

## **2023 CBA Report**

I am once again very pleased to have the opportunity to give the CBA and its members a brief update on the life and times of the Court of Appeal. Let me flag five points that might be of particular interest.

First, calendar year 2022 was quite a busy one for the Court. In those 12 months we disposed of 298 appeals, rendering 98 written civil decisions and 71 written criminal decisions. Those numbers are down slightly from 2021 but they are in line, overall, with what we have been seeing in the last few years. Also, the trend continues to be that the average or typical case we are hearing seems to be more involved or complex than was an average or typical case a few years ago. So, I can assure you that the Court is not out looking for work.

Second, personnel-wise, there have been changes on the Court since my report of last June. Justices Whitmore and Ryan-Froslic, who were both supernumerary judges, retired as planned in September. Justice Jill Drennan was appointed to the Court last October. She is the first judge ever to join the Court from a Legal Aid background and the first judge with a criminal defence pedigree to join the Court since Cal Tallis was appointed in 1981. These changes are all part of the normal and unavoidable renewal that marks the life of any court. Our very strong court will continue to be very strong.

Third, I can report that the Court of Appeal's move to hybrid hearings is now very much an entrenched part of our regular everyday operations. The judges are physically present in the courtroom but lawyers, litigants, the media and members of the general public can choose, at their individual option, to either be there in person or to attend virtually by Webex. We hear matters with all of the lawyers in the courtroom, with none of the lawyers in the courtroom, and with some

of the lawyers in the courtroom and some of them online. That said, for appeals proper, in-person appearances by counsel remain very much the norm. Things in Chambers, however, are quite different. The typical appearance in that forum is by Webex video and in-person appearances are now the clear exception rather than the rule. So, this is a significant change in appellate advocacy in this province. In my view, it is a change that is working well. The access to justice upsides of virtual and hybrid hearings are self-evident.

Fourth, CBA members might be interested to know that the Court implemented a general re-fresh of its *Rules* during 2022. The most significant change in this regard was to Civil Rule 15. That Rule used to provide that, unless otherwise ordered by a judge, the service and filing of a notice of appeal stayed the execution of the judgment under appeal pending the disposition of the appeal. Saskatchewan was something of an 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. That is the direction we have now gone. The filing of a notice of appeal no longer automatically stays the decision appealed from. A stay must be ordered. We believe that this more properly reflects the notion that a trial-level judgment should be seen as presumptively correct, rather than, in effect, as being presumptively incorrect. It has been smooth sailing on this front since the amendment came into force on January 1.

Fifth, let me advise that the Court has adopted both a civil and a criminal practice directive on electronic filing. They set out the required formatting for appeal books and factums. The bottom line is that these types of documents must be searchable, have appropriate internal bookmarking, and referenced authorities must be hyperlinked. This is a prerequisite for filing with the Registry. All of this makes electronic documents much easier to use and much more helpful for both counsel and the Court. Relatedly, we are also abandoning the idea of books of authorities. The reality is

that most members of the Court no longer use them, preferring to operate electronically. We do not want to burden litigants with the cost of preparing materials that will just gather dust. New practice directives with respect to books of authorities will come into force on July 1, 2023.

Those are my five points. Let me also say, if I might, that this will be my last report of this kind, given my upcoming retirement on August 31. As a result, I want to take this opportunity to say that I have very much enjoyed and appreciated my career-long association with the CBA. That association goes back to my very first years at the bar, extends through opportunities as a lawyer to chair two national standing committees, flows through the many times that I have spoken as a lawyer and as a judge at various CBA educational programs, and includes the fellowship and good company that I have enjoyed at many CBA events of one sort or another over the years. All of this has been an important and rewarding part of my professional life and I am grateful to the CBA for all that it has given me.

Finally, and in closing, let me re-make a point that I have been making for a number of years now. Very simply put, it is this. The democratic life that we Canadians know and value is under pressure from many directions and in many ways – some subtle and some not. It is absolutely essential that, going forward, 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 the independence of the courts and the rule of law. That, in my respectful view, must be a key mission for Canada’s preeminent lawyers’ organization. I urge the CBA to make its voice count in the days ahead.

The Honourable Robert G. Richards  
Chief Justice of Saskatchewan