



**B.C. COURT OF APPEAL
2008
ANNUAL REPORT**



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MEMBERS OF THE B.C. COURT OF APPEAL

Chief Justice

The Honourable 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

The Honourable 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)

The Honourable Madam Justice Jo-Anne E. Prowse

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

The Honourable 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)

The Honourable Mr. Justice Ian T. Donald

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

The Honourable Madam Justice Mary V. Newbury

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

The Honourable 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)

The Honourable Mr. Justice John E. Hall

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

The Honourable Mr. Justice Kenneth C. Mackenzie

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

The Honourable Madam Justice Mary E. Saunders

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

The Honourable 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)

The Honourable Madam Justice Risa E. Levine

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

The Honourable Mr. Justice Kenneth J. Smith

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

The Honourable Mr. Justice Peter D. Lowry

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

The Honourable Madam Justice Pamela A. Kirkpatrick

November 20, 1989 (Supreme Court Master)

November 27, 1992 (Supreme Court)

June 2, 2005 (Court of Appeal)

The Honourable Mr. Justice Edward C. Chiasson

September 14, 2006 (Court of Appeal)

The Honourable Mr. Justice S. David Frankel

March 2, 2007 (Supreme Court)

May 10, 2007 (Court of Appeal)

The Honourable Mr. Justice David F. Tysoe

June 24, 1992 (Supreme Court)

June 22, 2007 (Court of Appeal)

The Honourable Mr. Justice Robert J. Bauman

June 20, 1996 (Supreme Court)

February 20, 2008 (Court of Appeal)

The Honourable Madam Justice Daphne M. Smith

December 19, 1996 (Supreme Court)

May 8, 2008 (Court of Appeal)

The Honourable Madam Justice Kathryn E. Neilson

July 2, 1999 (Supreme Court)

May 8, 2008 (Court of Appeal)

The Honourable Mr. Justice Harvey M. Groberman

December 14, 2001 (Supreme Court)

May 8, 2008 (Court of Appeal)

STAFF OF THE B.C. COURT OF APPEAL

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

Law Clerks 2008–2009

Lauren Cook
Marisa Cruickshank
Caily DiPuma
Laura Duke
Brian Duong
Willa Duplantis
Bridget Gilbride
Erik Niit
Chantelle Rajotte
Matthew Scott
Joana Thackeray

Judicial Staff

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

* **Victoria**
** **Kamloops**
*** **Kelowna**

Registry Staff

Jaclyn Burgoyne*
Shelly Ducharme**
Matt Dykeman
Steven Evans*
Torri Enderton
Debbie Hale***
Shayna Irvine
Christina McKenzie**
Jennifer Rahiman
Diane Schwab
Moira Syring*

Ushers

Bill Deans
David O'Brien

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

Website Administrator Mary Falck

Webmasters Fairfax Culpepper
Susan Devenish

Judgment Clerk Heidi Hoefner

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 Court of Appeal hears appeals regularly in Vancouver and Victoria, and as needed from time to time in Kamloops and Kelowna.

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 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

There were many changes to the Court's complement in 2008. At the end of 2008, the Court had a complement of 22 justices, with 13 full-time justices and 9 supernumerary justices. At the end of

2007, there were 15 full-time justices and 3 supernumerary justices. The increase in 2008 of the total number of justices was due to the election by six full-time judges to become supernumerary. Supernumerary judges generally sit about one-half the time of a full-time judge. At the end of 2008, there were two full-time vacancies in the Court.

Supernumerary Elections

Six justices elected supernumerary status in 2008. The Court is pleased that the public and the province will continue to benefit from their wisdom and experience.

The Honourable Madam Justice Anne Rowles elected supernumerary status effective 1 January 2008. Madam Justice Rowles obtained her law degree from UBC in 1968. She was called to the B.C. bar on 14 May 1969, and was appointed to the County Court of Vancouver on 31 March 1983. She was elevated to the Supreme Court on 1 January 1987, and further elevated to the Court of Appeal on 11 October 1991. She is presently the longest-serving justice on this Court.

The Honourable Madam Justice Jo-Ann Prowse elected supernumerary status effective 1 March 2008. She was called to the B.C. bar on 20 June 1975 and appointed to the County Court of Vancouver on 1 January 1987. She was elevated to the Supreme Court on 8 September 1988, and then to the Court of Appeal on 24 June 1992. Before her appointment to the bench, Madam Justice

Prowse was a sole practitioner and a Bencher of the Law Society.

The Honourable Madam Justice Catherine Ryan elected supernumerary status effective 1 January 2008. She was called to the B.C. bar on 11 January 1977, and appointed to the County Court of Vancouver on 26 May 1987. She was elevated to the Supreme Court with the merger of the two courts effective 1 July 1990, and was appointed to the Court of Appeal on 28 January 1994. Before her first appointment to the bench, she practiced law with the Ministry of Attorney General of British Columbia.

The Honourable Mr. Justice Ian Donald elected supernumerary status effective 1 January 2008. He was called to the B.C. bar on 14 May 1969. He was first appointed to the Supreme Court on 30 June 1989, and then elevated to the Court of Appeal on 28 January 1994. Prior to his appointment, he practiced law in Vancouver.

The Honourable Mr. Justice Richard Low elected supernumerary status effective 1 April 2008. He obtained his law degree from UBC in 1964 and was called to the B.C. bar on 19 May 1965. Judge Low was appointed to the County Court of Prince Rupert on 31 March 1977, to the B.C. Supreme Court on 1 July 1990, and to the Court of Appeal on 27 July 2000. Prior to his first appointment, he practiced law in Prince George with the firm of Wilson, King & Baldwin.

The Honourable Mr. Justice Kenneth Smith elected supernumerary status effective 28 May 2008. Mr. Justice Smith obtained his law degree from UBC in 1965 and was called to the B.C. bar on 13 May 1966. He was a member of Doust &

Smith, later Shrum Liddle & Heberton, later McCarthy Tétrault, when he was appointed to the Supreme Court on 31 May 1993. He was elevated to the Court of Appeal on 1 October 2001.

New Appointments

On 20 February 2008, the Honourable Mr. Justice Robert Bauman was elevated to the Court of Appeal. He had served as a trial judge in the B.C. Supreme Court since his appointment to that court on 20 June 1996. As a lawyer, Mr. Justice Bauman practiced law at Wilson, King & Co. in Prince George, and subsequently with Wilson Bauman, and then with Bull Housser & Tupper in Vancouver from which he was appointed to the B.C. Supreme Court in 1996.

On 8 May 2008, three judges were elevated to the Court of Appeal from the Supreme Court: the Honourable Madam Justice Daphne Smith, the Honourable Madam Justice Kathryn Neilson, and the Honourable Mr. Justice Harvey Groberman.

Madam Justice Smith obtained her law degree from UBC in 1975 and was called to the B.C. bar in 1976. She was appointed Queen's Counsel in 1994. As a lawyer she practiced mainly civil and family litigation in Kamloops and Victoria with Mair Janowsky Blair, then with Smith Hutchinson, and finally with Mair Jensen Blair, until she was appointed to the B.C. Supreme Court in 1996.

Madam Justice Neilson obtained law degrees from Dalhousie (1974) and Oxford (1980). She was called to the B.C. bar in 1975. She worked at the Centre for Asia-Pacific Initiatives at the University of

Victoria, as a sole practitioner, and at Harper Grey Easton, prior to her appointment to the B.C. Supreme Court in 1999.

Mr. Justice Groberman obtained his law degree from the University of Toronto in 1982 and an LL.M. from Oxford in 1984. He was called to the B.C. bar in 1985. He worked with the Legal Services Branch of the Ministry of Attorney General of British Columbia and then with Davis & Company until 2001, when he was appointed to the B.C. Supreme Court.

In Memoriam



The year 2008 began on a sombre note for the Court. On 25 January the Great Hall of the Law Courts was crowded to overflowing as hundreds of members of the legal

profession, family and friends joined the members of both the Supreme Court of British Columbia and the British Columbia Court of Appeal to pay tribute to the Honourable Allan McEachern who passed away earlier in January. The ceremonial joint sitting of the Courts was attended by the Premier of British Columbia, the Honourable Gordon Campbell, and by Chief Justice Beverley McLachlin, Supreme Court of Canada, by the Chief Justice of Manitoba, the Honourable Richard Scott, and by the Chief Justice of Alberta, the Honourable Catherine Fraser.

Those who spoke in honour of our late Chief Justice included Chief Justice Brenner, Chief Justice McLachlin, the Honourable Wally Oppal, Q.C., Attorney General of British Columbia, W.S. (Bill) Berardino, Q.C., Richard (Rick) Peck, Q.C., Geoffrey (Geoff) Cowper, Q.C. and the present Chief Justice of the Court.

The speakers touched on various aspects of Chief Justice McEachern's life in the law and his many accomplishments. What emerged in sum was the word picture of an authentic legal giant, loved and respected by all whose lives he touched.

Allan McEachern was born in Vancouver, British Columbia, on 20 May 1926. He attended school in Vancouver and for some time in Penticton (where the climate was kinder to his asthma), and was a natural athlete. He attended the University of British Columbia and after majoring in History, moved on to the recently-opened Faculty of Law. He graduated with an LL.B. in 1950, and often acknowledged his debt of gratitude to the University. Although his football-playing career came to an abrupt end when he broke a leg on the field at UBC, he was a co-founder of the Kats Rugby Club of Vancouver (his proudest achievement) and was President and Commissioner of the Canadian Football League.

Allan was called to the bar of British Columbia in 1951. He commenced practice with the firm then known as Russell & DuMoulin, and came under the guidance and mentorship of professional leaders such as Leonard DuMoulin, Q.C. and Douglas McK. Brown, Q.C. He was drawn naturally to litigation, and quickly achieved the judgment, skills and standing of leading counsel. He appeared in all

kinds of cases, and in all levels of court, including the Supreme Court of Canada. Counsel appearing opposite invariably regarded him as a formidable adversary. But while Allan fearlessly advanced and protected his clients' interests, he did so with the courtesy, good humour and professional collegiality that became his hallmarks.

Those who were fortunate enough to practice with him (and against him) recognized their great privilege as beneficiaries of his mentorship, goodwill, sound advice and compassion. He gave generously of himself to his family, friends, partners, and the legal community, as well as to his province and country.

In January 1979, at the peak of his career as a lawyer, he accepted the appointment by Prime Minister Trudeau as Chief Justice of the Supreme Court of British Columbia. Allan led that Court with great distinction until his appointment as the Chief Justice of the British Columbia and Yukon Courts of Appeal on 7 September 1988.

As Chief Justice of both the trial and appellate courts, Allan continued to display his prodigious capacity for productive work. He presided in Court on the same full schedule as every one of his judicial colleagues. He wrote wise and important judgments in all fields of law, often in areas where the law was changing or required clarification. At the same time he managed the administrative side of his job with apparent effortlessness. He promoted legal and professional education and established the "Inns of Court Program" for young lawyers, and the extremely popular Trial Advocacy course at U.B.C.'s Faculty of Law. Many female lawyers and judges owe much to the

encouragement he gave throughout his career.

As Chief Justice, Allan was a member of the Canadian Judicial Council, one of whose statutory mandates is the review and investigation of complaints against Canada's Superior Court judges. For over six years Allan was the Chair of the Council's Judicial Conduct Review Committee. This is an extremely demanding position, requiring wisdom, insight and sensitivity in addition to a mature understanding of judicial independence and professional accountability. Allan's colleagues on the Canadian Judicial Council remember him with deep gratitude and respect.

After his retirement from the Court on 20 May 2001, Allan returned to the practice of law, and was able to return his debt to the University of British Columbia when he was elected to two terms as Chancellor. His energy and enthusiasm for life were boundless.

In his address to the Courts on 25 January 2008, Richard Peck, Q.C. spoke of Allan McEachern in these terms:

He always did what he believed to be right with a desire to serve the greater good. He had benign vision; in a sense, the gift of providence. He manifested the virtues of collegiality and civility. He believed in the worth and dignity of the individual and always looked to find the best qualities in people. As one lawyer said, he would always go out of his way to include the least

powerful person in the room when there was nothing in it for him but when to be included meant everything to that person. His innate tendency was to elevate rather than to suppress, to encourage rather than to diminish.

Allan leaves a wonderful legacy of humanity and professionalism for all who knew him. We are all the richer for his life.

The Work of the Court

The Court delivered reserved judgments in 241 appeals and 87 reserved judgments on chambers applications. In addition, the Court pronounced judgment with oral reasons in a further 221 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 88 reserved criminal judgments rendered in 2008, 89% were pronounced within the guideline. On the civil side, of the 153 reserved judgments delivered in 2008, 90% 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 2008, only 61 applications for leave to appeal were filed in the Supreme Court of Canada from judgments of the Court of Appeal, and only 8 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. This is most common in criminal and family law matters (but also occurs in other civil matters).

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

to engage in the appeal process. The Court's Pro Bono Committee deals with this issue and more is said in that Committee's report.

Extra-Judicial Appointments and Activities

In addition to the justices' workload in hearing cases and issuing judgments, every justice is involved in activities in the legal profession, for the larger Canadian judiciary, and for the community, province, and country of Canada. Justices also attend continuing education seminars in Canada and elsewhere as participants and speakers.

In 2008, justices of the Court were members, directors, officers, or similar, of local, national, and international community and law related organizations such as:

- International Society for the Reform of Criminal Law
- International Centre for Criminal Law Reform and Criminal Justice Policy
- International Commission of Jurists (Canada)
- Canadian Judicial Council
- Canadian Institute for the Administration of Justice
- Judicial Appointments Advisory Committee
- Insolvency Institute of Canada
- Judges Technology Advisory Committee
- JudiServ Steering Committee
- Canadian Superior Courts Judges Association
- Vancouver Institute
- Law Courts Legal Education Society
- Vancouver Foundation

- British Columbia Courthouse Library Society
- Law Foundation of B.C.
- Dean's Advisory Committee, National Centre for Business Law (UBC Faculty of Law)

Justices participated in continuing legal education programs, as organizers, speakers, and attendees, in Vancouver, in Canada, and abroad, including:

- International Centre for Criminal Law Reform and Criminal Justice Policy Symposium on National and International Perspectives on Identity Theft and Fraud (Vancouver, B.C.)
- International Criminal Law Conference (Dublin, Ireland)
- Cambridge Lectures
- North American Judicial Colloquium sponsored by the International Centre for Ethics, Justice and Public Life (Brandeis University)
- Canadian Institute for the Administration of Justice Roundtable on Administrative Law
- National Centre for Business Law (UBC Faculty of Law)
- National Judicial Institute
- Continuing Legal Education Society of B.C. seminars on International Law, on Tort Law, on Advanced Arbitration Law, and on Trial Advocacy
- Causation and Persuasion Seminar put on by the Trial Lawyers Association of British Columbia
- Conference for the Annual Review of Insolvency Law sponsored by UBC Law School

Justices also participated in law school courses and moot court programs, by giving guest lectures at UBC Law School (e.g., Appellate Advocacy, Insolvency Law) and by acting as moot court judges for the Gale Moot, the Canadian Corporate and Securities Law Moot, and the B.C. Law Schools Moot (UBC-UVic).

Of the myriad of other activities and presentations that occurred in 2008, justices spoke or made presentations

- to school tour groups for the Law Courts Education Society
- to the Fraser Valley Bar Association
- at Capilano College
- at the Provincial Crown Counsel Conference
- at the Public Prosecution Service of Canada Conference
- at the Justice Institute to newly appointed Judicial Justices of the Peace on issues relating to the issuance of search warrants
- and at the "Supreme Advocacy" Conference, a joint training endeavour put on by Federal, Provincial and Territorial Prosecution Agencies to improve both the oral and written advocacy skills of counsel appearing for the Crown in the Supreme Court of Canada

Justices also took part in publishing endeavours, such as by publication of an article in the Canadian Arbitration and Mediation Journal, and by sitting on the editorial boards for the Family Law Sourcebook (published by Continuing Legal Education Society of B.C.) and for the Annual Review of Insolvency Law.

Visits to the Court

In 2008, the Court was pleased to welcome distinguished visitors from Egypt and South Korea.

In August, Deputy Chief Justice Adel Omar Sherif of the Supreme Constitutional Court of Egypt met with representatives of all three courts of British Columbia, including Madam Justice Rowles, Mr. Justice Frankel and Madam Justice Smith. Deputy Chief Justice Sherif was in Vancouver to speak at a seminar hosted by Simon Fraser University. We acknowledge the assistance of Ms. Barbara Buchanan of the Law Society of B.C., who helped to organize the visit.

Also in August, the Court welcomed a delegation of judges and staff from the Supreme Court of South Korea. They observed proceedings in this Court over two days and met with some of our staff and judges, including Mr. Justice Frankel, Mr. Justice Tysoe, and Madam Justice Smith. The Court thanks Ms. Tiffany Lee of the Law Courts Education Society, for her help in organizing the visit.

Court meetings

As is usual, the Court held two semi-annual meetings of the full Court, in April and October. These meetings are an opportunity for all members of the Court to meet and decide matters of Court policy, as brought to the meeting by the Court's various committees, chiefly the Planning Committee. The meetings also include an educational component.

At the April meeting, the Court welcomed the Honourable Judge Thomas Gove, the Honourable Judge Karen Ruddy, and the Honourable Judge Anthony Palmer, who

spoke about some new specialty courts, the Whitehorse Family Violence Court and Community Wellness Court, and the Vancouver Drug Court and Community Court.

At the October meeting the Court heard a presentation by Mr. Kenneth M. Bagshaw, Q.C., who is the head of the VANOC legal team. He discussed the legal side of the preparations for the 2010 Olympic and Paralympic Games. A number of justices and senior staff then visited the hearing room of the B.C. Securities Commission to see how it makes use of electronic technology in the hearing room.

On behalf of the Court, I express our sincere thanks to these speakers for their useful and informative presentations.

On the substantive side of the meetings, the Court agreed to some changes to the method of judgment preparation, the protocol for signing judgments, and the process for final proofreading. The Court also approved a new style guide for use by judges, judicial administrative assistants, and law clerks. The style guide, which was developed during 2008 by law officers from the Court of Appeal and Supreme Court, is used by both courts.

These and other matters dealt with at the meetings are discussed in the reports of the relevant committees.

Other events

In November, the Court participated in a “media briefing session” with members of the media (newspapers, TV, radio, and others). The session included short explanations by the major sources of law related news – the Ministry of the Attorney General, the Law Society of

British Columbia, the Canadian Bar Association-B.C. Branch, and the three courts – about their roles and the relationships each have with the media.

The session was well attended by media representatives, including local newspapers and broadcasters, and some national media. We are grateful to the representatives of the Ministry of the Attorney General and the CBA-B.C. Branch, who arranged the administrative aspects of the session.

100th Anniversary of the Court of Appeal

As previously reported, the Court will celebrate its 100th Anniversary in 2010. The Court of Appeal was established by the “*Act constituting a Court of Appeal and declaring its jurisdiction*”, S.B.C. 1907, c. 10. The Court held its first hearing in Victoria, on Tuesday, 4 January 1910.

To commemorate the centenary, a number of projects are planned to occur throughout 2010. Special sittings of the Court are planned for Vancouver, Victoria, and elsewhere. The Victoria sitting is planned for early January 2010, as the first sitting of the Court of Appeal was held on 4 January 1910. A symposium in Vancouver, in honour of the occasion, is planned for April 2010, which will coincide with the Appellate Judges’ Conference of the National Judicial Institute.

Many judges and lawyers are assisting in the planning of these and other events. I would like to thank them for their ideas, energy and enthusiasm in developing these plans.

The Advocate intends to publish a special Court's 100th anniversary edition. Christopher Moore is preparing a book about the Court and the Knowledge Network is preparing a film, directed by Meghna Haldar. I would like to thank them, and all the people assisting them, for their work. We all look forward to seeing the final products.

Registry and Staff

The Court is served by a staff of professional and experienced personnel in the Court Registry, in the courtrooms, and by our judicial administrative assistants and law clerks. The complement of staff is listed elsewhere in this Annual Report.

In August, after many years of service to the Court, Patrick Boyer, the Deputy Registrar/Manager, left. He was replaced by Manjit (Mandy) Sandhu. A new Law Officer, Gregory Pun, commenced employment in January 2008. He replaced Meg Gaily, who left our service at the end of 2007.

In many ways, the registry staff and judicial administrative assistants are the front line of contact with the public, litigants, and counsel, who call, write, or attend in person at the registry or to the justices' chambers. We are appreciative of the efforts of all members of the staff on behalf of the Court. To all the persons who contribute to the effective operation of the Court, the justices express their sincere gratitude.

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

REPORT OF THE REGISTRAR

The Court's Workload

There were 1108 filings of new appeals in 2008, up slightly from the 1045 new filings in 2007.

Statistics for criminal and civil case loads for 2008, with comparable numbers from 1997 to the present, are attached as appendices to this report.

Sittings of the Court

In 2008, Division 1 sat for 39 weeks, Division 2 sat for 30 weeks and Division 3 sat for eight weeks. In addition, the Court sat for ten weeks in Victoria and one week in the Yukon. There were no sittings in the Interior due to the lack of demand. The Court sat a total of 88 divisions in 2008. This is one less division than in 2007.

Self-Represented Litigants

In 2008, out of 759 civil appeals filed and applications for leave, 141 cases (19%) involved a litigant who was not represented by counsel. There were fewer judgments rendered in civil appeals involving self-represented litigants. Of 260 civil cases disposed of in 2008, 16 (6%) involved at least one in-person litigant.

On the criminal side, there were 297 appeals or applications for leave to appeal filed. Of that total, 52 (18%) were appeals or applications by self-represented litigants. Of the 173 criminal appeals heard in 2008, 13 (8%) appeals involved in-person litigants.

Registry and Staff

As noted in the Chief Justice's Report, 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.

In addition, I would like to thank Patrick Boyer for his years of loyal service to the Court of Appeal. We wish him all the best in his new position.

We welcome Mandy Sandhu to the position of Deputy Registrar/Manager. Ms. Sandhu comes to us from Robson Square Provincial Court where she was the Manager of In Court Activity.

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 in 2008 included the ability of the judges to view, through WebCATS, factums, transcripts and other electronic documents which have been filed in electronic form.

In June, the Registrar spoke at the Australasian Institute for the Administration of Justice Law & Technology conference in Sydney, Australia. The topic was case tracking and judicial scheduling in British Columbia.

For the past two years judicial administration has been perfecting an off the shelf scheduling program which was originally designed for scheduling church volunteers (SmartRoster). Kevin Arens (Director of Finance and IT) and Maria Littlejohn (Deputy Registrar) use this program to prepare the sitting schedule for the Court of Appeal judges.

Lost Days and Hearing Scheduling

There were some lost court days, specifically in Victoria, during 2008. In an effort to improve the estimating of court hearings, Victoria counsel will be asked to be as precise as possible with hearing estimates. Counsel should be prepared, so far as may be possible, to accommodate requests to move hearing dates within a given hearing week to avoid lost court time. Counsel should also expect to be contacted by the Court Scheduler (Ms. Littlejohn) or the Law Officer (Mr. Pun) when time estimates are seen to be inaccurate.

Factum Compliance

In both civil and criminal appeals, factums often were not in substantial compliance with the Rules. At the request of the judges, in the interests of uniformity of practice, fairness to all litigants, and efficient operation of the Court, a concerted effort was made in 2008 to encourage improved factum compliance. The Law Officer and the Registry staff have enhanced their scrutiny of factums and have been sending courtesy letters advising of noted deficiencies in factums. The compliance checklist has been incorporated into practice materials such as H. Brinton, *Civil Appeal Practice* (CLE), and is available at the Registry counter.

One of the major offending features of non-compliant factums are uses of small fonts (e.g. 10 point type) for quotations and lengthy footnotes, which is seen as a ploy to subvert the 30 page limit.

The responses to these courtesy letters have been positive, and we thank counsel and their staff for their diligence in this regard.

New s. 25 (inactive appeals – Notice of hearing to be filed)

Effective May 2008, the *Court of Appeal Act*, s. 25, was amended to provide that an appeal may be put onto the inactive list if a notice of hearing is not filed within two months of the filing of the certificate of readiness. This appears to have resulted in an increase in the notices of abandonment filed in 2008. There were 14 abandonments filed after the certificate of readiness was filed.

New Practice Directive - Leave to Appeal

In May 2008, a practice direction was issued, concerning motions for directions and extension of time, where a party initiating an appeal was uncertain if leave to appeal is required. This replaced and modified the existing practice, established by the Practice Note of December 2005.

Court Services Online

In 2008 the Court Services Online team won several outstanding awards. The first award included winning the Gold Premier's Regional Award in all regions in B.C., culminating in winning the Provincial Gold Premier's award for "Innovation". Later in the year, the team was honoured on a national level at the Government Technology Event Conference (GTEC) in Ottawa by receiving a

Gold Medal for “Service Delivery to Citizens and Business”.

Court Services Online offers free province-wide searching for any civil file and online access to civil files (except family) for a fee at all court levels. Criminal information is available online for the Court of Appeal (for a fee) and Provincial Court criminal information is currently available for free.

The implementation of provincial e-filing, along with a scanning project, has allowed Supreme Court documents to also be available online. E-filing will eventually be available for the Court of Appeal.

Many court hearing lists for the province are also available through this online site: <https://eservice.ag.gov.bc.ca/cso/index.do>

DARS

Digital Audio Recording System (DARS) has been operating in the Court of Appeal since 2006. The court clerks access DARS in the courtroom through WebCATS, where their clerk’s notes (“log notes”) are stored with the individual files. Court staff, the judgment transcriber and the judges can access the audio for the hearings through the log notes.

Now both court and chambers proceedings are recorded in the Court of Appeal.

Policy regarding public access to the audio recording is found as a Practice Note on the court’s website: www.courts.gov.bc.ca

Registrar’s Hearings

In 2008, the Registrar conducted 68 hearings out of a total of 132 scheduled hearings. Of those 68 hearings, 30 were for the assessment of costs, 18 were to settle orders, 19 were hearings combining the settling of the order with the assessment of costs, and there was one to settle transcripts.

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 Planning Committee acts as the Court's executive committee. Any new policies, initiatives and changes to the Court are discussed at this Committee.

The Committee reports to the full Court at the semi-annual meetings to obtain approval of all the justices for matters that require such approval. For some matters, the Committee itself may make a decision on behalf of the Court.

Items that were considered in 2008 include:

Orientation Manual for New Judges

The new Orientation Manual has been prepared and was circulated in early January 2008. It is available in paper copy as well as on the Court intranet site.

New Law Officer

The Committee welcomed Gregory Pun, the new law officer to the Court of Appeal. Along with supervision of the law clerks, Mr. Pun has undertaken several tasks to

assist the judges in their daily work. A new style manual for editing judgments is available for judges, law clerks and staff. Mr. Pun will also be conducting research for the Publication Ban Working Group – a committee involving all three levels of court.

Scheduling issues

Summer sittings are reserved for urgent matters such as in-custody sentence appeals and family law access and custody matters. Counsel who wish to have a summer hearing date should write the registry with their request and indicate why the matter is urgent. The requests will be reviewed by the Chief Justice.

Committee Protocol

A Committee Protocol was approved. Committee members are appointed for three-year terms. At the Spring meeting of the Court, the Chief Justice will ask all committees to review their membership and the Chairs are to indicate those members who wish to retire from their committees. The Chief Justice will then canvass members of the Court asking for volunteers for the vacancies.

Registry Report

Sending the Vancouver court clerks to Victoria has been a huge success. It is anticipated that this will continue.

Supreme Court clerks have done some cross training in Court of Appeal positions. The schedulers give the Supreme Court notice when three divisions are scheduled in order to plan for a fourth court clerk to be assigned to Vancouver.

Expanding the law clerks' duties to chambers work for the judges has worked well, giving the judges some assistance as well as providing further training for the law clerks.

Executive Director's Report

Frank Kraemer, Q.C., Senior Counsel and Executive Director of Judicial Administration, joined the Planning Committee in January 2008. The report of the Executive Director will become a feature at the beginning of each Planning Committee meeting.

Digital Recording Policy

The Committee recommended, and the Court approved, the expansion of the Digital Recording policy to include the recording of court as well as chambers proceedings. The Policy is included in the Practice Notes found on the court website (www.courts.gov.bc.ca)

E-Filing in the Court of Appeal

Plans are underway to add the Court of Appeal to the Court Services e-filing initiative. The goal is to give the Court of Appeal the same functionality that currently exists for e-filing in the Supreme Court. In order to implement e-filing the

E-filing Rules will have to be implemented.

Address Change for Court of Appeal

The Court of Appeal registry has changed its address to 400 – 800 Hornby Street, V6Z 2C5. The registry remains in its present location; the change reflects the actual address of the building. The Smithe Street address has caused problems for couriers.

Victoria Registry

Additional Victoria registry staff have been trained in Court of Appeal procedures, specifically in the filing of materials at the registry and the delivery of materials from Victoria to Vancouver. A new fax machine will enable Victoria to fax initiating documents to Vancouver immediately.

Practice Advisor

A new staff position of Judicial Administrative Assistant Practice Advisor for both courts has been created. This person will undertake the regular training for judicial administrative assistants and the training for new employees.

Publication Ban Project

There are a number of questions relating to publication bans. A working group including judges has been formed to prepare a draft policy that can then be presented to both courts for discussion. The committee includes representatives from the Provincial Court, Supreme Court, and Court of Appeal.

Judgment Proofreading

The proofreading of judgments prior to release requires a considerable amount of time. A lawyer has been hired to undertake this task on a part-time basis.

Chambers Judgments

The Court will continue the practice of having someone review the chambers judgments to determine if a judgment should be assigned a neutral citation number and distributed to the publishers and placed on the website.

Media Information

In November, the law officers of the three courts and representatives of the CBA (B.C. Branch), Law Society, Ministry of the Attorney General and Legal Services Society met with members of the media as part of a media orientation. The session served as a briefing on the various roles the different organizations play; background material and contact names and numbers were provided.

New Judge Orientation

“*Judicial Education Guidelines for Canadian Superior Courts*”, was issued in April 2008 from the Canadian Judicial Council. There is an education plan that each new judge should prepare. The mentoring portion of the plan will be undertaken by the Chief Justice in consultation with the new judge.

Style Guide

A style guide for writing judgments has been prepared jointly by the law officers of the Supreme Court and the Court of Appeal for use by judges, law clerks, and judicial administrative assistants.

Cell Phones in the Courtroom

Cell phones ringing in the courtroom are a continuing concern. There are several signs throughout the building asking counsel to turn off their cell phones in the courtroom. Prior to the hearing, the court clerk always makes an announcement about turning off cell phones.

New Website

The new Superior Courts website was substantially complete in late 2008 (and was launched in January 2009). Among other improvements, the daily chambers list will be included on the new website, along with the weekly hearing list. Other content was reviewed, updated and added.

Laptop Replacement

A survey of the judges indicates that 95% of the Court of Appeal would prefer a laptop over a desktop on the next computer refresh program, which will take place in May 2009. Judges will be given the choice of a small or medium-sized laptop.

Sitting of the Court of Appeal during the Olympics

The Courts are considering the effect and the best way to accommodate the difficulties that will arise for the Courts during the Olympics. The Chief Justice and Chair of the Committee and staff met with VANOC and the City of Vancouver to discuss issues of the Court sitting during the Olympics. Options are being prepared and will be presented to the Court at its next meeting.

Photocopying of Judgments

An attempt has been made to reduce the amount of photocopying of judgments done for the Court of Appeal. All judges still prefer to read judgments in paper format. The Committee continues to investigate alternatives.

Late Filing of Factums

The delay in the filing of criminal factums is causing problems for the divisions preparing for the hearing of the appeals. Information is being collected to prepare a plan to assist the judges in resolving this issue.

Judgment Format

New guidelines for judgments have been approved by the Canadian Judicial Council. The front page of the judgment will include the history of the judgment, including the lower court neutral citation number. Corrected judgments will now have a notation on the front page indicating what corrections have been made to the judgment and when. These proposals will be discussed at the next Court meeting. The changes will be included in the new judgment template which will be in place for the new computers in May 2009.

New Supreme Court of Canada Policy – Electronic Access to Factums

The Committee was informed that the Supreme Court of Canada is putting its factums online, starting in January 2009. Counsel are being asked to file a redacted version of their factum if it contains any personal identifying information. There is pressure on appellate courts to generally make factums available online. The SCC has a number of lawyers who are also vetting the factums. The Committee is not

in a position to make a similar recommendation for the Court of Appeal at this time.

Out of Town Counsel Requesting Local Registry to send Exhibits to Vancouver for Hearing of Appeal

There is an issue in criminal appeals where Crown counsel is asking for exhibits to be sent to Vancouver. This is causing problems for the exhibit clerk. There are almost monthly requests. The exhibit clerks are communicating with the other registries to attempt to stop this transfer. This issue has also been discussed with Crown counsel and it appears that the practice is diminishing.

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 Low
The Honourable Mr. Justice Lowry
The Honourable Mr. Justice Frankel
The Honourable Mr. Justice Bauman
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 *Rules*. The Committee is also responsible for amendments to the Yukon Rules and legislation. 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 the complete revision of the *Criminal Appeal Rules, 1986*. The Committee decided to re-draft the entire *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. After the consultation process, the final version of the *Rules* will then need to be translated and published in the Canada Gazette. We

expect this will be a lengthy process. The main changes proposed are as follows:

1. Service and delivery of documents are changed by requiring an appearance to be filed by every respondent.
2. The Sentence Appeal Practice Directive has been incorporated into the Rules. As well, the registry will prepare a "sentence appeal book" containing copies of all the important documents.
3. The Rules and Forms concerning format for factums, appeal books, etc., have been revised for clarity and consistency with civil practice.
4. The Rule on transcript format has been modified, with many of the requirements now included in Form 12.
5. The Rules make provision for electronic copies of transcripts, factums and sentence appeal statements. A rule similar to the civil rule on books of authorities

has been added, with time limits for filing.

6. There is provision for an appointment before the registrar for directions.
7. A Notice of Hearing form is added to confirm the date and length of hearing.
8. Release from custody has been amended slightly to accord with the current practices of the registry.
9. The rules have been amended to deal with matters under the *Extradition Act*, including the addition of new forms.
10. A new form has been provided for “other” appeals which are not strictly “conviction” or “sentence” appeals.
11. The forms have been updated and streamlined.

Yukon Court of Appeal Fees

In September 2008, the *Supreme Court Rules* in the Yukon were amended. In the process, the section which referred parties to the Rules in British Columbia for analogous procedure was removed, eliminating the Court of Appeal filing fees. The Court of Appeal civil fees were

amended by adding a schedule to the *Yukon Civil Court of Appeal Rules*.

Electronic Factum Directive

The practice directive on electronic factums was amended to provide more persuasive language to encourage the filing of electronic copies of factums and statements.

Leave to appeal procedure

The Practice Note on the procedure to follow where there is uncertainty whether leave to appeal is required was amended and changed to a Practice Directive. The new procedure requires the motion for directions and the motion for leave to appeal (if needed) to be heard together. Motion books must be filed within specified time limits before the hearing of the leave application.

Further Submissions

The Committee determined that the registrar’s practice of arranging further submissions on costs should continue. This is recognized as a function connected to the registrar’s settling of orders and the authority to refer a matter back to the court.

COURT OF APPEAL TECHNOLOGY COMMITTEE

Members:

The Honourable Chief Justice Finch
The Honourable Madam Justice Saunders
The Honourable Madam Justice Levine (chair)
The Honourable Mr. Justice Chiasson
The Honourable Mr. Justice Tysoe
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 potential use of computers in the courtroom. The Committee's concerns relate to the effect on the Court's process of 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.

There are both physical issues, such as the placement of computers and monitors, and fundamental questions about changing litigation, that the Committee is addressing.

Technology Focus Group

One of the first activities of the Committee was to convene a focus group of Court of Appeal practitioners to discuss the potential use of computers in the courtroom. The main points from that discussion are:

- The main purpose of the hearing of an appeal is to create a dialogue between counsel and the judges.

Computers should not interfere with that dialogue.

- Counsel did not seem to be concerned about judges using laptops in the courtroom.
- All counsel approved the concept of moving toward electronic appeals, including factums hyperlinked to electronically produced transcripts, exhibits and authorities.
- Counsel agreed that they would not use a computer while making submissions, although they may have to look something up in response to a judge's question.
- The courtroom would have to be equipped with a monitor to display transcripts and exhibits, and counsel would require their own laptops to search material.
- Some changes to the infrastructure of the courtroom would be required, such as the

addition of internet access and sufficient electrical outlets.

- Electronic appeals will not be welcomed if counsel will be required to prepare the same amount of paper as presently required.

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 is 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 will allow the judges to clearly see the information on the screen.

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

Laptops in the Courtroom

A demonstration was held to allow judges to experience what it would be like to use, have a colleague use, and have counsel use, a laptop in the courtroom.

There were mixed reviews from this demonstration. The noise of the keyboards was quite distracting for some judges. The acceptable use of laptops in the courtroom is still considered part of the mandate of the Committee.

B.C. Securities Commission Visit

As part of its review of options for equipping courtrooms for the use of computers, the Committee and other interested judges of the Court visited the British Columbia Securities Commission for a demonstration in the Commission's hearing room of the various technologies used to conduct electronic hearings.

The Commission hears both "original" matters, which are fact-based and document-heavy, and hearings in the nature of appeals. Much of the technology it uses manages the receipt of evidence in electronic form, including realtime reporting and double screens, which are not required for the hearing of appeals.

Continuing Work of the Committee

The Committee intends to continue examining these issues as needs and alternatives arise, including from the experience of the use of electronic aids in the Pickton appeal.

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.

Speakers at Law at Lunch present 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 have included:

The Honourable Michael Harcourt, who discussed the state of affairs in B.C. Treaty Negotiations; Dr. Max Cynader, Director of the Brain Research Centre at U.B.C., speaking on neuroscience; Professor Richard Price, a Political Scientist at U.B.C., discussing “Hegemony and Multiculturalism Strategies for International Law and Institutions”; Stephen Owen, Q.C., Vice President, External, Legal and Community Relations at U.B.C., discussing the University’s relationship with the non-academic community; Dr. Benjamin Perrin, of the U.B.C. Faculty of Law, speaking on the topic of International Criminal Tribunals; and Professor Ron Davis, at the U.B.C. Faculty of Law, reviewing recent developments in the field of pensions.

At the spring meeting of the Court in April, Judges Thomas Gove and Anthony Palmer of the B.C. Provincial Court, and Judge Karen Ruddy of the Yukon

Territorial Court, described the specialty courts under their direction.

At the fall meeting of the Court, Kenneth Bagshaw, Q.C., counsel for the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games, presented an overview of the preparations for the games. This was followed by a discussion on the implications of the Olympics for the operation of the Court.

In the latter part of 2008, the Committee became involved in the preparations for the 2010 Centenary of the Court. This includes developing a National Judicial Institute Appellate Judges’ Conference on 22 April 2010, to be immediately followed by a two-day symposium.

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

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

JOINT COURTS TECHNOLOGY COMMITTEE

Members:

The Honourable Mr. Justice Groberman* (Chair)
The Honourable Mr. Justice Masuhara* (Vice-Chair)
The Honourable Madam Justice Levine
The Honourable Madam Justice Boyd*
The Honourable Mr. Justice Tysoe
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
Linda Rainaldi*/Heidi McBride*, Law Officer (Secretary)
(*B.C. Supreme Court)

The Committee discussed a number of issues and projects including: the courts' proposed new website; judicial access to DARS; and ongoing technology support issues.

Digital Audio Recording System (DARS)

Replacement of analog recorders with a Digital Audio Recording System (DARS) was fully realized in 2007, with a great deal of assistance and support from Court Services IT. 2008 saw training for court staff and the judiciary. The Committee provided significant input to ensure that judicial requirements were met.

Website Redesign

After conducting an online survey of website users, redesign of the Superior Courts' website was undertaken this year. The new design will facilitate access to information frequently searched by the legal profession and the public. The new website was launched in January 2009.

Software Renewal

The Committee participated in the software renewal initiative undertaken by the Ministry of the Attorney General. The Committee provided input on enhancing current efficiencies while keeping options open for future initiatives.

Ongoing Support

In addition to new initiatives undertaken in 2008, the Committee monitored service levels provided by IT Services. The Committee also responded to issues such as:

- suggesting “best practices” for maintaining confidentiality and security in the system, including network password changes;
- providing input to the Integrated Court Planning Committee to integrate electronic initiatives into the courts;
- monitoring the Supreme Court e-filing pilot project.

JUDICIAL ACCESS POLICY WORKING COMMITTEE

Members:

Jennifer Jordan, Registrar (Chair)
Frank Kraemer, Q.C., Senior Counsel & Executive Director, Judicial Administration
Virginia Day, Director, Business Transformation & Change Management
Ingrid Munro, 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 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 2008, 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. Access to files with existing publication bans is also a concern. Steps are being taken by the judiciary to prepare a manual for the staff.

Access to criminal information continues to be discussed, particularly in relation to stays of proceedings and pardoned files. In addition, the Provincial Court criminal

information was made available to the public online in November.

Discussions continue on access to family law Digital Audio Recording. Work is underway to allow counsel of record to access their family court files online.

The attendance list for chambers, which is available online, is not as useful to counsel as the actual courtroom lists. Changes to the online chambers list have been approved.

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.

Looking Forward to 2009

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

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 on the operation and administration of the Court's settlement conference program. The committee is comprised of a roster of justices who act as settlement conference judges, although other justices may also act as settlement conference judges.

The Court introduced a pre-hearing judicial settlement conference pilot project in November 2004, which ran for two years. The Court thereafter decided to offer the program indefinitely. The establishment and the operation of the project through 2007 were due to the efforts of Ms. Meg Gaily, the Court's former Law Officer. Her contributions to the project are gratefully acknowledged.

The purpose of a settlement conference is to assist parties to resolve 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 Civil Practice Directive #8, which sets out the procedure and the forms used. The settlement conference judge does not speak to the factual or legal merits of the appeal, but rather seeks to find a mutually-agreeable resolution with the parties. Participation in settlement conferences is entirely voluntary.

The settlement conference process was the subject of an article published in *BarTalk*, the newsletter of the CBA-BC Branch (vol. 20, no. 3, June 2008).

The first request for a settlement conference was made in December 2004 and the most recent, the 12th request, was made in June 2008. Of the first 11 requests, four involved family law matters; the other seven have been a mix: two involved personal injury, two involved commercial issues, one was a wrongful dismissal case, one was a human rights case, and one involved an appeal from an order striking out a statement of claim.

Four requests have progressed to a full settlement conference. In one case, the parties settled after the conference. In the other three, the parties settled at the conference. The remaining seven cases did not go to a settlement conference for various reasons: (a) at the initial teleconference a determination was made by the judge or the parties that the matter was not suitable for settlement conference; (b) a party withdrew consent; and (c) the parties agreed to discontinue the settlement conference process.

Only one request, the twelfth, was made in 2008, in a family law matter. This settlement conference had not yet concluded by the end of 2008.

LAW CLERK COMMITTEE

Members:

The Honourable Madam Justice Ryan (to August 2008)
The Honourable Madam Justice Saunders (Chair)
The Honourable Mr. Justice Smith (to August 2008)
The Honourable Madam Justice Kirkpatrick (from September 2008)
The Honourable Mr. Justice Frankel (from September 2008)

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.

The composition of the Committee changes in accordance with the Court's Committee Protocol. Such changes typically take effect in September, to coincide with the commencement of the clerking term.

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 2008, 11 clerks began their clerkships at the Court of Appeal for the 2008-2009 term. Five are scheduled to complete their terms in June 2009; four will work through July 2009; the remaining two will continue through August 2009. Of the clerks who started in September 2008, there are five from University of British Columbia, three from University of Victoria, two from the

University of Toronto, and one from Dalhousie University.

In January 2008, the law officers of the Court of Appeal and the Supreme Court received 77 applications for the 29 law clerk positions available in the two courts for the 2009-2010 term. Nearly 50 were from students at either UBC or UVic law schools, but there were many applications from other Canadian and foreign law schools.

In February 2008, the law officers interviewed 64 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 2008, Madam Justice Kirkpatrick and Madam Justice Saunders, 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 Committee expresses its thanks to Jill Leacock and Linda Rainaldi, Law Officers for the Supreme Court, Gregory Pun, Law Officer to the Court of Appeal, and to Susan Devenish and especially Krystal Mason, for their assistance.

LIBRARY COMMITTEE

Members:

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

The past year was busy for the Library, with changes to staffing, modifications to annotations, clean-up projects, processing of judgments, and the ubiquitous financial challenges.

The departure of a library staff member in October gave us an opportunity to look at the judgment publishing process. The newly created position of Website Administrator/ Desktop Application Specialist was just what was needed to balance the workload. The conversion and posting on the Courts' website of Court of Appeal and Supreme Court judgments continues to be done by library staff along with the website administrator.

After the completion of a survey, a decision was made by the Library Committee to continue with the handwritten annotations (in Vancouver only) for at least another year, limiting to five the number of reported citations to any given case. (B.C.L.R., C.C.C., D.L.R., W.W.R., S.C.R.).

Library staff was pleased to be involved in the judgment card clean-up project, a process which led up to the release of the new and improved BC Superior Courts website on 29 January 2009. The Director of Information Technology and Finance,

the Supreme Court judgment clerk, many judicial administrative assistants, and the website administrator all worked very hard on this team project, which was completed in just over three months.

Library staff processed 1859 Supreme Court judgments and 520 Court of Appeal judgments in 2008. Nineteen Yukon Court of Appeal judgments were also processed.

The Library catalogued 184 new acquisitions (including donated items). We have discontinued just one reporter (Ontario Reports), but, to date, no loose leaf services have been cancelled. By far the greatest proportion (87%) of spending is on the top three legal publishers.

One area in which the Library has been able to streamline operations was in the distribution of case digests. Over 50% of those who received printed versions have chosen to cancel the printed version in favour of the enhanced electronic version.

This is but one example of the Library's continuing effort to balance needs with limited resources.

PRO BONO COMMITTEE

Members:

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

Pro Bono Law of BC, which administers the Pro Bono Project for the Court of Appeal, hosted a national conference on Pro Bono services in November. Out of discussions that arose during the conference, there emerged the idea that Pro Bono Law of BC could provide duty counsel for self-represented litigants in Court of Appeal Chambers. The Committee and Pro Bono Law of BC began meetings towards that end.

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

Jamie Maclaren
Simon Coval
JP Boyd
Richard Peck Q.C.
Georgiale Lang
John Jordan
Angus Gunn
Brent Olthuis
Marko Vojvodic
Roy Millen
David McWhinnie

Anthony Price
James MacInnis
Jay Fogel
Jobst Bode
Micah Rankin
Timothy Dickson
Shannon Salter
Kellie Hamilton
Donald McLeod
Timothy Hinkson

STATISTICS

SUPREME COURT OF CANADA

There were 61 applications for leave to appeal from decisions of the Court filed with the Supreme Court of Canada in 2008.

The Supreme Court of Canada considered 61 applications for leave to appeal (some of these were from 2007 filings). Of these applications, 8 were granted, 43 were dismissed, 1 extension of time was refused, 1 was remanded, 1 oral hearing was ordered and there were 7 decisions pending at the end of 2008.

In 2008, the Supreme Court of Canada heard 20 appeals from B.C. cases. Of these

appeals, 7 appeals were allowed, 4 appeals were dismissed and there were 9 reserve judgments pending at the end of 2008. In addition to these decisions, another 19 judgments were rendered in B.C. cases which had been heard in previous years. Of these, 11 appeals were allowed and 8 appeals were dismissed.

In 2008, 12% of the applications for leave to appeal to the Supreme Court of Canada were from B.C. appeals. Of the judgments rendered in 2008, 25% were appeals from B.C.

B.C. COURT OF APPEAL

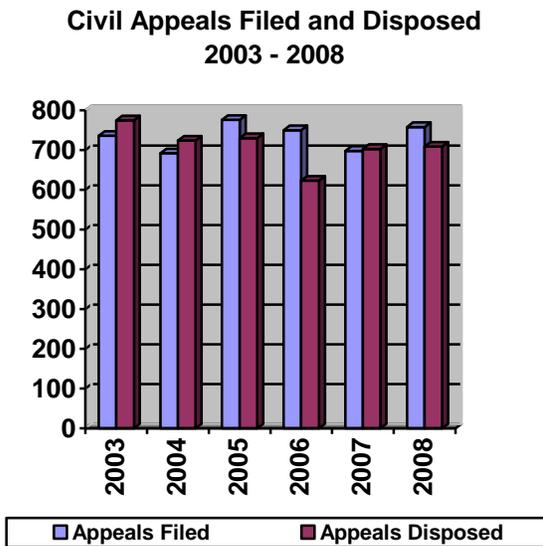
The charts on this page show the volume of litigation and compare the number of appeals filed, both civil and criminal, and the number of appeals disposed of for the period 2003 - 2008.

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

Civil

Figure 1 demonstrates the declining number of civil appeals filed between 2003 and 2004, the increase in appeals filed for the next two years and then another drop and rise for 2007 and 2008. The disposed appeals dropped noticeably in 2006, and have remained relatively constant for the last two years. The disposition rate for appeals in 2008 was 94% of filings. (Appendix 1)

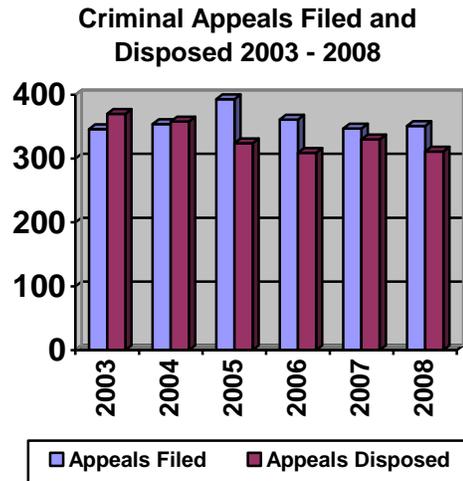
Figure 1



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 is less than the number of criminal appeals filed, which results in a growing backlog of criminal appeals. For 2008, there was a slight drop in the number of criminal dispositions, with a disposition rate of 89% of filings. (Appendix 2)

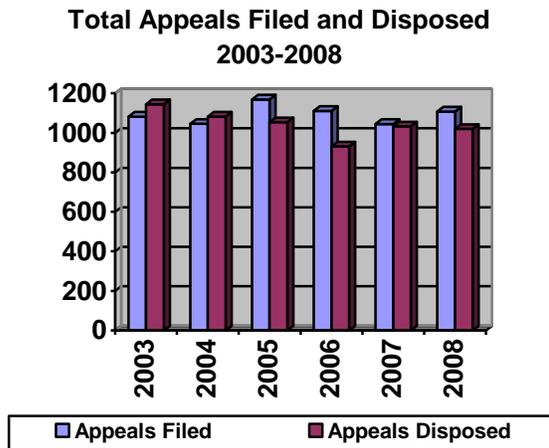
Figure 2



Global

For a more complete picture of total activity, Figure 3 combines the civil and criminal filings and dispositions. The overall dispositions in 2008 did not quite keep up with the filings that year (92%). (Appendix 3)

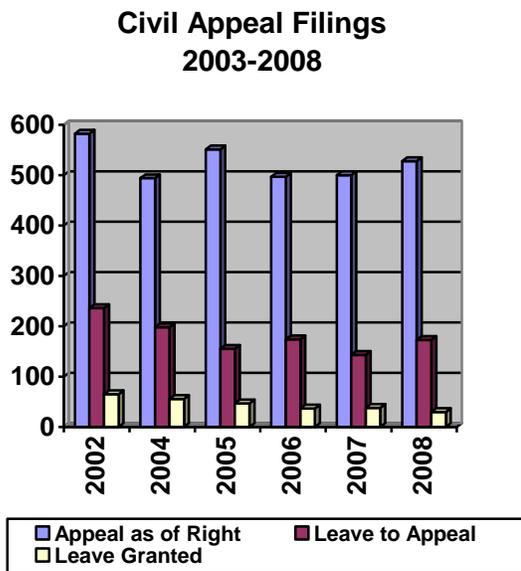
Figure 3



Types of Civil Appeals Filed

Of the civil appeals initiated in 2008, 33% 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 2008, 37% 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)

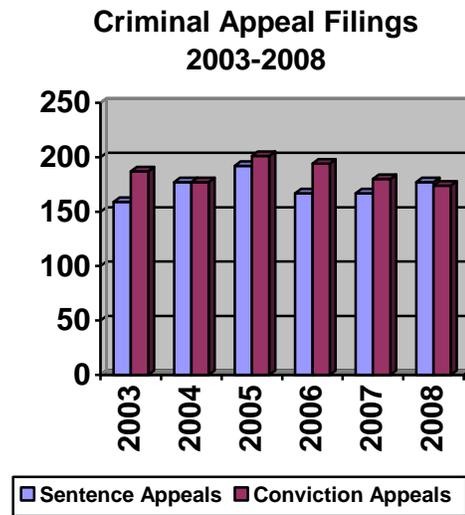
Figure 4



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 2003 and 2008. Sentence and summary conviction appeals amount to half (50%) of the total criminal appeals filed. (Appendix 2)

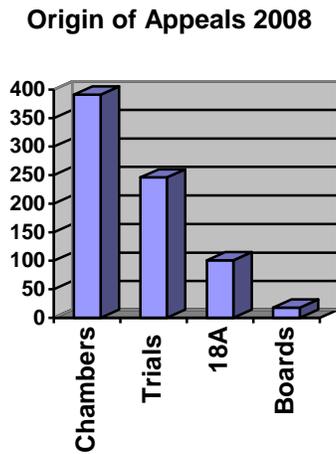
Figure 5



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 2008 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. Twice as many appeals are from proceedings other than trials.

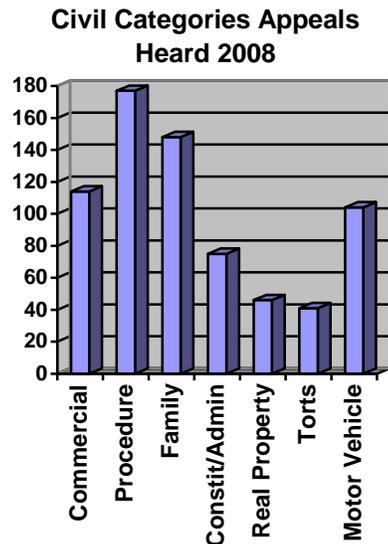
Figure 6



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.

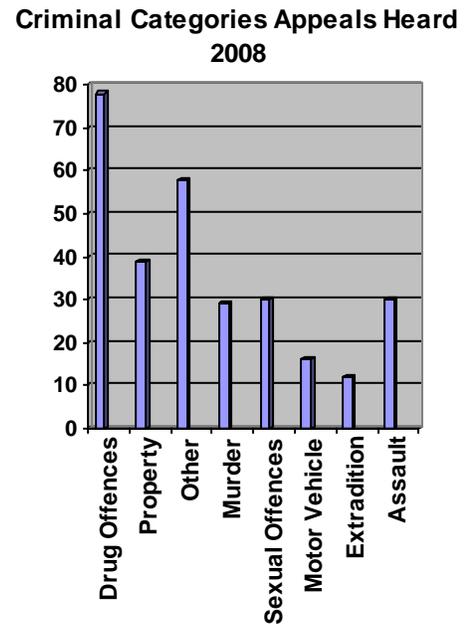
Figure 7



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



Appeals Allowed/Dismissed

The rate of civil and criminal appeals allowed over the past six years has varied. In 2008 the number of civil appeals allowed was 34% of the total civil appeals heard. For criminal appeals, the figure was 40% allowed of all criminal appeals heard. 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 2008. The statistics take into

account partial appeals allowed 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. (Appendix 1 & 2)

Figure 9

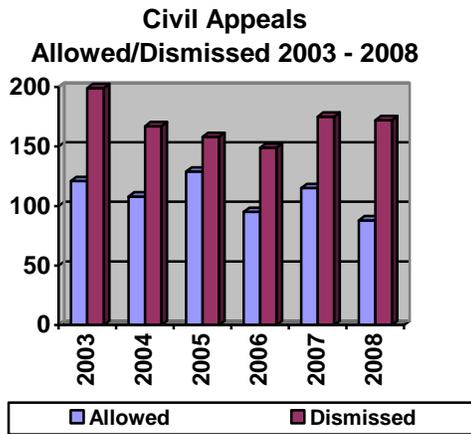
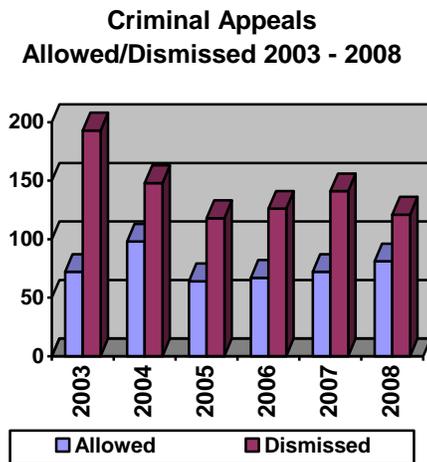


Figure 10



Self-Represented Litigants

Figure 11 shows the number of self-represented litigants compared to the number of represented litigants who filed appeals in 2008. 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 2008 the percentage of civil filings for self-represented litigants was 19% and the percentage of criminal self-represented litigants amounted to 18% 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

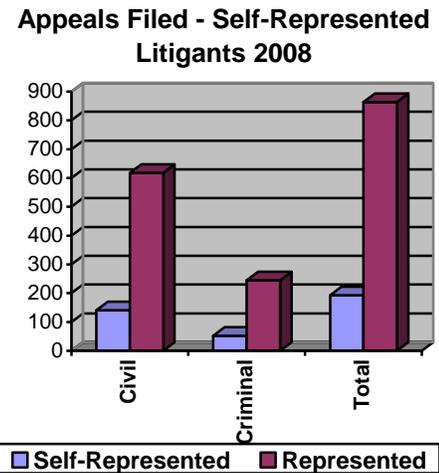
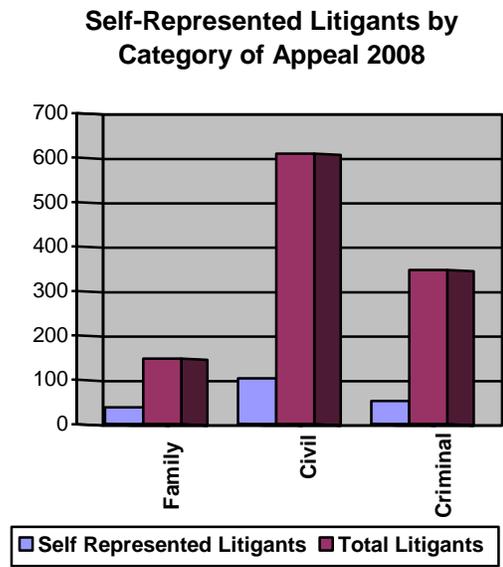


Figure 12



Appendix 1
British Columbia Court of Appeal
Civil Statistics 1997-2008

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
APPEALS FILED:												
Notice of Appeal	854	822	787	679	660	582	532	494	551	497	500	528
Leave to Appeal	273	272	224	248	258	236	204	198	155	174	143	173
Notice of Appeal and Leave									70	79	55	57
TOTAL FILED	1127	1094	1011	927	918	818	736	692	776	750	698	758
COURT DISPOSITIONS:												
Appeals Allowed	159	142	151	148	133	137	121	108	129	95	115	88
Appeals Allowed %	39%	37%	43%	42%	43%	42%	38%	40%	45%	39%	40%	34%
Appeals Dismissed	250	241	196	197	177	189	199	165	158	149	175	172
Appeals Dismissed %	61%	63%	57%	58%	57%	58%	62%	60%	55%	61%	60%	66%
TOTAL COURT DISPOSITIONS	409	383	347	345	310	326	320	273	287	244	290	260
Appeals Concluded in Chambers or Abandoned	988	744	673	544	522	492	455	451	443	379	413	449
TOTAL DISPOSITIONS	1397	1127	1020	889	832	818	775	724	730	623	703	709
Dispositions as % of Filings	124%	103%	101%	96%	91%	100%	105%	105%	94%	83%	101%	94%
Judgments Reserved (Court)	188	182	174	197	178	193	181	200	166	177	171	153
Judgments Reserved (Cham)								104	64	75	86	76
Appeals with 5 Judges	3	5	3	12	16	10	16	4	1	0	3	2
Court Motions: Reviews	10	13	16	10	7	17	13	14	13	18	13	13
Granted	5	6	0	3	6	2	7	3	5	4	2	2
Refused	5	7	16	7	1	15	6	11	8	14	11	11
Chambers Motions	643	664	568	530	419	427	451	397	298	277	241	226
LEAVE TO APPEAL												
Granted	74	65	18	80	75	65	56	47	46	37	38	30
Refused	71	48	39	37	35	26	30	19*	53*	32*	45*	51
Total	145	113	57	117	110	91	86	58	54	44	43	32

*These numbers have been amended

Appendix 2
British Columbia Court of Appeal
Criminal Statistics 1997-2008

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
APPEALS FILED:												
Sentence	249	219	199	182	156	133	126	150	175	152	150	154
Conviction	232	231	203	174	177	128	130	124	137	145	117	142
Summary Conviction	48	54	39	40	37	47	33	27	17	15	17	23
Acquittal & Other	50	63	68	78	69	64	57	53	64	49	63	32
TOTAL FILED	579	567	509	474	439	372	346	354	393	361	347	351
COURT DISPOSITIONS:												
Appeals Allowed	115	127	103	84	111	70	72	98	66	67	72	81
Appeals Allowed %	31%	31%	29%	28%	37%	31%	27%	40%	36%	35%	36%	40%
Appeals Dismissed	253	283	248	218	193	159	193	148	118	126	141	121
Appeals Dismissed %	69%	69%	71%	72%	63%	69%	73%	60%	64%	65%	64%	60%
TOTAL	368	410	351	302	304	229	265	246	184	193	200	202
Summary Dismissals Abandonments in Court/Chambers	193	134	118	149	139	137	105	64	47	35	130	109
TOTAL DISPOSITIONS	561	544	469	451	443	366	370	310	231	228	330	311
Appeals Disposed % of Filings	97%	96%	92%	95%	101%	98%	107%	88%	59%	63%	95%	89%
Appeals Heard by 5 Judges	3	3	4	5	5	0	1	0	1	0	0	2
Judgments Reserved	116	117	78	89	89	86	109	93	85	85	80	75
Judgments Reserved Chambers									10	12	28	11
Chambers Motions	332	316	305	218	260	230	219	172	137	151	111	81

Appendix 3
British Columbia Court of Appeal
Total Appeals Filed and Disposed 1997-2008

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
APPEALS FILED:	1706	1661	1520	1401	1357	1190	1082	1046	1169	1111	1045	1108
COURT DISPOSITIONS:	777	793	698	647	614	555	562	519	471	437	490	462
Appeals Allowed	274	269	254	232	244	207	179	206	195	162	187	169
Appeals Allowed %	35%	34%	36%	36%	40%	37%	32%	40%	41%	37%	38%	37%
Appeals Dismissed	503	524	444	415	370	348	383	313	276	275	316	293
Appeals Dismissed %	65%	66%	64%	64%	60%	63%	68%	60%	59%	63%	62%	63%
TOTAL COURT DISPOSED	777	793	698	647	614	555	562	519	471	437	490	462
Appeals Concluded in Chambers or Abandoned	1181	878	791	693	661	629	560	515	490	414	543	558
TOTAL DISPOSITIONS	1958	1671	1489	1340	1275	1184	1145	1034	961	851	1033	1020
Dispositions as % of Filings	115%	101%	98%	96%	94%	99%	106%	99%	82%	77%	99%	92%
Judgments Reserved	304	299	252	286	267	279	290	397*	325*	349*	365*	316*
Appeals with 5 Judges	6	8	7	17	21	10	17	4	2	0	3	4
Chambers Motions	975	980	873	748	679	657	670	569	435	428	352	307

*Now includes chambers reserved judgments