

2021 CBA Report

I appreciate this opportunity to report to the membership of the Canadian Bar Association about the work of the Court of Appeal over the last year.

The last 15 months for the Court of Appeal has been not insignificantly about dealing with COVID-19. As the pandemic was coming over the horizon last March, our Court moved aggressively to online hearings using the Webex platform. We also went to a workplace model that featured a skeleton crew of our support staff and registry staff onsite, and judges in significant part also working from home. Our efforts to move in this direction were made much easier by our eCourt electronic filing system. It meant that all of our files were available remotely for both judges and staff and, for that matter, counsel as well. So, happily, we were able to transition to online hearings literally without missing a beat. No adjournments. No delays. Just the regular schedules with the regular number of cases.

This forced experiment with online hearings has worked surprisingly well. I can advise that all of the judges would prefer in-person hearings. But, and this is the important thing, all members of the Court also think that the virtual format for hearing appeals has not in any way interfered with our ability to absorb and understand oral argument, or our ability to get answers to the questions we need to put to counsel. So, from the perspective of the Court, virtual hearings have been an unexpectedly successful way of discharging our responsibilities.

Webex appears to have worked well for lawyers as well. I arranged a series of consultations (online of course) with counsel in July of last year. In groups of 4 or 5 or 6 at a time, I talked to over 20 lawyers who had argued appeals in our Court by Webex. They all offered quite positive reviews and, to a person, did not suggest that the online approach had compromised, in any

meaningful way, their ability to effectively represent their clients. That was all good news and it made it relatively easy to decide that we would just carry on in Webex mode through the fall and until we were out from under the shadow of COVID-19. As a result, we have not had a lawyer appear in the flesh in our Court since March of last year.

We have been so struck by the convenience, cost savings, and access to justice upsides of online hearings that we have decided to make such hearings a permanent part of our operations going forward, COVID or no COVID. To that end, renovations are currently underway to the Court of Appeal hearing rooms in Regina. Those renovations will upgrade our audio-visual technology and add additional cameras and large screens to each of the courtrooms. These changes will mean that the Court will emerge very quickly into a world where, subject to working out some operational details and protocols, lawyers will have the option of arguing an appeal in person or by Webex. So, if you are practicing in Estevan or Prince Albert or Swift Current or Yorkton – wherever – and you and your client would prefer that you not spend hours on the road, you will be able to opt to appear virtually. Post-COVID the judges will be in the courtroom physically but, at their individual option, lawyers can be there or not, as they prefer and their clients instruct. We could have appeals with all, some or no lawyers physically present in the courtroom. Similarly, clients will be able to “attend” hearings virtually at their option. If they do not want to travel in from Toronto or Melfort or to be in the same room as the folks on the other side of the case, they will be able to watch it live via Webex. The same goes for the media and members of the general public. They will be able to attend appeals in real time without having to travel to the court house.

This, we think, is a reasonably exciting development. It will promote access to justice and it will open up the operations of our Court to the public. The experiment that COVID-19 forced on us has demonstrated that this is all doable. We intend to move, and move very soon, to lock it

in as an ongoing reality. Virtual-type hearings, to some extent anyway, are here to stay in the Court of Appeal.

By way of other developments, I can advise that, with Melanie Baldwin’s appointment to the Court of Queen’s Bench, Amy Groothuis has joined the Court as Registrar. Amy was a partner at Miller Thomson (and quite involved with the CBA by the way) and is a strong addition to the Court team.

CBA members might also wish to know that the Court will soon be putting in place a reasonably significant refresh of both our Civil and Criminal Rules. I will also remind CBA members that we are in the process of seeking input from the bar about possible changes to Rule 15 of the Civil Rules, the provision that imposes an automatic stay on the execution of most judgments when a notice of appeal is filed.

By way of closing, let me once again 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 strong and cooperative relationship between the bench and the bar.

The Honourable Robert G. Richards
Chief Justice of Saskatchewan