

2022 CBA Report

I am very pleased to provide the CBA and its membership with an update on the work of the Court of Appeal and on recent developments at the Court. Let me briefly flag six points that might be of interest.

First, calendar year 2021 was a busy one for the Court. In that year we disposed of 331 appeals, a substantial increase over the 274 disposed of in 2020. We rendered 126 written civil decisions as compared to 92 the year before and 71 written criminal decisions as compared to 48 the year before. Those appeal volumes have maintained themselves into 2022. So, we are not troubled by a lack of work.

Second, I can report that the forced move to online hearings brought about by the COVID-19 pandemic has changed our operations. In light of how well Webex hearings have worked, both for counsel and the Court, we have made them a permanent part of our operations. The access to justice upside of online hearings are too significant to ignore. We will not be putting Webex back in the box. Renovations have been made to our courtrooms so that, at their option, lawyers (and for that matter clients, the media and the public) now have the choice of appearing either in person or by Webex. That will be the situation COVID or no COVID. The judges will be present in the courtroom but all others, generally speaking, will be able to decide whether to be there in person or to attend by way of Webex. So, if you are practicing in Estevan or Prince Albert or Swift Current or Yorkton – wherever – and you and/or your client would prefer that you not spend hours on the road, you will be able to opt to appear virtually. I very recently sat on an appeal with lawyers who appeared virtually from Swift Current and Saskatoon and with an appellant

sitting in from Gravelbourg. The fact that they did not have to drive to Regina was obviously a considerable cost saving and allowed things to proceed much more conveniently.

Third, the Court will very soon be pulling the trigger on a refresh or update of our Rules, both criminal and civil. The most significant of those changes will be those made to Civil Rule 15. It provides that, unless otherwise ordered by a judge, the service and filing of a notice of appeal (with limited exceptions) stays the execution of a judgment pending the disposition of the appeal. Saskatchewan has historically been something of a national outlier on this front. In most jurisdictions, it works the other way around, i.e., a judgment is only stayed on appeal if a court makes an order to that effect. The upcoming amendment will stand the existing Rule on its head and bring things into line with the Canadian norm. This will represent a significant change in appellate practice in this province, but we believe it will more properly reflect the notion that a trial-level judgment should be seen as presumptively correct, rather than, in effect, as being presumptively incorrect. Given the importance of this amendment, we will be launching a communications initiative to ensure that members of the bar are aware of it before the changes come into effect this fall.

Fourth, I want to flag a relatively new Court protocol dealing with the preferred manner of addressing the Court. It also represents a change from the past. The new protocol provides as follows:

The preferred form of address for a judge of the Court is “Justice” or “Chief Justice”, as the case might be, followed by the last name of the judge. Counsel and self-represented parties are asked to refrain from addressing judges as “My Lord”, “My Lady”, “Your Lordship” or “Your Ladyship”. A hearing panel should be addressed as “Justices” or “the Court”.

I would note that the Supreme Court of Canada went this direction 20-plus years ago.

Fifth, the Court adopted, at the end of last year, a protocol with respect to pronouns and forms of address. It provides that:

Counsel and self-represented litigants are welcome to provide their preferred manner of address (example, Mr./Ms./Mrs./Mx./Counsel) and/or pronouns (example, she/her, he/him, they/them) to the Court in advance of an appeal or a Chambers hearing by contacting the Registrar in writing, including by email.

Alternatively, immediately prior to the commencement of a hearing, and before the judge or judges enter the courtroom, counsel or a self-represented litigant may elect to provide the clerk with their preferred manner of address and/or pronouns. Counsel may also elect to provide the manner of address and/or pronouns of their clients and other individuals who might be referred to during the hearing. The clerk will then provide such information to the judge or judges before the proceedings begin.

Sixth, let me note that the Court of Appeal is in a period of some transition personnel-wise. Justice Ottenbreit, who was a full-time judge, retired in April. Justices Whitmore and Ryan-Froslic, both supernumerary judges, will be retiring in September. Justice Barrington-Foote has recently elected supernumerary status. Justice Meghan McCreary, who has been a member of the Court of Queen’s Bench for the last four years, was appointed to our Court on June 6, 2022. We currently have one vacancy that I anticipate will be filled in the near future. This is all part of the normal and unavoidable renewal that is a feature of life on any court. People, even judges, do get older. I am fully confident that our very strong court will continue to be very strong.

Those are my six points. By way of closing, let me acknowledge the good work done by the Canadian Bar Association and its members. We are fortunate to live and work in a jurisdiction where there is such a solid and cooperative relationship between the bench and the bar.

These are difficult times. The world we know and value is under pressure from many directions and in many ways – some subtle and some not. It is absolutely essential that the CBA be alert to the challenges we face in this regard and that it use its resources and its national reach

to help protect democracy, the independence of the courts and the rule of law. I appreciate and salute your efforts in this regard.

The Honourable Robert G. Richards
Chief Justice of Saskatchewan