He was humourous. He had a dry wit about him, an ironic wit. He was excellent company, but you didn't see that in court. He drew a line between his private and his public appearances.

Bill is only one of four British Columbia lawyers to have been appointed to the

Supreme Court of Canada. He was remembered with great affection by many friends, former law clerks and colleagues at a reception in the Vancouver Club on 9 July 2009.

On 11 September 2009 the Court held a special sitting in his honour, attended by his widow, Dorothy Parkinson, his son, John, and many former colleagues and friends. Bill's memory was especially honoured by the presence and remarks of the Right Honourable Beverley McLachlin, Chief Justice of Canada, who took Bill's place on the Supreme Court after he resigned.

Bill was a man of wisdom, insight and integrity, and we are all grateful to him for his contributions to Canadian jurisprudence, and for enriching the lives of all who knew him.

The Work of the Court

The Court delivered reserved total (written) judgments in 293 appeals and 71 chambers applications. In addition, the Court pronounced judgment with oral reasons in a further 165 appeals, and in the vast majority of chambers applications.

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

Most of the justices' non-sitting time is taken up either with the research for and writing of reserved judgments or with preparation for upcoming appeals. The

law clerks assist the justices in these tasks. Responsibility for the writing of reserved judgments is shared among those members of the Court who have heard the appeals.

The Court continues to work towards full compliance with the guideline set by the Canadian Judicial Council for pronouncement of reserved judgments within six months from the date of hearing. Out of the total 77 reserved criminal judgments rendered in 2009, 96% were pronounced within the guideline. On the civil side, of the 216 reserved judgments delivered in 2009, 84% were pronounced within the guideline. Of all reserved judgments, both civil and criminal, 68% were rendered within three months or less of the hearing date.

Appeals to the Supreme Court of Canada

The statistics indicate that the Court of Appeal is essentially the court of last resort for litigants in British Columbia. As set out later in this Annual Report (see "Supreme Court of Canada" in the statistics section and the Registrar's Report), in 2009 only 74 applications for leave to appeal were filed in the Supreme Court of Canada from judgments of the Court of Appeal, and only 13 applications were granted.

Self-Represented Litigants

As noted in the Registrar's Report, the Court hears a significant number of appeals involving self-represented litigants. While the number of filings for self-represented litigants remained relatively constant over last year, it is significant to note that the number of civil appeals heard where at least one party was self-represented more than doubled over 2008. The percentage of criminal appeals involving a self-represented litigant remained relatively the same.

The Court again acknowledges the significant contributions of the bar in providing *pro bono* assistance to litigants unable to afford legal services. As noted in the Pro Bono Committee Report, the Court of Appeal welcomed an expansion of the *pro bono* program to deal with chambers applications as well as court hearings. The Court is most grateful to all lawyers who have provided free legal advice, advocacy, or other assistance to litigants with arguable cases, who lack necessary financial means to engage in the appeal process.

Extra-Judicial Appointments & Activities

In addition to the justices' workload in hearing cases and issuing judgments, every justice is involved in activities in the legal profession, for the larger Canadian judiciary, and for local communities, the Province, and the country of Canada. Justices also attend continuing education seminars, for lawyers and for judges, in Canada and abroad, as participants and speakers. As a partial but representative listing, in 2009 justices of the Court:

Held positions on various bodies such as:

- President, Vancouver Institute
- Chair, Judicial Appointments Advisory Board
- Judicial Technology Advisory Committee (JTAC)
- Board member, Canadian Institute for the Administration of Justice
- B.C. vice-president, International Commission of Jurists (Canada)
- Director, International Center for Criminal Law Reform and Criminal Justice Policy

Attended seminars either as speakers or audience members:

- CLE seminar "Judicial Review Fundamentals"
- CLE seminar on "Criminal Law and the *Charter* – 2009
- CBA Criminal Justice Subsection Yukon Bench and Bar annual seminar
- CBA – Department of Justice Training Seminar on Ethics
- Centre on Women and Violence
- National Centre for Business Law seminars
- NJI National Class Action seminar
- NJI Annual Insolvency Conference
- Cambridge Lectures
- International Conference on Family Law

Wrote and edited books and articles:

- Editorial Board, Family Law Sourcebook (published by CLE of BC)

Assisted in:

- Inns of Court program
- training sessions for law school moots teams such as the UBC-UVic Moot, Gale Moot, and Securities Law Moot
- lectures at Capilano College
- sessions for the Justice Education Society
- M.A. thesis external examination for Simon Fraser University

Publication Ban Manual

The Publication Ban Working Group was constituted in late 2008 to address the complex questions and issues that arise in the administration and management of publication bans. The Publication Ban Working Group is a collaborative effort by the three courts in British Columbia and

represents an effort to address the problems that exist in all three courts.

The Chair of the Working Group is Mr. Justice Donald. Other members of the Working Group are Madam Justice Rowles, Mr. Justice Davies, Madam Justice Loo, Madam Justice Dickson and Judge Jardine. In addition to the judges, the Law Officers of each court as well as the Senior Counsel and the Registrar of the Court of Appeal are members. Heidi McBride, a Supreme Court Law Officer, has taken the lead as the group's recording secretary and in compiling the Manual.

During 2009, the Working Group created an inventory of the problems related to publication bans, and developed recommendations for best practices. The Working Group is preparing a practice manual for use by the judiciary and judicial support staff of the three courts. Initially, the Publication Ban Practice Manual will address criminal publication bans; future editions will address civil and family publication bans.

Visits to the Court

In October 2009, the Court hosted a delegation of six judges and court officials from the Supreme People's Court in China, that country's highest court. The delegation was headed by Shen Deyong, Vice President of the Supreme People's Court of PRC, Member of the Judicial Committee, and Grand Justice of the First Rank. The Court thanks Ms. Tiffany Lee and Ms. Danielle Horwitz, both of Justice Education Society, for their help in organizing and conducting the visit.

Court meetings

At the spring meeting of the Court in April 2009, the Court received a joint presentation from the Deans of British Columbia's two law schools, Dean Mary

Anne Bobinski from the Faculty of Law at U.B.C., and Dean Donna Greschner from the Faculty of Law at the University of Victoria. The two Deans presented a broad picture of legal education in the province, how it has evolved, and the challenges presently faced by those responsible for providing it.

At the fall meeting of the Court on 23 October, the Court heard presentations by Liz King, Corinne Swystun and Rodney Fehr from the office of Legislative Counsel in the Ministry of the Attorney General. This was a most interesting and informative discourse on the process of legislative drafting, choice of language in statutes, and rules of statutory interpretation.

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

100th Anniversary of the Court of Appeal

Much time and effort was expended in 2009 in the planning of various events and publications to celebrate the Court's centenary in 2010. Many members of the Court, as well as members of the profession, have made significant contributions to these plans in order that the Court's 100th birthday might serve as an occasion for public education on the role of the courts in general, and courts of appeal in particular. As this report is being written, various centennial events have already occurred. A full account of the year's activities will appear in the Annual Report for 2010.

At this stage, I wish particularly to acknowledge the work of the Court's Law Officer, Greg Pun, who has laboured tirelessly throughout 2009 – and beyond –

to ensure that all centennial events succeed beyond expectations.

Registry and Staff

Ms. Manjit (Mandy) Sandhu commenced employment as the Court's Deputy Registrar/Manager in August 2008. Ms. Sandhu left that position for a manager's position at Richmond Provincial Court in September 2009.

The position was filled by Ms. Vicki Jang, who has been Deputy Registrar/Manager since October 19, 2009.

REPORT OF THE REGISTRAR

The Court's Workload

There were 1210 filings of new appeals in 2009, up from the 1108 new filings in 2008. The increases relate primarily to the increase in criminal filings.

Statistics for criminal and civil case loads for 2009, with comparable numbers from 1998 to the present, are attached as appendices to this report.

Sittings of the Court

In 2009, Division 1 sat for 39 weeks, Division 2 sat for 39 weeks and Division 3 sat for 16 weeks. In addition, the Court sat for six weeks in Victoria and one week in the Yukon Territory. There were no sittings in the Interior due to the lack of demand. The Court sat a total of 101 divisions in 2009. This is 13 more divisions than in 2008.

Self-Represented Litigants

In 2009, out of 784 civil appeals filed and applications for leave to appeal filed, 173 cases (22%) involved a litigant who was not represented by counsel. There were fewer judgments rendered in civil appeals involving self-represented litigants. Of 296 civil cases disposed of in 2009, 42 (14%) involved at least one in-person litigant.

On the criminal side, there were 426 appeals or applications for leave to appeal filed. Of that total, 56 (13%) were appeals or applications by self-represented litigants. Of the 162 criminal appeals heard in 2009, 10 (6%) appeals involved in-person litigants.

Registry and Staff

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

We welcome Vicki Jang to the position of Deputy Registrar/Manager. Ms. Jang comes to us after many years as the supervisor in Provincial Family and Traffic Courts. She has been with the public service for over 28 years.

WebCATS

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

Upgrades to WebCATS in 2009 included the ability for staff to create a letter or memo in the "filings" screen and to issue the document electronically as part of the electronic court file.

The judicial scheduling report has also changed. Judges can look at their individual schedule. They can also view a completed schedule with all the sittings for any chosen time period. This allows the judges to see the current schedule incorporating all of the changes as opposed to the past paper schedule which was always out of date.

Another change has been the addition of trial court exhibit clerks across the province as users of WebCATS. This change has allowed exhibit clerks throughout the province to monitor appeals, thus allowing them to dispose of exhibits in a timely manner when no appeal is filed. The change has also resulted in a shift in work for the registry staff, who no longer have to respond to these queries.

Registrar's Hearings

In 2009, the Registrar conducted 97 hearings out of a total of 159 scheduled hearings. Of those 97 hearings, 53 were for the assessment of costs, 22 were to settle orders, and 22 were hearings combining the settling of the order with the assessment of costs.

Proposed amendments to the Court of Appeal Rules add to the duties of the Registrar the ability to settle the Appeal Record, Appeal Books as well as any Transcript being filed in the Court of Appeal. These Rules will be in force in July 2010.

Hague Convention Appeals

The Court of Appeal issued a Practice Directive (21 July 2009) dealing with procedure to follow when a party wishes to raise an issue dealing with the inter-jurisdictional abduction of a child. The protocol provides for a fast-tracking of the appeal and a proposed timeline of three weeks for the appeal to be heard. These types of appeals are rare in the Court of Appeal.

Frequently Cited Authorities

The Practice Note of the Registrar covering the list of Frequently Cited Authorities was revised (11 June 2009) to update a citation appearing on the list as

well as to split the cases into separate civil, criminal and Aboriginal lists.

E-Filing in the Court of Appeal

In anticipation of receiving government funding for 2010-2011, the Court of Appeal has been finalizing the technical and business requirements for e-filing as well as preparing the E-Filing Rules for the Court of Appeal. The plan is to employ the Court Services Online interface and to make available a few of the Court of Appeal forms for e-filing. The E-Filing Rules will exempt from e-filing all books required for an appeal, so the list of documents which can be e-filed will be fairly short.

Further information on this project will be available in 2010.

COMMITTEE REPORTS

PLANNING COMMITTEE

Members:

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

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

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

These are some of the matters considered during 2009:

Sitting of the Court of Appeal during the Olympics

After consultation with VANOC and the City of Vancouver, proposals for a reduced sitting schedule for the Court of Appeal were considered by the Committee and approved by the Court. The expectation was that there would be difficulty in getting to the courthouse and that parking would be at a premium. As well, it was expected that there would be elevated noise levels as Robson Square is one of the main downtown venues for

bands, a zip line, large outdoor screens and other Olympic-related activity. It was agreed to cancel full Court sittings during the weeks of February 8-26, 2010. The sittings of the Court lost during these 3 weeks will be incorporated into the rest of the sitting year such that the Court's sitting time over the year will not be reduced. Chambers will continue to sit as usual throughout this period.

Celebration of the 100th Anniversary of the Court of Appeal

The Chief Justice has continued to report on the activities relating to the 100th Anniversary of the Court of Appeal (1910-2010). The activities include:

- A video on the Court of Appeal produced by the Justice Education Society
- A book on the Court of Appeal by Christopher Moore
- A special edition of *The Advocate* devoted to the Court of Appeal
- B.C. Studies will devote one publication to the Court of Appeal

- Special sittings of the Court will be held throughout the year, beginning with a sitting in Victoria January 8, 2010, including a banquet at the Lieutenant Governor's house; and other special sittings in Vancouver, Prince George, Kamloops, Kelowna
- The Yukon Court of Appeal is celebrating its 50th Anniversary in 2010, so a special sitting has also been scheduled for Whitehorse.
- An Appellate Court Seminar scheduled for April 2010, followed by a banquet for all those attending the seminar and invited guests.

Late Filing of Factums

Late filing of factums in criminal appeals has caused problems for judges preparing for hearings. Statistics were gathered on the timing of the factums being filed in criminal conviction appeals and the results were forwarded to the Rules Committee for consideration.

Judgment Format

A revised version of the *Preparation, Citation and Distribution of Canadian Decisions* has been approved by the Canadian Judicial Council. One of the changes, which has been approved by the Court, is to put on the face page of judgments being released historical information relating to earlier court judgments (such as lower court judgment citations). As well, corrections to judgments will be noted on the face of the judgment, although the entire correction will not be reproduced.

Request to Remove Judgments from the Website

In response to requests, the Committee reconsidered and reaffirmed the Court's

policy that judgments should not be removed from the Internet where a pardon has been granted following a criminal conviction or an acquittal following a successful appeal.

WebCATS Rota Report

The Committee approved the format of a new report which shows the individual sitting calendar for judges as well as giving the judges the ability to print or view the entire court schedule for any given date.

Laptop Upgrade

Plans were approved for the replacement of all of the judges' laptops with new laptops and Vista. The rollout took place in May 2009. A training program was in place and trainers were made available for any judge wishing assistance.

Courthouse Security

Plans are being developed to implement "airport style" security at some of the major courthouses in the province. The Committee has arranged to have representation on the Supreme Court Facilities Committee so that it can participate in these discussions.

Report on Media Lock-up for Release of Pickton Judgment

There was a successful media and counsel lock-up prior to the release of the *R. v. Pickton* judgment in June 2009. Greg Pun, the Court of Appeal Law Officer, did a briefing for the media and then was available to respond to questions during the briefing and before the judgment was released to the public.

Public Access to Court Records

A proposal prepared by the Judicial Access Policy Committee on a consolidated policy covering access to

court records was considered by the Committee. On its recommendation the proposal was approved by the Court.

Reducing Paper in the Court of Appeal

Various ways of reducing the amount of paper circulated within the Court are being considered on an ongoing basis. The staff has been directed to attempt to communicate electronically when possible and practical to do so.

Chambers Manual

There is a need for a Chambers Manual to assist those in the registry in making decisions about requests that are received as well as in accepting for filing documents that do not strictly comply with the Rules. Some judges have volunteered to assist with the manual.

Acknowledgements

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

RULES COMMITTEE

Members:

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

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

Criminal Appeal Rules

Over the past year, the Committee's most important work has been to continue with the revision of the *Criminal Appeal Rules, 1986*. This process began in 2006 and at the end of 2008 a draft of the *Criminal Appeal Rules 2009* was circulated to the bar for consultation purposes. The consultation process exposed some issues which needed to be explored further before the proposed Criminal Appeal Rules could be finalized. The main issues of concern are the timing of the filing of factums and the length of time taken for a conviction appeal to make its way through the Court of Appeal.

A subcommittee (Prowse and Frankel, JJA) was formed to meet with the bar and to formulate proposals to deal with the filing of factums in conviction appeals as well as to reduce delay for these appeals.

The subcommittee met with groups of federal and provincial Crown and defence counsel as well as with Legal Services Society. Issues regarding the timing of the filing of transcripts and factums have dominated the discussion and the subcommittee is hoping to improve procedures for the ordering of transcripts, which in turn should accelerate the filing of notices of appeal and transcripts. The subcommittee is also considering various ways of ensuring appellants meet the deadline for the filing of factums. Proposals will be presented to counsel for discussion in 2010.

Amendment to the Court of Appeal Act

The Court has approved a request that section 16 of the *Court of Appeal Act* be amended to include a reference to appeal record and transcript extracts. This updates the *Act* to take into account changes in the Rules. This request has been placed on the legislative calendar.

Civil Rule Amendments

Minor amendments to the civil Rules have been prepared for July 1, 2010, enactment. The proposed changes include:

- Changing the time for filing leave to appeal materials. The proposal is to file the motion book 10 business days before the scheduled hearing date; the reply to the leave application will be filed 5 business days before the hearing of the application. This amendment will give the judges and litigants time to review the material before the hearing.
- A provision for the filing of a reply book to an application for a stay of proceedings or a stay of execution 2 days before the hearing of the application.
- Clarifying the Rules to define the filings for cross appeals and to provide for reply factums on cross appeals.
- Adding provisions regarding the settlement before the Registrar of an appeal record, appeal book and Transcript and clarifying rules about the Registrar's hearing requirements.
- Amending the forms to include the proper address of the Court of Appeal registry:
B.C. Court of Appeal
Suite 400, 800 Hornby Street
Vancouver, B.C. V6Z 2C5
- Amending the form for the appeal record to require a copy of the reasons for judgment with the signature of the trial judge or other decision-maker. This is to make clear that electronic copies of the judgment from websites or

commercial publishers are not acceptable for the appeal record.

- Adding Appendix C to the Rules. This is the schedule of fees payable to the Crown, and it was previously found in the Supreme Court Rules.

E-Filing Rules

E-Filing Rules for the Court of Appeal existed until 2005, as part of the e-filing project. The Rules lapsed, by statute, as the e-filing project was never implemented in the Court of Appeal. There is some expectation that e-filing will be implemented in the Court of Appeal within the next year or so. In order to be ready for the commencement of e-filing in the Court of Appeal, the Rules will need to re-enacted, with any changes necessary to take into account the changes the Supreme Court has implemented since e-filing was implemented there.

The Rules Committee will consider the necessary Rules and changes. The Court will review the Rules at its spring meeting in April 2010 and we hope to have the Rules placed on the legislative agenda for July 1, 2010.

Yukon Act and Rules

Some issues have arisen with respect to the *Yukon Court of Appeal Act*. With the amendment of Supreme Court Rules in the Yukon, the general provision for costs in the Court of Appeal was lost. The Rules Committee has recognized that the costs provision should be part of the *Act* or Rules.

The decision in *Whitehorse (City) v. Darragh*, 2008 YKCA 19, raised an issue about the ability of a chambers judge to make orders when the Court is in "vacation". This issue has been referred to legislative counsel in the Yukon.

Practice Directives/Practice Notes

- A Practice Directive on the *Hague Convention on the Abduction of Children* provides for notice to the registry and a procedure for an expedited hearing (21 July 2009).
- The Practice Note on *Frequently Cited Authorities* was revised by adding some recent citations of cases (11 June 2009).
- The earlier Practice Directive on *Expediting Interlocutory Appeals* (2 February 2000) has been reissued, as interlocutory appeals are taking too long to be heard in the Court of Appeal. The intent is for counsel to have a timetable worked out in advance of the hearing for leave to appeal, so that when leave is granted, dates may be set for subsequent filings as well as for the hearing of the appeal.

Factum Compliance

The Rules Committee has asked the registry staff to become more vigilant in enforcing the rules relating to the format of factums. The Committee identified several mandatory items, any one of which will result in a factum being rejected at the counter. These requirements are:

- 12 point Arial type
- 30 pages maximum length
- Appropriate colour covers
- Bound on left-hand side of page
- Opening statement limited to 1 page
- 1 1/2 line spacing except for quotations (which may be single-spaced).

Printing of Appeal Books and Transcripts

The Court approved double-sided printing for appeal books and transcripts. To effect this change, amendments will have to be made to the B.C. Court Transcription Manual.

Telephone Conferences

The Committee has discussed the scheduling of telephone conferences in Chambers. Hearings by telephone, while everyone else is in the courtroom, are difficult to manage. The scheduling of the remote hearing is at the discretion of the Chambers judge. Videoconferences are easier to manage, but there is a cost associated with the hearing and a courtroom and remote staff are also required.

Acknowledgements

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

COURT OF APPEAL TECHNOLOGY COMMITTEE

Members:

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

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

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

Pickton Appeal

The Committee was involved in deciding what monitors should be used in the

courtroom for this appeal, where the large volume of transcripts and appeal books was in electronic format. The Committee and other judges of the Court attended a demonstration in the courtroom to review different options for placing monitors on the bench. The judges agreed on a flexible monitor that can be positioned out of the line of sight to counsel, but allows the judges to clearly see the information on the screen.

The court clerk controlled the information displayed on the screen. The judges and counsel were not required to operate any computer in the courtroom.

The result was considered by both the Court and counsel to be satisfactory.



Courtroom 60 for the *R. v. Pickton* Appeal (March, 2009)

EDUCATION COMMITTEE

Members:

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

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

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

Law at Lunch speakers included: Dr. Thomas Ross, Associate Dean of the Sauder School of Business, U.B.C., speaking on the methodology and purpose of the U.B.C. Election Stock Market; Dr. Peter Reiner from the U.B.C. Department of Psychiatry, Brain Research Centre, on neuroethical issues; Dr. Raymond Corrado, Director of the B.C. Centre for Social Responsibility, S.F.U., on youth crime issues; Dr. Judy Illes of the U.B.C. Brain Centre (speaking to a joint Supreme Court and Court of Appeal session) on brain science and the law; and Brian Lang, Pacific District Director of the Correctional Service of Canada, on post-conviction classification, incarceration and release issues.

At the spring meeting of the Court in April, Dean Mary Anne Bobinski of the U.B.C. Law School, and Dean Donna Greschner of the UVic Law School,

discussed the current status of legal education in the Province.

At the fall meeting of the Court, Corinne Swystun, Elizabeth King and Rodney Fehr, legislative counsel from the B.C. Ministry of Attorney General, dealt with the topic of legislative drafting.

In the latter part of 2008, the Committee was invited to participate in the preparations for the 2010 Centenary of the Court. This includes developing a National Judicial Institute Appellate Conference on 22 April 2010, to be immediately followed by a two-day symposium, all at the Wosk Centre for Dialogue in Vancouver.

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

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

JOINT COURTS TECHNOLOGY COMMITTEE

Members:

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

In 2009, the Committee oversaw the replacement of the courts' computers, introduction of a new operating system and a complete overhaul of the courts' judgment template. The computer replacement project went smoothly due in no small measure to the planning and training that the judicial support and IT staff put in place prior to the replacement. The Committee was also involved in overseeing the launch of the Court's new website in January 2009. The feedback received by the Committee is that the work done to improve the judgment search engine has been well received and much appreciated. In addition, the Committee

began to work on developing policies to assess the acquisition of new software applications and hardware for the members of the Court.

Looking forward to 2010, the Committee will continue working on developing policy that will assist judicial staff to carry out their roles. The Committee is also overseeing some pilot projects, including expanded use of the Judicial Module for the electronic approval of court orders, the use of tablet laptops by the judiciary, as well as the development of a site search function for the courts' website and the re-launch of the courts' intranet site.

JUDICIAL ACCESS POLICY WORKING COMMITTEE

Members:

Jennifer Jordan, Registrar (Chair)
Frank Kraemer Q.C., Executive Director & Senior Counsel, Judicial Administration
Virginia Day, Director, Business Transformation & Change Management (to March/09)
Trish Shwart, Executive Director Business Transformation and Corporate Planning (since June 2009)
Georgina Daniels, Senior Policy and Planning Analyst, Court Services Branch (since April/09)
Jan Rossley, Director Judicial Administration, Provincial Court
Gene Jamieson, Legal Officer, Provincial Court
Kathryn Thomson, Legal Policy Consultant

Mandate of the Committee

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

Work of the Committee

In 2009, work of this Committee continued to revolve around issues relating to the Digital Audio Recording System (DARS), discussions about access to criminal record information, and consolidation of the various access policies. There were also decisions made regarding access to documents through Court Services Online.

The Public Access Policy for all three courts has been sent to court committees for discussion and approval.

Access to criminal information continues to be discussed. Provincial Court criminal information was made available to the public online in November 2008 and free access continued through 2009. During 2008-2009 the number of searches was in excess of 40,500. In 2009-2010, the searches increased to 60,800. There may be a decrease in 2010 once the search fee is introduced. The issue for 2010 will be to determine the criteria for those seeking fee exemptions to access the database.

Technical work is proceeding to permit counsel to access files online which are not available to the public (such as family files).

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

JUDICIAL SETTLEMENT CONFERENCE COMMITTEE

Members:

The Honourable Chief Justice Finch
The Honourable Madam Justice Prowse
The Honourable Mr. Justice Donald
The Honourable Madam Justice Levine
The Honourable Mr. Justice Chiasson

The Settlement Conference Committee provides general guidance as needed related to the operation and administration of the Court's settlement conference project. The Committee is comprised of the roster of justices who act as settlement conference judges, although other judges may also act as settlement conference judges.

The purpose of a settlement conference is to assist parties to resolve certain appeals at an early stage, to save expense to the parties and to expedite the final resolution of the dispute. Settlement conferences are governed by the Practice Directive ("Judicial Settlement Conferences", 12 December 2005), which sets out the procedure and the forms used. The

settlement conference is interest-based, not rights-based, which is to say that the presiding judge does not speak to the factual or legal merits of the appeal, but rather seeks to assist the parties to find a mutually-agreeable resolution. Participation in settlement conferences is entirely voluntary.

In 2009, the only ongoing matter was a settlement conference originally launched in 2008. The 2008 request was still pending during 2009, but came to an end mid-year, when one party withdrew consent. That appeal returned to normal procedure and ultimately went to a hearing before the Court.

LAW CLERK COMMITTEE

Members:

The Honourable Madam Justice Saunders (Chair to September 2009)

The Honourable Madam Justice Kirkpatrick

The Honourable Mr. Justice Frankel (Chair from September 2009)

The Honourable Mr. Justice Tysoe

The Honourable Madam Justice D. Smith

Gregory Pun, Law Officer

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

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

In September 2009, 12 clerks began their clerkships at the Court of Appeal for the 2009-2010 term. Four are scheduled to complete their terms in June 2010; five will work through July 2010; the remaining three will continue through August 2010. Of the clerks who started in September 2009, there are six from University of British Columbia, two from University of Victoria, one each from University of Toronto, Dalhousie University, Queen's University, and University of New Brunswick.

In January 2009, the law officers of the Court of Appeal and the Supreme Court

received 105 applications for the 29 law clerk positions available in the two courts for the 2010-2011 term. About 65 were from students at either UBC or UVic law schools, and the remainder were from other Canadian and foreign law schools.

In February 2009, the law officers interviewed 82 of those applicants. Subsequently, the judges of the Court of Appeal Law Clerk Committee interviewed 20 candidates and selected 11 for the positions in the Court of Appeal.

In November 2009, Mr. Justice Frankel and Mr. Justice Tysoe, and members of the Supreme Court Law Clerk Committee, the law officers, and some former and current clerks, attended recruitment information sessions at both UBC Law School and UVic Law School.

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

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

LIBRARY COMMITTEE

Members:

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

As always, the Judges' Library balanced the need for up-to-date library resources with budgetary constraints.

Expenditures for 2009 totalled \$268,677.79, the majority of which (\$241,557.62) was spent on the top three legal publishers for loose-leaf services, law reports and journals. Total expenditures have declined by \$26,744.34 since 2008.

Subscription services have been trimmed. The full subscription to the D.L.R.s in Victoria was replaced by the paper parts from the Vancouver subscription that are bound and sent to Victoria. This leaves one current set in Vancouver rather than two.

The Judges' Libraries in Victoria, New Westminster, Kamloops and Kelowna are maintained either by local court staff or periodic visits from library staff from Vancouver.

An on-going task is the processing and maintenance of the Court of Appeal and

Supreme Court judgments. Library staff processed 573 Court of Appeal judgments, 1915 Supreme Court judgments and 11 Yukon Court of Appeal judgments.

The Judges' Library surveyed judges and staff by e-mail whether there was a need for individual current copies of the BC Lawyers directory, which costs over \$11,000 for 233 copies. The response resulted in a reduction of 57 copies. Free on-line services are available on the Intranet.

Lastly, the Judges' Library gratefully receives donated materials from judges and law offices. Wherever possible, the library endeavours to re-use and recycle material such as *Criminal Codes* to public libraries and the Justice Education society.

As always, the Committee is indebted to the hard work of our librarian, Diane Lemieux, who is ably assisted by Sarah Preston and other court staff.

PRO BONO COMMITTEE

Members:

The Honourable Chief Justice Finch
The Honourable Mr. Justice Donald
The Honourable Madam Justice Levine
The Honourable Madam Justice Neilson

In 2009, Pro Bono Law of BC and Access Justice were in the process of merging. Both organizations are now sharing a new office at 106-873 Beatty Street in Vancouver and are aiming for full integration of governance and operations by April 1, 2010. The merger will allow for more seamless delivery of *pro bono* summary advice, brief services and representation services, as well as more efficiencies in management, administration, fundraising and lawyer recruitment. In the coming months the new merged organization is looking to expand its representation programs to more areas of law to assist a greater number of people in need.

The Civil Chambers Duty Counsel Project has also expanded its service days from one day a week to two days a week. Lawyers now provide duty counsel services on Tuesdays and Thursdays for Chambers matters in both the Court of Appeal and BC Supreme Court.

For 2009, 18 litigants received assistance, from full appeal assistance to assistance on a discrete issue. Five of these litigants were served through the Civil Chambers Duty Counsel Program. There were a total of 30 Court of Appeal cases processed through the program in 2009.

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

Coordinators of Court of Appeal Program

Simon Coval
Georgiale Lang
Richard Peck Q. C.
John Jordan
Angus Gunn, Jr.

Court of Appeal Roster Program

Ben Ingram
Brent Olthuis
Mark Oulton
Donald McLeod
Eli Walker
Teresa Tomchak
Tam Boyar

Civil Chambers Duty Counsel

Amy Davison
Jonathan Hanvelt
Andrew Pilliar
Morgan Camley
Michael Feder
Jordana Cytrynbaum
Alex Luchenko
Ryan Parsons

STATISTICS

SUPREME COURT OF CANADA

There were 74 applications for leave to appeal from decisions of the Court filed with the Supreme Court of Canada in 2009.

The Supreme Court of Canada considered 70 applications for leave to appeal (some of these were from 2008 filings). Of these applications, 13 were granted, 50 were dismissed, 1 extension of time was refused, and there were 6 decisions pending at the end of 2009.

In 2009, the Supreme Court of Canada heard 9 appeals from B.C. cases. Of these appeals, 5 appeals were allowed and there were 4 reserved judgments pending at the end of 2009. In addition to these decisions, another 14 judgments were rendered in B.C. cases which had been heard in previous years. Of these, 8 appeals were allowed and 6 appeals were dismissed.

In 2009, 12.5% of the applications for leave to appeal to the Supreme Court of Canada were from B.C. appeals. Of the judgments rendered in 2008, 20% were appeals from B.C.

B.C. COURT OF APPEAL

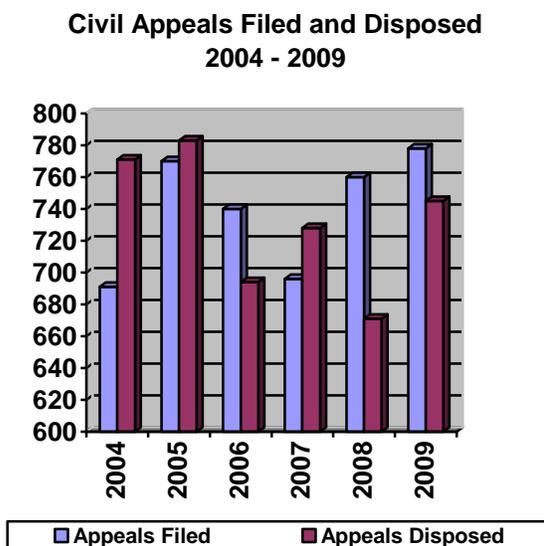
The charts on this page show the volume of litigation and compare the number of appeals filed, both civil and criminal, and the number of appeals disposed of for the period 2004 - 2009.

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

Civil

Figure 1 demonstrates the general increase in appeals filed from 2004 to 2009, with a substantial drop in filings in 2007. The disposed appeals dropped in 2006, but otherwise have remained relatively constant. The disposition rate for appeals in 2009 was 93% of filings. (Appendix 1)

Figure 1

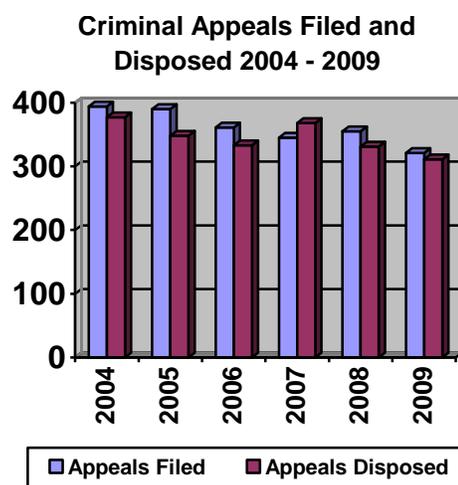


Criminal

There are substantially fewer criminal appeals filed as compared to civil appeals. Figure 2 shows that the number of criminal appeals disposed of since 2005

(excluding 2007) is less than the number of criminal appeals filed, which results in a growing backlog of criminal appeals. For 2009, there was a noticeable increase in filings and a decrease in the number of criminal dispositions, resulting in a disposition rate of 69% of filings. (Appendix 2)

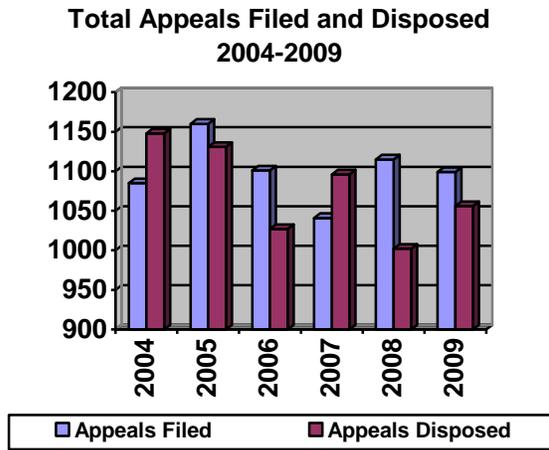
Figure 2



Global

For a more complete picture of total activity, Figure 3 combines the civil and criminal filings and dispositions. Because of the increase in criminal filings in 2009, the overall disposition rate compared to the filings that year dropped (84%). (Appendix 3)

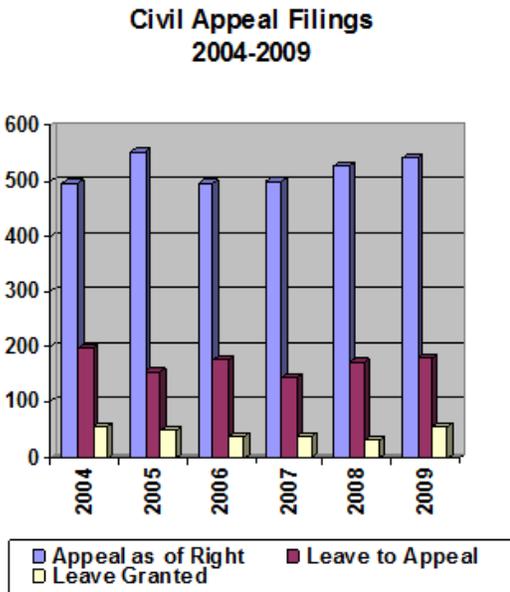
Figure 3



Types of Civil Appeals Filed

Of the civil appeals initiated in 2009, 23% were by applications for leave to appeal. These appeals require the permission of a justice before they can be heard by a division of three judges. In 2009, 57% of the applications for leave to appeal were granted. Figure 4 shows the comparison of applications for leave to appeal with appeals as of right. (Appendix 1)

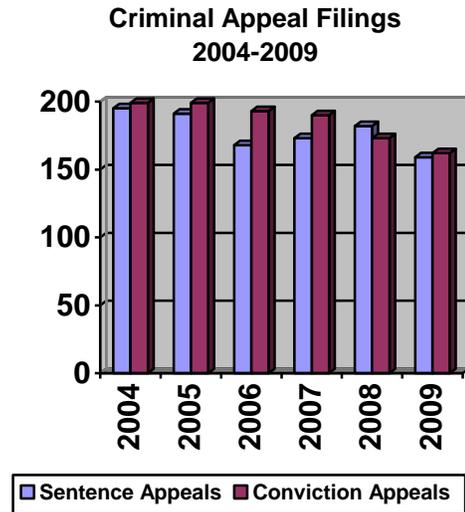
Figure 4



Types of Criminal Appeals Filed

In criminal matters, appeals from convictions and acquittals take up most of the hearing time of the Court, while sentence appeals and summary conviction appeals require less time. Figure 5 gives a comparison of criminal appeals filed between 2004 and 2009. Sentence and summary conviction appeals amount to half (50%) of the total criminal appeals filed. (Appendix 2)

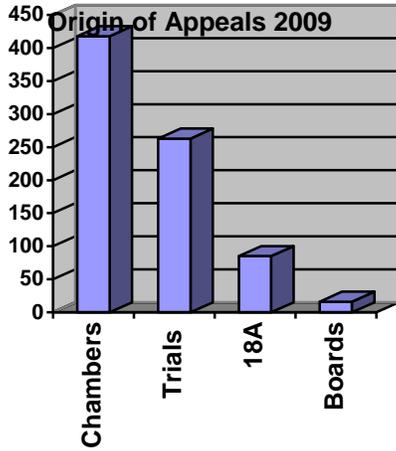
Figure 5



Origin of Appeals

Another way to categorize the civil work of the Court is to look at the type of proceeding that gave rise to the appeal. The majority of appeals arise from chambers matters and summary trials (under Rule 18A). The 2009 figures show there were substantially more appeals from chambers matters and Rule 18A summary trials than appeals from trials. Figure 6 shows the types of appeals according to the underlying proceeding. Over 67% of appeals filed were from non trials.

Figure 6

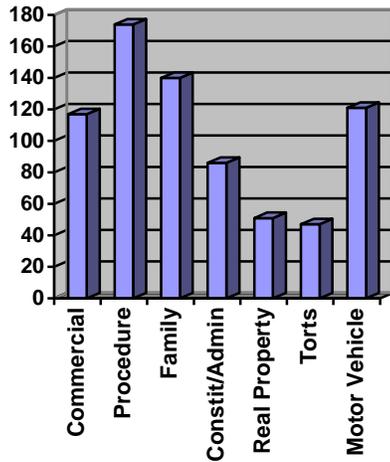


Civil Case Categories

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

Figure 7

Civil Case Categories 2009



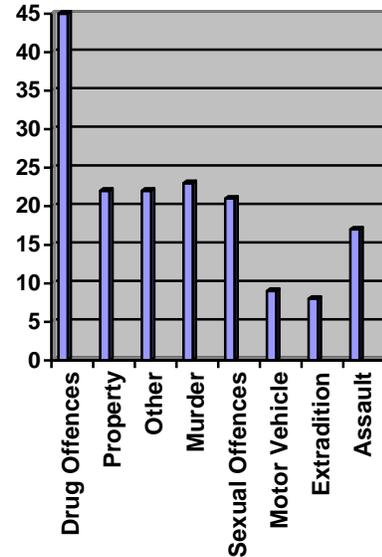
Criminal Case Categories

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

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

Figure 8

Criminal Categories Appeals 2009



Appeals Allowed/Dismissed

The rate of civil and criminal appeals allowed over the past six years has varied. In 2009 the proportion of civil appeals allowed was 43% of the total civil appeals heard. For criminal appeals, the figure was 40% allowed of all criminal appeals heard. The “allowed” statistics encompass partial appeals allowed (i.e. any variations in the order) as well as appeals where new trials were ordered.

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

Figure 9

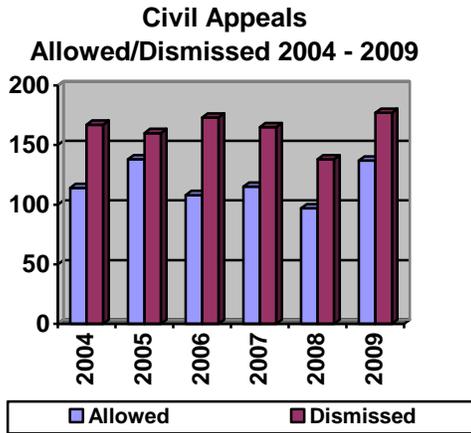
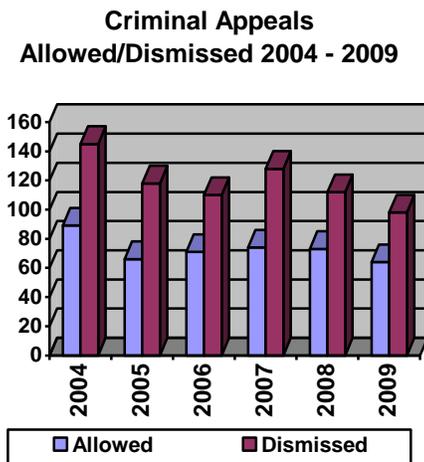


Figure 10



Self-Represented Litigants

Figure 11 shows the number of self-represented litigants compared to the number of represented litigants who filed appeals in 2009. This number does not capture those litigants who file their own appeal but subsequently retain counsel; nor does it show the change where counsel cease to act. In 2009 the percentage of

civil filings for self-represented litigants was 22% and the percentage of criminal self-represented litigants amounted to 17% of all the appeals filed.

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

Figure 11

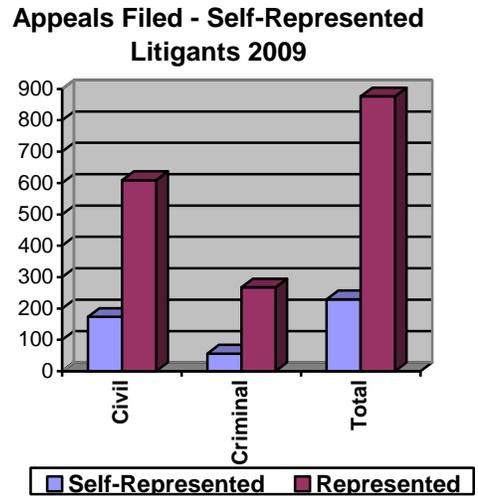
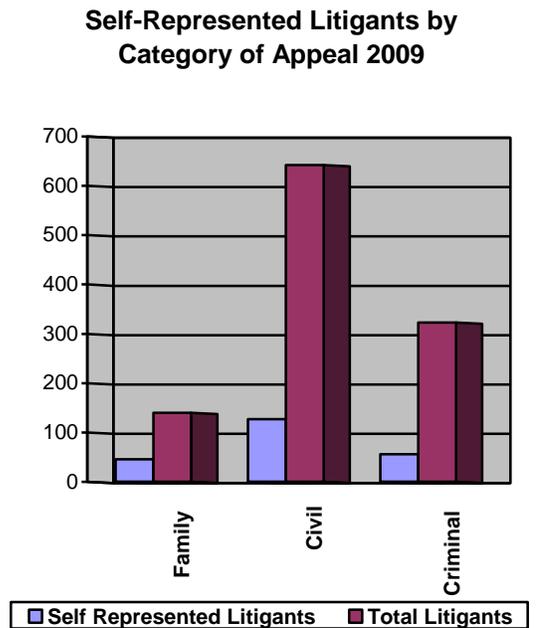


Figure 12



Appendix 1
Civil Statistics 1998-2009*

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
APPEALS FILED:												
Notice of Appeal	822	787	679	660	582	532	469	550	494	499	530	538
Leave to Appeal	272	224	248	258	236	204	168	154	170	143	172	176
Notice of Appeal and Leave							54	66	76	54	58	64
TOTAL FILED	1094	1011	927	918	818	736	691	770	740	696	760	778
COURT DISPOSITIONS:												
Appeals Allowed	142	151	148	133	137	121	114	138	108	115	97	136
Appeals Allowed %	37%	43%	42%	43%	42%	38%	41%	46%	38%	41%	41%	43%
Appeals Dismissed	241	196	197	177	189	199	167	160	173	165	138	177
Appeals Dismissed %	63%	57%	58%	57%	58%	62%	59%	54%	62%	59%	59%	57%
TOTAL COURT DISPOSITIONS	383	347	345	310	326	320	281	298	281	280	235	313
Appeals Concluded in Chambers or Abandoned	744	673	544	522	492	455	490	485	413	448	436	431
TOTAL DISPOSITIONS	1127	1020	889	832	818	775	771	783	694	728	671	744
Dispositions as % of Filings	103%	101%	96%	91%	100%	105%	112%	102%	94%	105%	88%	96%
Judgments Reserved (Court)	182	174	197	178	193	181	195	173	190	174	160	195
Judgments Reserved (Cham)	n/a	n/a	n/a	n/a	n/a	n/a	104	64	75	86	76	60
Appeals with 5 Judges	5	3	12	16	10	16	4	1	1	2	2	7
Court Motions: Reviews	13	16	10	7	17	13	15	13	18	13	14	19
Granted	6	0	3	6	2	7	3	5	4	2	2	4
Refused	7	16	7	1	15	6	12	8	14	11	12	15
Chambers Motions	664	568	530	419	427	451	495	431	428	423	423	537
LEAVE TO APPEAL												
Granted	65	18	80	75	65	56	56	62	66	50	43	56
Refused	48	39	37	35	26	30	48	42	38	36	37	44
Total	113	57	117	110	91	86	104	104	104	86	80	100

*The numbers for 2004-2009 have been revised

Appendix 2
Criminal Statistics 1998-2009*

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
APPEALS FILED:												
Sentence	219	199	182	156	133	126	154	173	153	149	160	146
Conviction	231	203	174	177	128	130	124	138	143	116	121	115
Summary Conviction	54	39	40	37	47	33	41	18	15	17	22	13
Acquittal & Other	63	68	78	69	64	57	75	61	50	74	52	47
TOTAL FILED	567	509	474	439	372	346	394	390	361	345	355	321
COURT DISPOSITIONS:												
Appeals Allowed	127	103	84	111	70	72	89	66	71	74	73	64
Appeals Allowed %	31%	29%	28%	37%	31%	27%	40%	36%	39%	37%	39%	40%
Appeals Dismissed	283	248	218	193	159	193	145	118	110	128	112	98
Appeals Dismissed %	69%	71%	72%	63%	69%	73%	60%	64%	61%	63%	61%	60%
TOTAL	410	351	302	304	229	265	234	184	181	202	185	162
Summary Dismissals Abandonments in Court/Chambers	134	118	149	139	137	105	143	164	152	166	146	149
TOTAL DISPOSITIONS	544	469	451	443	366	370	377	348	333	368	331	311
Appeals Disposed % of Filings	96%	92%	95%	101%	98%	107%	96%	89%	92%	107%	93%	97%
Appeals Heard by 5 Judges	3	4	5	5	0	1	0	1	0	0	2	0
Judgments Reserved	117	78	89	89	86	109	84	85	85	81	76	88
Judgments Reserved Chambers	n/a	n/a	n/a	n/a	n/a	n/a	22	10	12	28	11	11
Chambers Motions	316	305	218	260	230	219	243	275	298	248	242	265

* The numbers from 2004-2009 have been revised

Appendix 3
Total Appeals Filed and Disposed 1998-2009**

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
APPEALS FILED:	1661	1520	1401	1357	1190	1082	1085	1160	1101	1041	1115	1099
COURT DISPOSITIONS:	793	698	647	614	555	562	515	482	462	482	420	475
Appeals Allowed	269	254	232	244	207	179	203	204	179	189	170	200
Appeals Allowed %	34%	36%	36%	40%	37%	32%	39%	42%	39%	39%	40%	42%
Appeals Dismissed	524	444	415	370	348	383	312	278	283	293	250	275
Appeals Dismissed %	66%	64%	64%	60%	63%	68%	61%	58%	61%	61%	60%	58%
TOTAL	793	698	647	614	555	562	515	482	462	482	420	475
Appeals Concluded in Chambers or Abandoned	878	791	693	661	629	560	633	649	565	614	582	580
TOTAL DISPOSITIONS	1671	1489	1340	1275	1184	1145	1148	1131	1027	1096	1002	1055
Dispositions as % of Filings	101%	98%	96%	94%	99%	106%	106%	98%	93%	105%	90%	96%
Judgments Reserved	299	252	286	267	279	290	405	332	362	369	323	354
Appeals with 5 Judges	8	7	17	21	10	17	4	2	0	3	4	7
Chambers Motions	980	873	748	679	657	670	738	706	726	671	665	802

*Now includes chambers reserved judgments

**The numbers from 2004-2009 have been revised