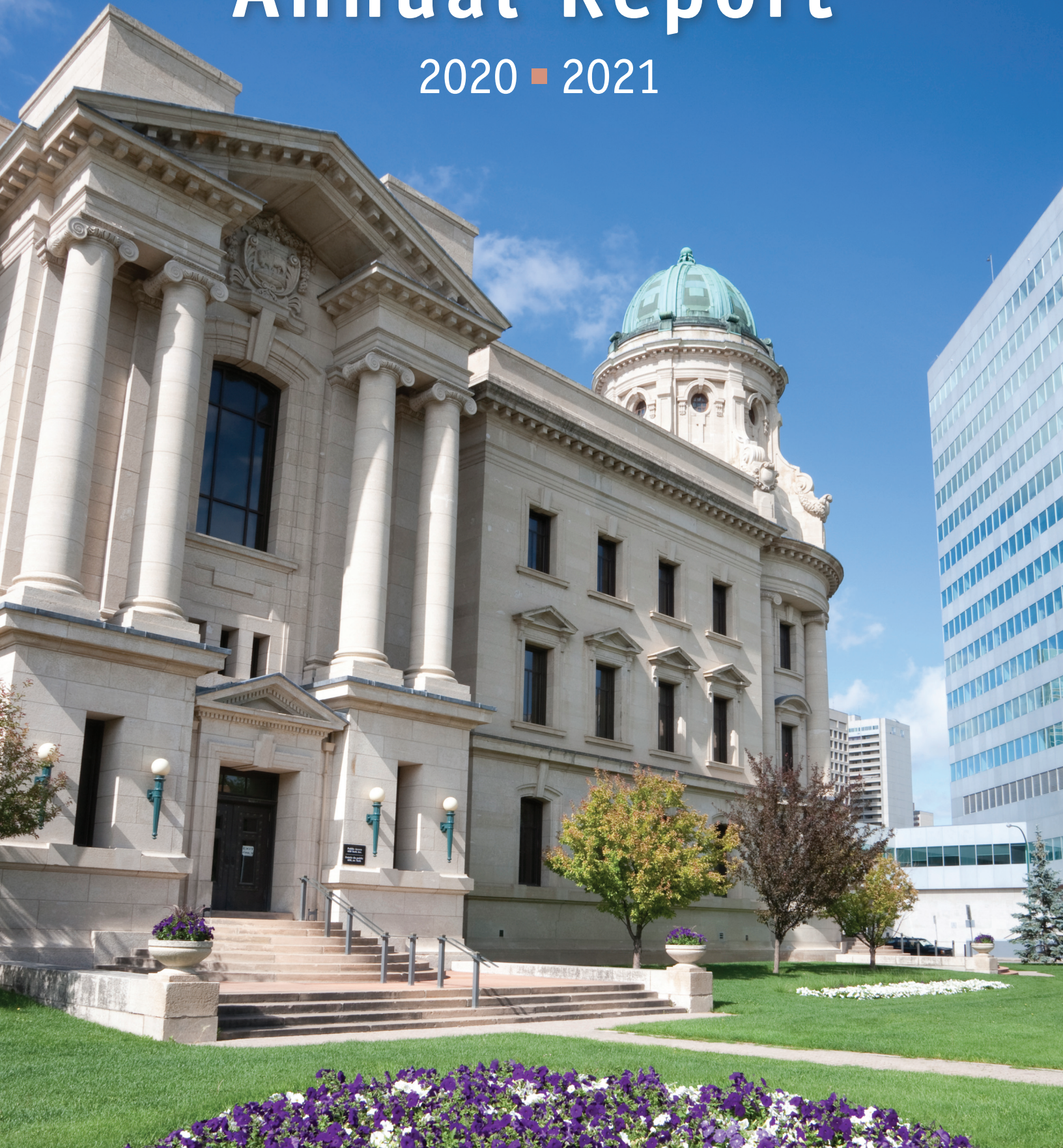




The Manitoba Court of Appeal

# Annual Report

2020 ■ 2021





**The “Justice” sculpture stands at the entrance of the Law Courts Building, 408 York Avenue in Winnipeg. Local artist, Professor Gordon Reeve is the creator of this massive sculpture.**

*“ Consisting of three ribs or legs, the sculpture is topped by three long arms, each taking a different serpentine form. Capable of moving, these arms are balanced such that they can be set in motion by a visitor with little effort, despite their great weight. The concept draws to mind the metaphoric scales of justice, an image which appears carved in stone at the adjacent historic Law Courts Building (1912-16, 411 Broadway) visible from the site of “Justice.” At the time, Reeve stated of his work: “I wanted to create a structure to carry the metaphor of justice, one that is responsive to the individual, yet enduring and lasting. My hope is that even a child will make it move.”*

([www.winnipegarchitecture.ca/justice/](http://www.winnipegarchitecture.ca/justice/))



THE HONOURABLE RICHARD J. CHARTIER  
CHIEF JUSTICE OF MANITOBA

THE LAW COURTS  
WINNIPEG, MANITOBA R3C 0P9

MANITOBA COURT OF APPEAL  
COUR D'APPEL DU MANITOBA

L'HONORABLE RICHARD J. CHARTIER  
JUGE EN CHEF DU MANITOBA

PALAIS DE JUSTICE  
WINNIPEG (MANITOBA) R3C 0P9

The Honourable Kelvin Goertzen  
Minister of Justice and Attorney General  
Legislative Building  
Room 104, 450 Broadway Avenue  
Winnipeg MB R3C 0V8

Dear Minister:

We are pleased to enclose the Manitoba Court of Appeal Annual Report for the fiscal year April 1, 2020 to March 31, 2021.

Sincerely,

*Original signed by*

Richard J. Chartier  
Chief Justice of Manitoba

Encl.



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# Message from the Chief Justice of Manitoba



**The Honourable  
Mr. Chief Justice Richard J.F. Chartier**

The Chief Justice of Manitoba is also the Chief Justice of the Manitoba Court of Appeal.

The Court of Appeal is the highest Court in Manitoba. It performs two important roles. First, it reviews lower court decisions and some administrative tribunal decisions for errors and corrects them when required. In addition to its error-correcting role, the Court of Appeal plays a law-settling role by changing or clarifying the law and setting a precedent that lower courts must follow.

The Government of Manitoba is divided into three branches: the legislative branch; the executive branch; and the judicial branch. The Court of Appeal, like the Court of Queen's Bench and the Provincial Court, forms part of the judicial branch of government. Each branch has separate powers and areas of responsibility. This is called the separation of powers. The judicial branch is independent from the two other branches of government.

The Canadian Constitution guarantees the principle of judicial independence. An independent judiciary is indispensable to impartial justice. By protecting judges against outside influence, it ensures that any dispute entrusted to judges will be decided fairly and impartially, in accordance with the law and evidence, without concern or fear of interference or control by another person, institution, corporation or other branch of government.

The Chief Justice of Manitoba, in addition to presiding over appeals and managing the administration of the Court of Appeal, has other duties outside of the Court. For example, the Chief Justice serves as the Administrator of the Government of Manitoba and executes the office and functions of Lieutenant Governor during such periods of time when the Lieutenant Governor is unable to fulfil that role by reason of absence from the province, illness or other inability. The Chief Justice of Manitoba is also called upon to chair the Advisory Council of the Order of Manitoba as well as the Queen's Counsel Advisory Council of Manitoba.

We cannot look back on 2020/2021 without reflecting on the COVID-19 pandemic. We have felt its impact in every aspect of our lives. No institution has been spared. This includes the justice system. We have had to pivot, adopt new policies, and change procedures. Remote hearings by videoconference or teleconference are increasingly commonplace. The Court of Appeal has had to evolve rapidly to balance its institutional obligations – including access to justice – with very real public health and safety requirements. While the worst of the pandemic may well be behind us, we continue to adjust to an evolving normal.

I am pleased to submit the Annual Report of the Manitoba Court of Appeal for the fiscal year April 1, 2020 to March 31, 2021.

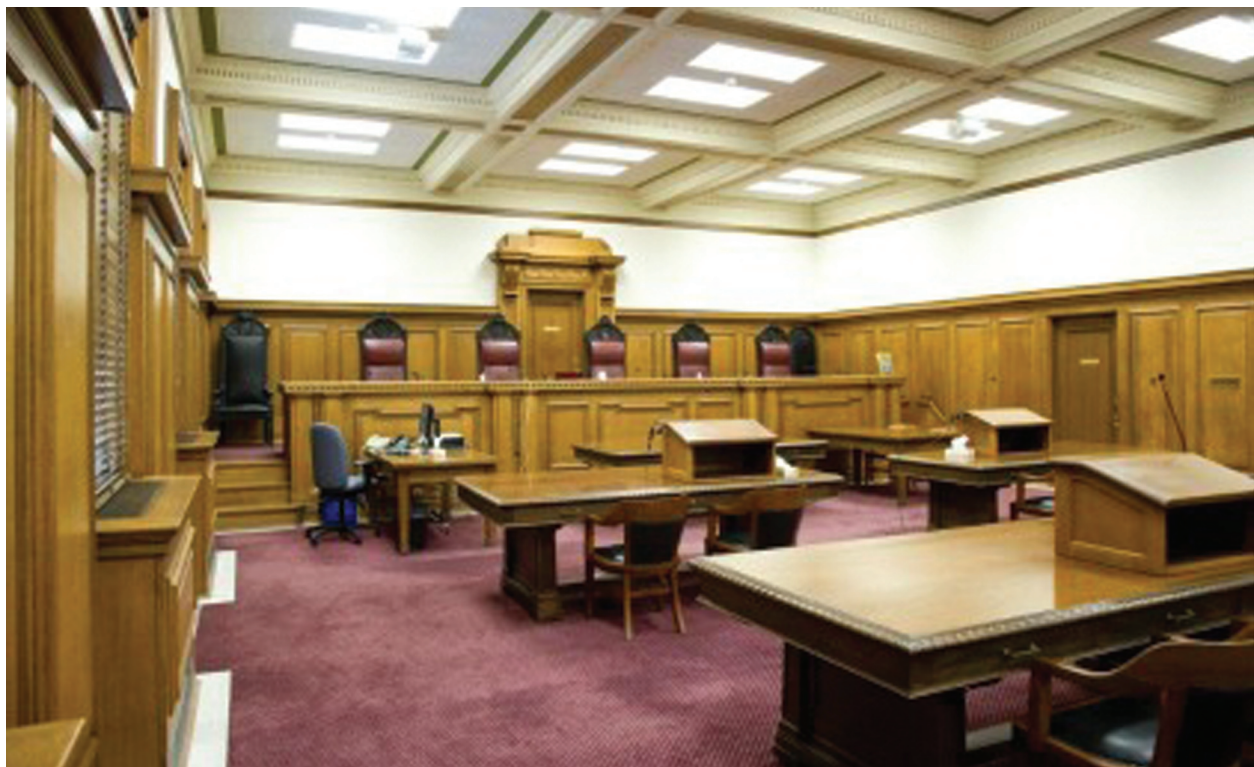
# About the Court of Appeal

The Court of Appeal is the highest Court in Manitoba. It was established in 1906 and sits only in Winnipeg. The Court hears appeals from the Court of Queen's Bench and appeals from the Provincial Court that involve indictable criminal offences. In addition, the Court of Appeal provides opinions on questions referred to it by the Lieutenant Governor in Council under *The Constitutional Questions Act*. Finally, the Court hears, in limited circumstances and as mandated by statute, appeals from professional bodies and some government boards and tribunals, usually when a question of law or jurisdiction is involved and only after leave to appeal has been granted.

In 2020/2021, the Court of Appeal was comprised of 11 judges who are federally appointed pursuant to the *Judges Act*, RSC 1985, cJ-1. Three of the 11 were supernumerary judges.

Under the *Judges Act*, a supernumerary judge is one who may, after being in judicial office for at least 15 years and whose combined age and number of years of judicial service is not less than 80 or after the age of 70 years and at least 10 years of judicial service, elect to give up his or her regular judicial duties and hold judicial office as a supernumerary judge.

The Court of Appeal normally sits in panels of three judges, which constitute a quorum, but occasionally, on matters of great importance, will sit with a panel of five judges.



Courtroom 330

# The Judges of the Court of Appeal

Judges	Date of Appointment
The Honourable Mr. Chief Justice Richard J.F. Chartier	<ul style="list-style-type: none"> <li>■ Appointed Chief Justice of Manitoba on March 7, 2013</li> <li>■ Appointed a Judge of the Court of Appeal on November 22, 2006</li> <li>■ Appointed a Judge of the Provincial Court on August 16, 1993</li> </ul>
The Honourable Madam Justice Freda M. Steel	<ul style="list-style-type: none"> <li>■ Elected supernumerary status on May 1, 2014</li> <li>■ Appointed a Judge of the Court of Appeal on February 28, 2000</li> <li>■ Appointed a Judge of the Court of Queen’s Bench on October 3, 1995</li> </ul>
The Honourable Madam Justice Holly C. Beard	<ul style="list-style-type: none"> <li>■ Elected supernumerary status on January 1, 2019</li> <li>■ Appointed a Judge of the Court of Appeal on September 9, 2009</li> <li>■ Appointed a Judge of the Court of Queen’s Bench on November 27, 1992</li> </ul>
The Honourable Mr. Justice Marc M. Monnin	<ul style="list-style-type: none"> <li>■ Elected supernumerary status on September 1, 2016</li> <li>■ Appointed a Judge of the Court of Appeal on February 3, 2011</li> <li>■ Appointed Chief Justice of the Court of Queen’s Bench on March 26, 2003</li> <li>■ Appointed a Judge of the Court of Queen’s Bench on August 27, 1997</li> </ul>
The Honourable Madam Justice Diana M. Cameron	<ul style="list-style-type: none"> <li>■ Appointed a Judge of the Court of Appeal on November 2, 2012</li> <li>■ Appointed a Judge of the Court of Queen’s Bench on February 3, 2011</li> </ul>
The Honourable Mr. Justice William J. Burnett	<ul style="list-style-type: none"> <li>■ Appointed a Judge of the Court of Appeal on March 7, 2013</li> <li>■ Appointed Associate Chief Justice of the Court of Queen’s Bench (General Division) on February 3, 2011</li> <li>■ Appointed a Judge of the Court of Queen’s Bench on September 9, 2009</li> </ul>
The Honourable Mr. Justice Christopher J. Mainella	<ul style="list-style-type: none"> <li>■ Appointed a Judge of the Court of Appeal on October 1, 2013</li> <li>■ Appointed a Judge of the Court of Queen’s Bench on October 4, 2012</li> </ul>
The Honourable Madam Justice Jennifer A. Pfuetzner	<ul style="list-style-type: none"> <li>■ Appointed a Judge of the Court of Appeal on June 19, 2015</li> <li>■ Appointed a Judge of the Court of Queen’s Bench on October 9, 2014</li> </ul>
The Honourable Madam Justice Janice L. leMaistre	<ul style="list-style-type: none"> <li>■ Appointed a Judge of the Court of Appeal on June 19, 2015</li> <li>■ Appointed Associate Chief Judge of the Provincial Court on September 9, 2009</li> <li>■ Appointed a Judge of the Provincial Court on November 22, 2006</li> </ul>



# The Judges of the Court of Appeal

Judges	Date of Appointment
The Honourable Madam Justice Karen I. Simonsen	<ul style="list-style-type: none"> <li>■ Appointed a Judge of the Court of Appeal on August 31, 2018</li> <li>■ Appointed a Judge of the Court of Queen’s Bench on December 9, 2004</li> </ul>
The Honourable Madam Justice Lori T. Spivak	<ul style="list-style-type: none"> <li>■ Appointed a Judge of the Court of Appeal on March 26, 2019</li> <li>■ Appointed a Judge of the Court of Queen’s Bench on May 19, 2005</li> </ul>



From left to right Justice Diana Cameron, Chief Justice Richard Chartier, and Justice Jennifer Pfuetzner

# 2020/21: The Year of the Pandemic

## Prioritizing the safety of all court participants, while balancing the need to maintain judicial operations

On March 11, 2020, the United Nations World Health Organization declared COVID-19 a pandemic. On March 12, 2020, Manitoba reported its first case of COVID-19. The next day, the three levels of Manitoba Courts took pro-active measures to protect justice system participants and reduce the spread of COVID-19. These measures restricted courthouse access to only those persons necessary to court proceedings. Although public access was curtailed, consistent with the open court principle, hearings remained open to the media.

On March 20, 2020, the Manitoba government declared a state of emergency. In an effort to “flatten the curve”, on April 1, 2020, all non-essential services and businesses were ordered closed. As an essential service, the judicial branch remained operational. From March 30, 2020 to April 17, 2020, the Court of Appeal deferred all hearings in order to prepare for a transition to remote proceedings. During this period, the Court set up the necessary infrastructure, tested new videoconferencing technology, and prepared amendments to the court rules.

Regulation 32/2020 was registered on April 17, 2020, amending the court rules to allow, in exceptional circumstances, for remote hearings by way of audioconference or videoconference.

The amendments also codified the Court’s informal practice of “paper appeals”, allowing – if the parties agree – for an appeal, motion or application to be determined based on written materials, without an oral hearing.

April 20, 2020 marked the first ever Court of Appeal hearing conducted remotely by videoconference, with Justice Freda Steel, Justice William Burnett, and Justice Christopher Mainella hearing the *R v Ramos* appeal. On August 24, 2020, the Court resumed in-person hearings. These continued until November 3, 2020, after an increase in COVID-19 cases resulted in further public health orders in the Winnipeg region. In short, in the fiscal year 2020-2021, the Court of Appeal heard all of its appeals remotely except for a 10-week period in the fall.

During this COVID-19 year – in addition to using videoconferencing technology – the Court of Appeal implemented other new measures aimed at maintaining operations while still promoting public safety. The Court allowed for flexibility in the filing of documentation normally subject to formal requisites. To minimize in-person appearances at the Registry counter, the Court released its judgments electronically.



Justice Burnett



Justice Steel



Justice Mainella

# 2020/21: The Year of the Pandemic



Manitoba Court of Appeal Judges

As a result of strict adherence to COVID-19 safety protocols by all participants and staff, the Court was pleased to report that no COVID-19 outbreaks occurred in the courthouse.

In the end, the pandemic did not greatly affect the number of matters heard by the Court of Appeal (both chambers and appeal hearings).

As noted in the table below, the fiscal year 2020-2021 showed only a slight reduction in the number of matters heard from that in previous years:

Fiscal Year	# of Matters Heard
2018 - 2019	170
2019 - 2020	165
2020 - 2021	156

## Retirements

With the end of our spring session, came an end to the illustrious careers of two of our judges, Justice Michel A. Monnin and Justice Barbara M. Hamilton.

Justice Michel Monnin was appointed to the Court of Queen's Bench in 1984 after 14 years as a lawyer. In 1995, Justice Monnin was appointed to the Court of Appeal. Always providing a full and fair hearing, Justice Monnin exacted excellence from those who appeared before him. As a judge, he was fair, straightforward, and direct. Justice Monnin served as a judge for 36 years.

Madam Justice Barbara Hamilton was appointed to the Court of Queen's Bench in 1995 after 18 years as a lawyer. In 2002, Justice Hamilton was appointed to the Court of Appeal. The quintessential appellate court judge, she had all of the necessary attributes: integrity, intelligence, honesty, decisiveness, common sense, sound judgment, fairness and impartiality. Justice Hamilton served as a judge for 25 years.

Both Justices were a huge asset to the Court and will be missed. We wish them all the best in their retirements.

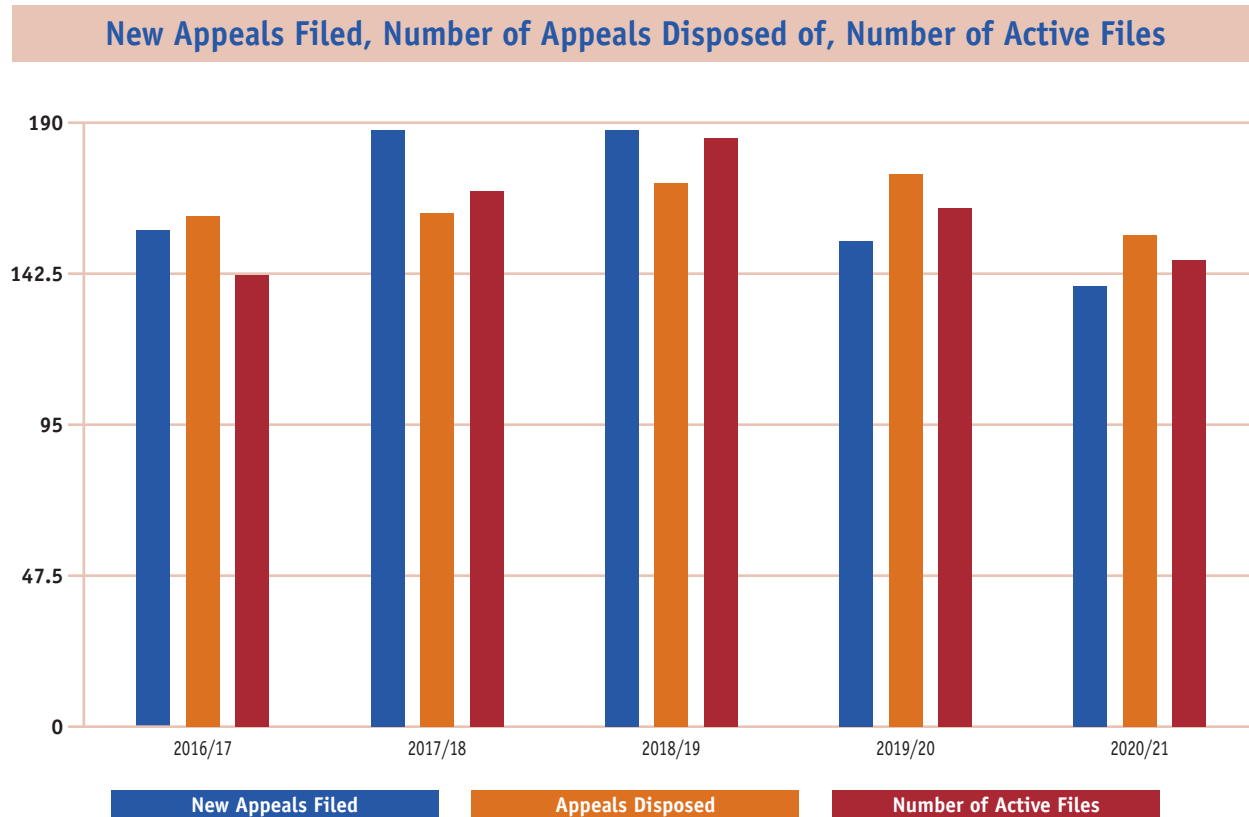
# Summary of the Year in Numbers

## The Manitoba Court of Appeal Inventory

It is important to keep our inventory at a manageable number. The inventory represents all appeal files that are in our Registry system that have not yet been disposed of. The inventory includes new appeals recently filed; appeals that are not yet perfected (which means that they are not yet ready to be assigned a hearing date); appeals for which a hearing date has been assigned and are waiting to be heard; and appeals that have been heard, but where a decision has not yet been released. In essence, the total number of new appeals filed less the total of files disposed of represents our inventory. The goal of our Court is to get our inventory down to 125.

A new appeal enters our Registry system when a notice of appeal is filed. The following table shows how many new appeals have been filed in a particular year. The average number of new appeals filed over that time was 165 per year. The only discernable trend is that the last three years (160 on average) saw a 4% decrease over the previous three years (166 on average).

An appeal is disposed of when a decision in the matter has been released or when the appeal has been withdrawn or deemed abandoned. The following table shows how many appeals have been disposed of in any particular year. The noticeable trend is that more matters are being disposed of each year. When the number of appeals disposed of outpaces the number of new appeals filed, the total number of active files is reduced.



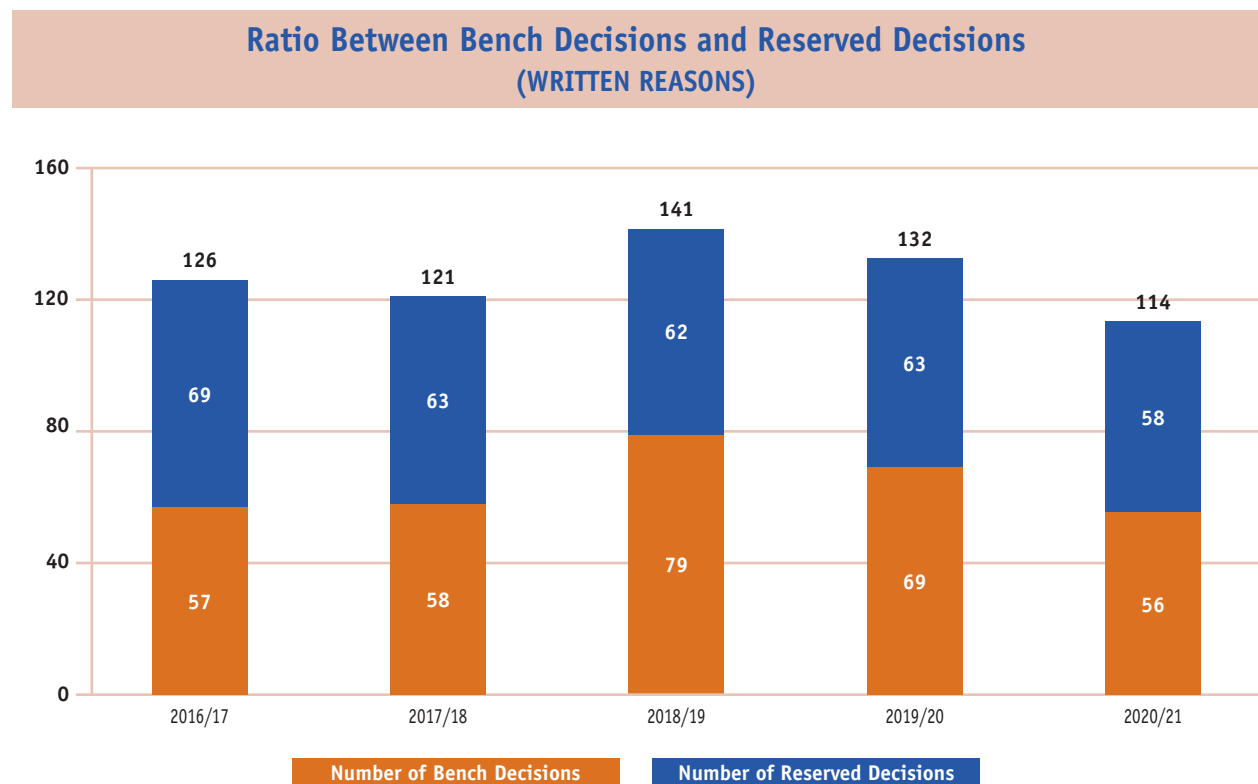
# Summary of the Year in Numbers

## Number of Written Decisions Delivered by the Court

A panel of three judges typically hears appeals. As a rule, each time the Court hears an appeal, it will deliver written reasons. When a motion or an application is filed with the Registry, a judge sitting alone will hear it. From time to time written reasons are issued for motions or applications to the Court, but generally, only oral decisions are delivered.

## Ratio Between Bench and Reserved Decisions

When a panel of three judges hears an appeal, it will either reserve its decision (Reserved Decision) or issue it from the Bench (Bench Decision). The ratio typically stands at 50/50.

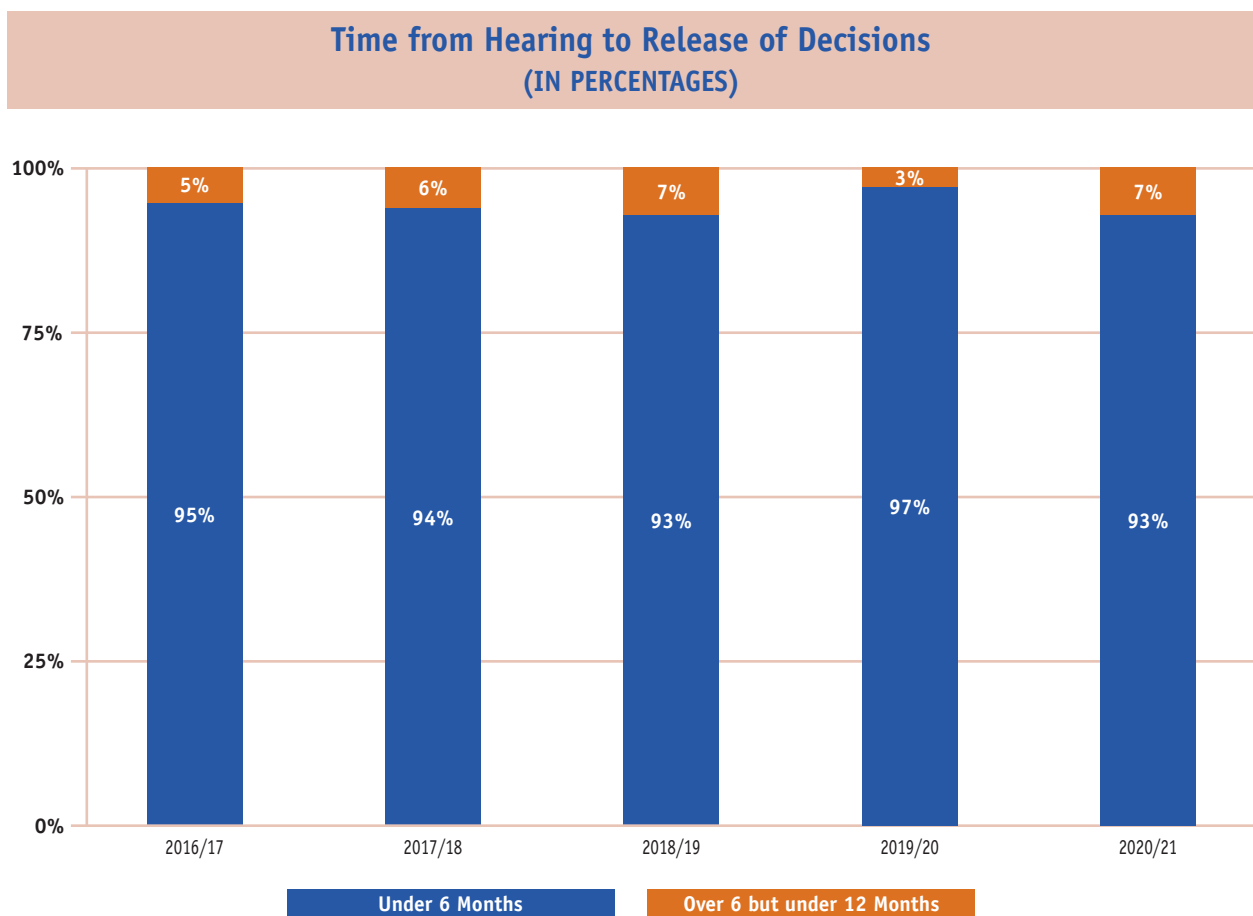


# Summary of the Year in Numbers

## Time from Hearing to Release of Decisions

(IN PERCENTAGES)

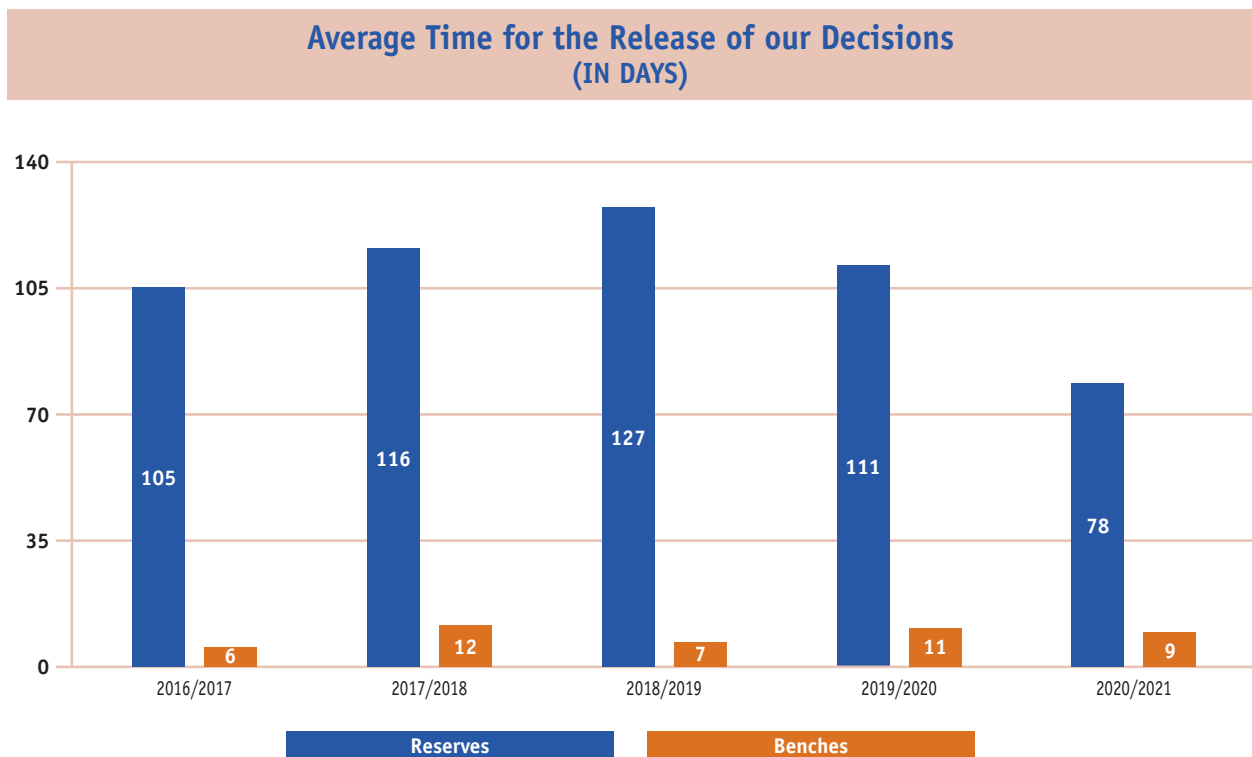
The Canadian Judicial Council issued guidelines stating that trial court decisions should be delivered within six months after the trial hearing, except in special circumstances. Our Court tries to follow those guidelines as much as possible. In certain circumstances, that is not possible; for example, when there are either concurring or dissenting reasons or when the matter is extremely complex. However, 95% of the time our decisions are released within 6 months. The remaining 5% are always issued within the 12-month period following the hearing.



# Summary of the Year in Numbers

## Average Time for the Release of our Decisions (IN DAYS)

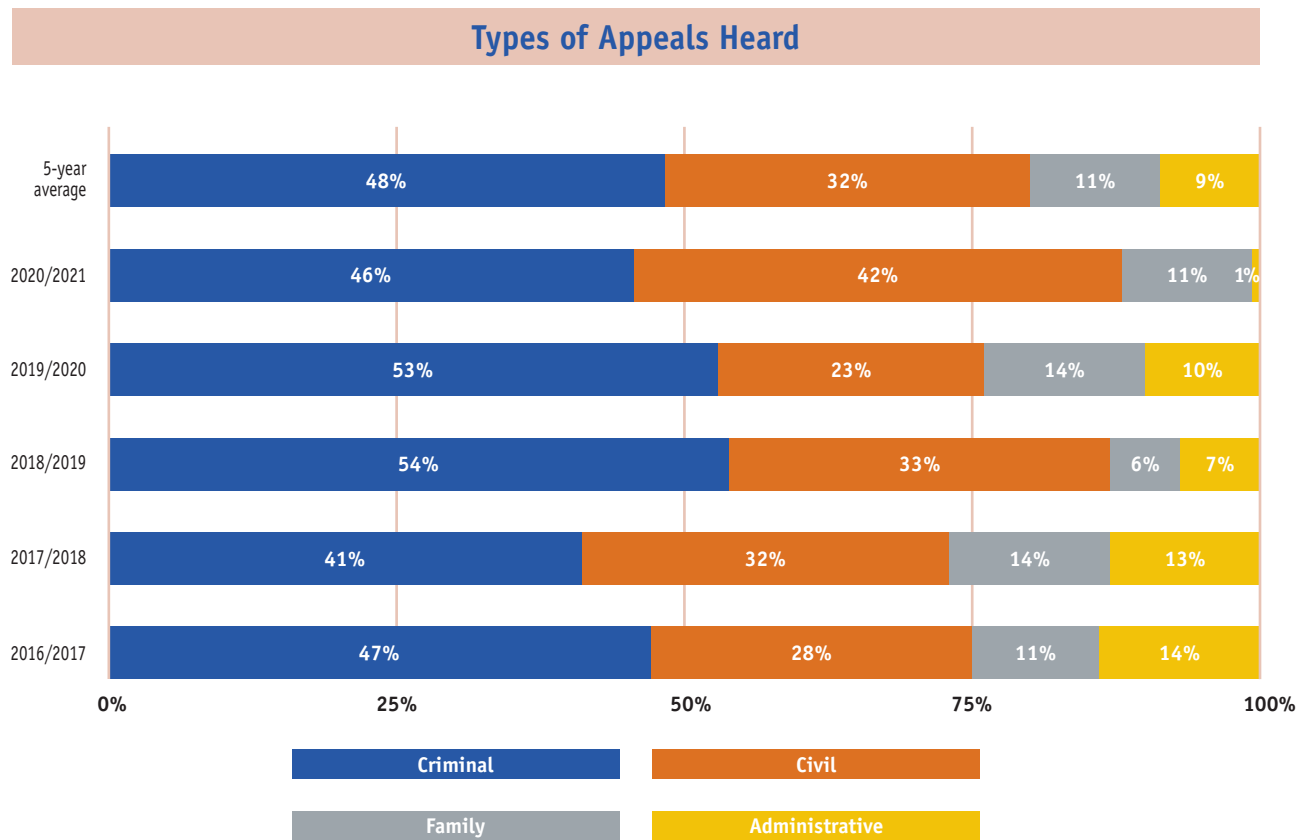
Justice delayed is justice denied. The MBCA understands that it is important for our decisions to be issued in a timely fashion. On average, our reserved decisions are released within four months from the date of the hearing. As for our bench decisions, they are released, on average, nine days after the hearing.



# Summary of the Year in Numbers

## Appeals by Area of Law

The types of appeals that our Court hears can essentially be broken down into four areas of law. Approximately half of our appeals relate to criminal law matters. One third are civil law matters, while family law and administrative law matters each represent 10% of our cases.

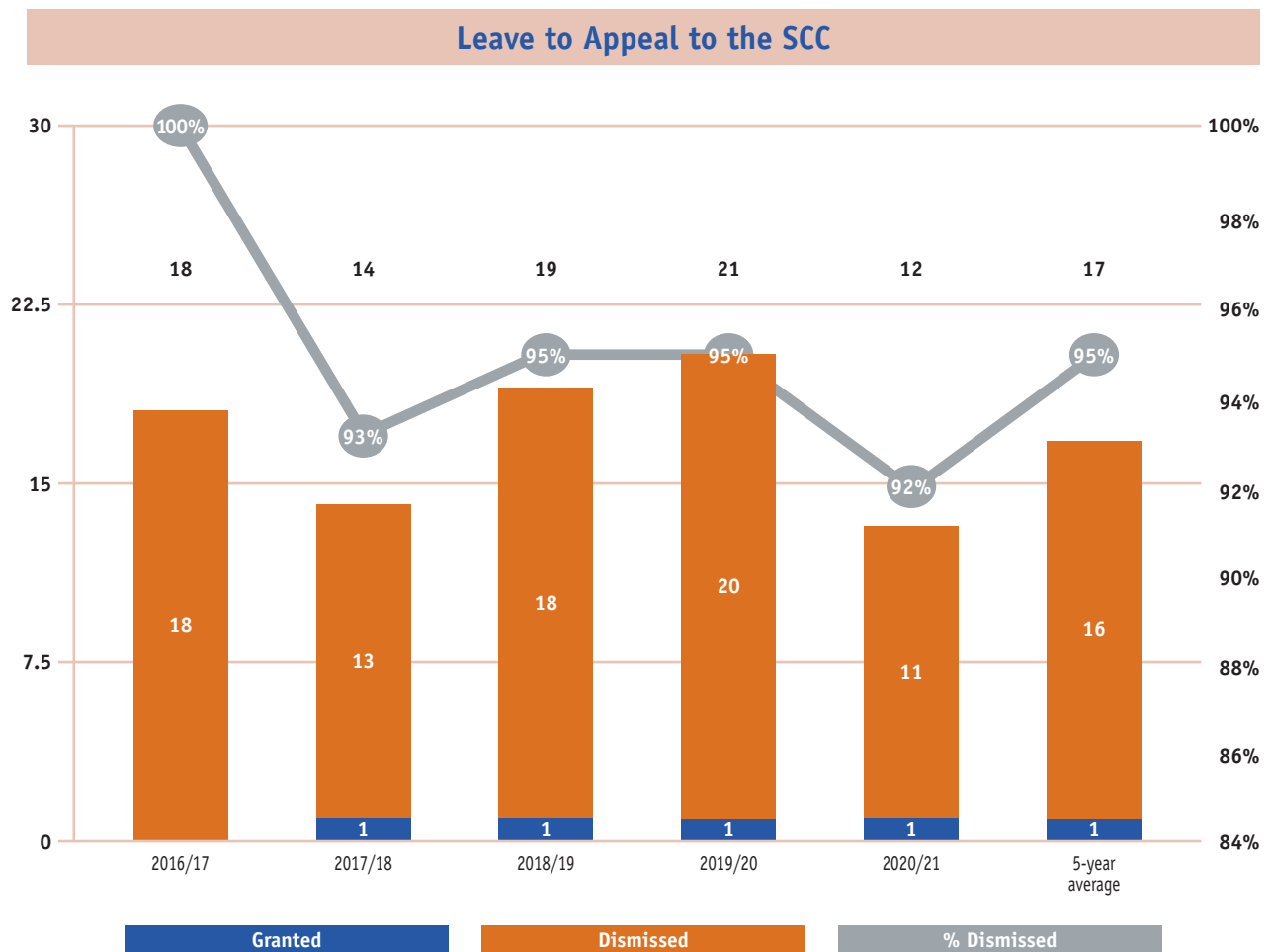




# Summary of the Year in Numbers

## Leave Applications to the Supreme Court of Canada from Manitoba Court of Appeal Decisions

The MBCA averages over 125 decisions a year. When a party disagrees with a MBCA decision, it sometimes has a right to appeal directly to the SCC. However, most of the time it must be granted permission and apply for leave to appeal to the SCC. On average, the SCC hears only one appeal from the over 125 MBCA decisions rendered each year. Most of the time (95%) permission to appeal is refused by the SCC. The table below shows the numbers:



# Closing Remarks

In his best selling book *Good to Great*, Jim Collins notes that progressing from good to great requires that an organization have disciplined people, engaging in disciplined thought, taking disciplined action. In 2014, the Court of Appeal embraced this concept, adopting our Mission Statement: To Deliver Quality Decisions in a Timely Fashion.

We are pleased to submit our Annual Report, which reflects the outcomes of the Court's disciplined approach, as well as its adaptability in the face of new challenges and opportunities. Despite a pandemic, the Court was able to continue to deliver robust decisions in a timely manner with no sacrifice to the quality of our services or our judgments.

It is clear enough that achieving the Court's mission demands complete commitment and discipline on the part of our judges. At the same time, the support and engagement of the Court's entire staff is essential to achieve this goal. I know I speak for all of my colleagues at the Court of Appeal when I say that, but for our dedicated and hard-working staff, we would not have been able to realize the Court's mission.

The judges of the Court of Appeal wish to express their sincere appreciation and gratitude to our legal researchers, our Registry staff and our administrative assistants for their continued commitment to excellence. Thank you to each and every one of you.

**Richard Chartier**

CHIEF JUSTICE OF MANITOBA