Report to the Canadian Bar Association (Saskatchewan Branch)

Introduction

I thank the Canadian Bar Association (Saskatchewan Branch) for the opportunity to provide this report.

The past year has been one of significant change for the Court of Appeal for Saskatchewan. Most materially, after 20 years of outstanding public service as a judge, including more than 10 as Chief Justice of our province, the Honourable Robert Richards retired on August 31, 2023. The Honourable Georgina Jackson – Saskatchewan's longest tenured judge – then served as Acting Chief Justice, until my appointment in October.

All of this means that I have now had a little more than half a year on the job as Chief Justice. The annual Branch meeting offers me the occasion to reflect on where the Court is today and speak a bit about the future.

Composition

Prior to the retirement of Chief Justice Richards, the Court had a full complement of seven puisne judges and the Chief Justice, and two supernumerary judges, being Justice Jackson and Justice Barrington-Foote. From September 1, 2023, to April 18, 2024, the Court was one judge short. This was remedied on the latter date by the appointment of Justice Bardai. The Court was able to carry on business as usual only because of the assistance provided by several judges of the Court of King's Bench who sat as *ad hoc* judges of our Court over several months. I thank Chief Justice Popescul for allowing this to occur.

For roughly one month, all the Court's positions were filled, that is until Justice Schwann elected supernumerary status as of May 31, 2024, creating a new vacancy. The timing of an appointment to fill this position is up in the air. Additionally, Justice Barrington-Foote has advised that he will be retiring effective August 31, 2024.

Reflecting on all of this, the complement of judges serving on the Court today is very different than it was even a few short years ago. We have lost much judicial experience. However, we have an energetic and highly qualified set of jurists who I am confident will well serve the people of Saskatchewan for many years.

Case load

The Court continues to be a busy place. In 2023, the Court opened 159 civil files and 94 criminal files and disposed of 159 appeals. Last year, the Court – that is panels of three judges or more – issued 135 written judgments on appeals. 125 of those written judgments were reported with a neutral citation. In ten of those cases there was either a dissenting or concurring judgment. In addition, the Court disposed of 24 appeals through oral judgments. Moreover, panels of the Court disposed of 20 applications, 13 of which received written reasons. Individual judges of the Court, sitting in Chambers, dealt with 143 applications, 91 of which received written reasons. Six Chambers decisions were published with a neutral citation. These numbers are very comparable to prior years.

Manner of appearances

Even though much of the world shut down in March of 2020 and was interrupted for several years after that, many will know that the operations of the Court of Appeal continued seamlessly through the pandemic. The Court was able to carry on “business as usual” with the regular schedule and the regular number of cases by conducting its proceedings using video technology. Indeed, so far as I know, only one appeal in our Court had to be rescheduled while the appropriate protocols were put in place.

I mention this because the Court has been changed permanently due to this experience. Of course, litigants can now appear in person. However, in all matters we also now allow parties to appear using remote technology. This significantly improves access to justice. No longer must litigants or their lawyers travel to Regina or Saskatoon to present their case, whether it be an appeal or Chambers matter. Instead, they can do so from their office, wherever it may be. Litigants and lawyers are embracing this facility. As an example, today I presided at an appeal involving a

dispute over several million dollars, with an extensive record, where both lawyers presented argument remotely, and only the judges and the Court staff were present in the courtroom. The litigants and the lawyers could easily have justified the expense of an in-person hearing. However, evidently, they were confident that their cases could be heard and would be fairly decided without incurring the expense of attending in person.

Here are some concrete statistics for 2023 to put this single occurrence into a broader perspective.

Percentage of Appearance for Civil Hearings

	Appeal Hearings		Chambers Hearings	
	In-Person	**Remote**	**In-Person**	**Remote**
Appellant Counsel	78%	22%	58%	42%
Respondent Counsel	86%	14%	50%	50%
Appellant	59%	41%	37.5%	62.5%
Respondent	43%	57%	37%	63%

Percentage of Appearance for Criminal Hearings

	Appeal Hearings		Chambers Hearings	
	In-Person	**Remote**	**In-Person**	**Remote**
Appellant Counsel	70%	30%	23%	77%
Respondent Counsel	82%	18%	6%	94%
Appellant	51%	49%	13%	87%
Respondent	33%	67%	0[1]	100%

I would add only that these numbers do not precisely quantify the prevalence of self-represented litigants. In round numbers, in roughly 30% of our civil matters one or both parties are self-represented.

[1] The numbers for respondent parties in Chambers were low to nil since Crown appeals will typically have counsel representing the respondent.

Rule 15

As many will be aware, on January 1, 2023, the Court changed Rule 15 of *The Court of Appeal Rules*. Prior to that date, unless otherwise ordered, in most cases, the service and filing of a notice of appeal stayed the execution of the judgment under appeal pending the disposition of an appeal. As of January 1, 2023, Saskatchewan adopted a practice followed in most other jurisdictions by directing that a judgment is stayed on an appeal only if a court makes an order to that effect. One of the reasons for this change was to reduce the number of appeals that are launched for tactical reasons.

The Court had some concern that the revision to Rule 15 might prompt more litigation. In fact, the opposite has proven to be true. Comparing a 17-month period prior to the Rule change with the 17-month period after, the total applications under Rule 15 reduced from 36 to 26.

Expanded role for the registrar

By convention, all applications brought pursuant to the *Rules* have been heard and determined by a singe judge in Chambers. This practice has existed notwithstanding Rule 60, which provides the registrar may hear and determine applications under Rules 10(2) (Filing notice of appeal), 18 (Appeal book required), 22(5) (Agreement as to contents and completion of appeal book), 28(1) (Contents of factum), 34(1) (Late filing of factum), or 43(3) (Content of appeal book on expedited appeal). Practice Directive No. 9 came into effect on April 26, 2024. It provides that the registrar will hear and determine applications under these rules unless any such application is referred by the registrar to a judge for a decision by the judge.

Public information

The Court is constantly looking at ways to provide information to the public and the bar in a practical way. Recently, the Court expanded the scope of information about its schedule on its website. With one click from a drop-down menu, any person can see a complete list of the appeals that have been set down for hearing, including the date, time, case name, court file number, a short description of the case, and the name of the court or tribunal, and judge, from which the appeal is taken.

Looking ahead

The Court will be soon soliciting feedback from the bar on possible further changes to the Court's Chambers practices and its practices surrounding the filing of the record of the court or tribunal from which an appeal is taken. I will mention several changes the Court will be looking at.

Rule 48(2) contemplates that, subject to the direction of the Chief Justice, regular Chambers are to be held in Regina on the second and fourth Wednesday of each month and in Saskatoon on the first day of each regular court sitting. Applications are to be made returnable in accordance with this Rule. In practice, Chambers matters are now routinely scheduled by Court staff to be heard at specific times and on days other than those prescribed in the Rule, considering the complexity of the overall Chambers list, the demands on the Chambers judge and the schedules of the parties. All of this can be quite chaotic at times and requires significant administration by the Court and counsel. The Court will be examining changes to the *Rules* that will align with present practices. If changes are made, it will be with a view to bringing more predictability for parties and also possibly expanding the number of days that Chambers matters may be made returnable.

Rule 48(5) provides that if a judge or the registrar sees fit, an application in Chambers may be heard by telephone or video conference. The Court is considering changing the Rule to make the presumptive position to be that Chambers matters will be heard by video, with an in-person hearing to be at the direction of the judge or registrar.

Pertaining to the appeal record, the *Rules* presently require that parties serve a paper copy of most documents and also file an electronic copy with the registrar. This dual requirement existed in the past because not all litigants and judges were comfortable dealing with an electronic record only. However, the additional requirement for a paper copy adds considerably to the costs to the parties. The Court considers it timely to reexamine the necessity of a paper copy of documents.

Importance of the work of the CBA

I end not by talking specifically about the Court of Appeal but instead by making a few broader points. My messages are simple, three in number and build on each other. The first is that *the law matters*. The second is that the *Courts are vital* to this. The third is an encouragement to the CBA to *keep up its good work*.

We tend to take for granted that we live in a society that is subject to law – the rules of civil society – and what that really means. Of course, what I am talking about here is the rule of law. Even among lawyers, there is sometimes an understandable reaction by some, when they hear the phrase "Rule of Law", to roll their eyes. It is the kind of thing that we all read about in a jurisprudence class in our first year of law school and probably did not think it had any real importance in our day-to-day lives, whether as lawyer or simple citizen. But the Rule of Law is a concept with very practical and important ramifications.

The standard of living we enjoy, the largely safe nature of our communities, and the rights and freedoms we appreciate as Canadians are all dependent upon an organized and effective legal system that is recognized and respected by individual participants in our society. I will give but a few examples.

We can own a home only because we have a functioning and accepted system of land titles. We can borrow money to buy that home only because banks can be confident that their lending agreements will be honoured and if they are not they can be enforced. We can walk safely in our streets because we have criminal laws that are generally respected and will be enforced if they are not. We enjoy the rights and freedoms we do because of the *Charter* that sits over top of all our other laws. I can think of no part of our society that is not dependent on a functioning legal system. One needs only to think about Haiti and other places in the world where there is a sub-optimal legal system to understand that this simple fact is true.

I am confident that all of you here know all this, even if you don't think about it daily. As lawyers you play a role in all of this. As solicitors you implement and interpret society's rules. As barristers you assist in their enforcement.

As lawyers, you also understand that our Courts are the indispensable backstop to all of this. Most of the times contracts are respected, crimes are not committed, and rights are valued. However, our Courts are there when this does not occur. They provide the assurance that something will be done if society's rules are not followed. Our independent Courts allow our citizens to be confident that they can go about their personal and economic business, knowing that the other members of society will as well. In a very real way, therefore, civil society's very existence depends on a functioning system of Courts, whose rulings are broadly accepted by all members of society.

Recently, Chief Justice Wagner spoke up against the increasing number of attacks against judges and Courts, particularly those that challenge the independence and integrity of our Courts and judges. These attacks – particularly when they come from persons in authority – seriously undermine the acceptance of court rulings. An erosion of the public confidence in our legal system stands to affect not just the public acceptance not only of rulings on cases with a social or political dimension but, ultimately, all Court rulings. In this way, the attacks against Courts undermine *all* of the rules that govern our society, from the sanctity of land titles to the enforceability of contracts, to the observance of our criminal law and so on. For this reason, the direct and indirect attacks against judges, Courts and their rulings, attacks that are becoming more prevalent and acceptable in many quarters, implicate much more than the functioning of the Courts; they strike against the foundations of our society.

I thank the CBA for its indispensable work in reinforcing all of this on a day-to-day basis. As routine as this may appear to become, I implore the CBA and its individual members to recognize that none of this can be taken for granted. I encourage you to continue to do the necessary hard work to maintain Canada's legal system.

June 13, 2024

The Honourable Robert W. Leurer
Chief Justice of Saskatchewan