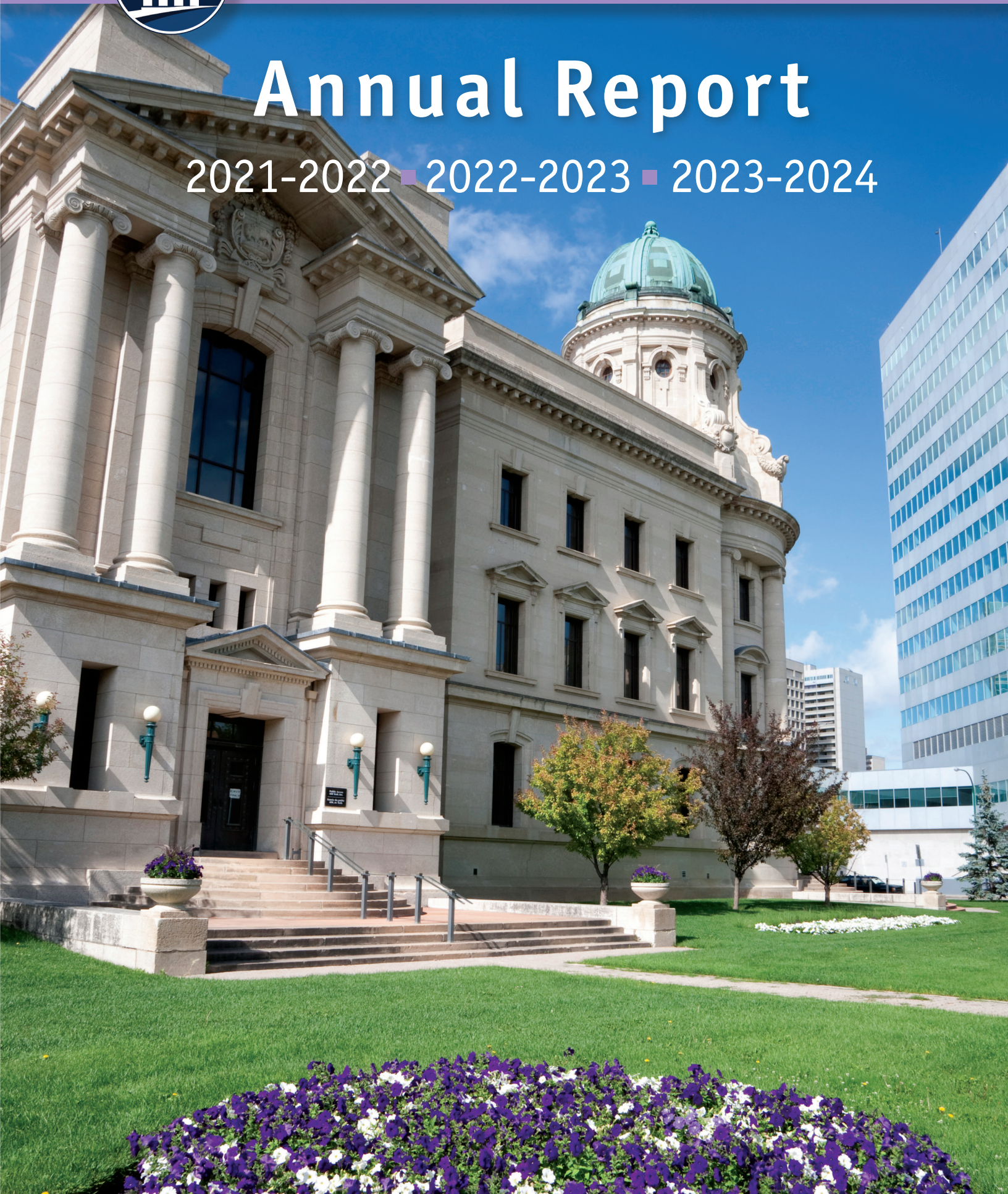




The Manitoba Court of Appeal

Annual Report

2021-2022 ■ 2022-2023 ■ 2023-2024





**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/)



THE HONOURABLE MARIANNE RIVOALEN
CHIEF JUSTICE OF MANITOBA

THE LAW COURTS
WINNIPEG, MANITOBA R3C 0P9

MANITOBA COURT OF APPEAL
COUR D'APPEL DU MANITOBA

L'HONORABLE MARIANNE RIVOALEN
JUGE EN CHEF DU MANITOBA

PALAIS DE JUSTICE
WINNIPEG, MANITOBA R3C 0P9

The Honourable Matt Wiebe
Minister of Justice and Attorney General
104 Legislative Building
450 Broadway
Winnipeg, Manitoba
R3C 0V8

Dear Minister:

Enclosed please find the Manitoba Court of Appeal's Annual Report for the fiscal years April 1, 2021 to March 31, 2022; April 1, 2022 to March 31, 2023; and April 1, 2023 to March 31, 2024. This report is provided in accordance with section 38 of The Court of Appeal Act, CCSM c C240.

Please accept our best regards.

Sincerely,

Marianne Rivoalen
Chief Justice of Manitoba
MR/fp

Table of Contents

Message from Chief Justice Rivoalen	2
About the Court of Appeal	4
The Judges of the Court of Appeal	5
Chief Justice Chartier’s Retirement	7
Education Program	7
Gala Dinner	7
Rule Changes and Practice Directions	8
Statutory Changes	8
Rule Changes	8
Practice Directions	8
Statistics	9
The Manitoba Court of Appeal Inventory	9
Number of Written Decisions Delivered by the Court	10
Ratio Between Number of Bench Decisions and Reserved Decisions	10
Time from Hearing to Release of Decisions	11
Average Time for the Release of Decisions	12
Appeals by Area of Law	13
Leave Applications to the Supreme Court of Canada from Manitoba Court of Appeal Decisions	14
Closing Remarks	15

Message from Chief Justice Rivoalen



**The Honourable Chief Justice
Marianne Rivoalen**

I am pleased to provide to the public and members of the legal profession the Manitoba Court of Appeal's Annual Report for the fiscal years 2021-2022, 2022-2023 and 2023-2024.

The report set out in the following pages is based on data compiled during the tenure of my predecessor, Chief Justice Richard Chartier, from April 1, 2021 until his retirement on October 30, 2022. From October 31, 2022 until May 31, 2023, the data was compiled during the tenure of the Acting Chief Justice, my colleague, The Honourable Madam Justice Diana Cameron. The balance of the data was compiled from the date of my appointment as Chief Justice of Manitoba on May 31, 2023.

I would like to take this opportunity on behalf of the judges and staff of the Manitoba Court of Appeal to thank Justice Cameron for the hard work, tireless dedication and significant contributions she made while acting in the position of Chief Justice. Along with the administrative responsibilities that fell into her lap, she continued to sit full-time during the pandemic and when the Court of Appeal was at half complement. She carried the Court of Appeal during this difficult period with leadership and professionalism.

The Court of Appeal is the highest court in Manitoba and performs two important roles. First, it reviews lower court decisions and certain administrative tribunal decisions for errors and corrects them when required. In addition, the Court of Appeal settles the state of the law in Manitoba by clarifying the law and setting precedents that must be followed by the lower courts.

Manitoba's system of government is divided into three branches: the legislative branch, the executive branch and the judicial branch. The Court of Appeal, like the Court of King's Bench and the Provincial Court, forms part of the judicial branch of government. Each branch has separate powers and areas of responsibility. The judicial branch is independent from the two other branches of government. In addition, each court is independent from the other two courts.

The Canadian Constitution guarantees the principle of judicial independence. Judicial independence has two components: individual and collective. Individual independence relates to the security of tenure and security of compensation of a judge. It protects individual judges having the freedom to adjudicate cases without influence or fear of reprisal. By

protecting judges in this way, 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 judge, person, institution, corporation or other branch of government. Judicial independence is the cornerstone of a free and democratic society.

Collective independence relates to the independence of the judiciary as an institution and is intimately tied to the office of the Chief Justice. In this context, the role of the Court of Appeal, as an institution, can be described as protector of the Constitution and the fundamental values embodied in it—the rule of law, fundamental justice, equality and the preservation of the democratic process.

Did You Know?

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

The Chief Justice of Manitoba has rank and precedence over all other judges of the courts of Manitoba. In terms of precedence in Manitoba, the Chief Justice of Manitoba is third after the Lieutenant Governor and the Premier.

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 the 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 a member of the Advisory Council of the Order of Manitoba and, as well, is the chair of the King's Counsel Advisory Council of Manitoba. The Chief Justice of Manitoba is also a member of the Appointing Board of the Winnipeg Foundation.

During my tenure as Chief Justice of Manitoba, there are six values that I will strive to protect and promote: independence, impartiality, accountability, representativeness, transparency and efficiency, all through the lens of access to justice for the litigants who appear before the Court of Appeal.

About the Court of Appeal

The Court of Appeal was established in 1906 and only sits in Winnipeg. The Court hears appeals from the Court of King's Bench and second-level appeals from the Provincial Court. The Court provides opinions on questions referred to it by the Lieutenant Governor in Council under The Constitutional Questions Act, CCSM c C180. In addition, 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. Finally, the Court hears judicial review applications from certain government boards and tribunals.

In 2021/2022, the Court of Appeal comprised 11 judges who were federally appointed pursuant to the Judges Act, RSC 1985, c J-1. Three of the 11 were supernumerary judges.

The years 2022/2023 involved a time of transition at the Court. Chief Justice Richard Chartier retired on October 30, 2022. Until the appointment of Chief Justice Marianne Rivoalen on May 31, 2023, the Court's most senior puisne judge, Madam Justice Diana Cameron, served as the Acting Chief Justice. Mr. Justice William Burnett retired on October 31, 2022. Madam Justice Lori Spivak elected supernumerary status on September 1, 2022. Madam Justice Karen Simonsen elected supernumerary status on October 8, 2022. Mr. Justice James Edmond, Mr. Justice David Kroft and Madam Justice Anne Turner were appointed to the Court of Appeal on August 23, 2023. Thus, at the end of the 2023/2024 fiscal year, the Court of Appeal comprised 13 judges, five of whom were supernumerary.

Under the Judges Act, a supernumerary judge is one who elects to give up their regular judicial duties and hold judicial office as a supernumerary judge. A judge may do so after being in judicial office for at least 15 years and having a combined age and number of years of judicial service of 80 or more or after having attained the age of 70 years and at least 10 years of judicial service.



Courtroom 330

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

The Judges of the Court of Appeal

Judges	Date of Appointment
The Honourable Chief Justice Marianne Rivoalen	<ul style="list-style-type: none"> ■ appointed Chief Justice of Manitoba on May 31, 2023 ■ appointed a judge of the Federal Court of Appeal on September 20, 2018 ■ appointed Associate Chief Justice of the Court of Queen's Bench (Family Division) on May 22, 2015 ■ appointed a judge of the Court of Queen's Bench (Family Division) on February 2, 2005
The Honourable Chief Justice Richard J. F. Chartier	<ul style="list-style-type: none"> ■ retired on October 30, 2022 ■ appointed Chief Justice of Manitoba on March 7, 2013 ■ appointed a judge of the Court of Appeal on November 22, 2006 ■ appointed a judge of the Provincial Court on August 16, 1993
The Honourable Madam Justice Freda M. Steel	<ul style="list-style-type: none"> ■ elected supernumerary status on May 1, 2014 ■ appointed a judge of the Court of Appeal on February 28, 2000 ■ appointed a judge of the Court of Queen's Bench on October 3, 1995
The Honourable Madam Justice Holly C. Beard	<ul style="list-style-type: none"> ■ elected supernumerary status on January 1, 2019 ■ appointed a judge of the Court of Appeal on September 9, 2009 ■ appointed a judge of the Court of Queen's Bench on November 27, 1992
The Honourable Mr. Justice Marc M. Monnin	<ul style="list-style-type: none"> ■ elected supernumerary status on September 1, 2016 ■ appointed a judge of the Court of Appeal on February 3, 2011 ■ appointed Chief Justice of the Court of Queen's Bench on March 26, 2003 ■ appointed a judge of the Court of Queen's Bench on August 27, 1997
The Honourable Madam Justice Diana M. Cameron	<ul style="list-style-type: none"> ■ appointed a judge of the Court of Appeal on November 2, 2012 ■ appointed a judge of the Court of Queen's Bench on February 3, 2011
The Honourable Mr. Justice William J. Burnett	<ul style="list-style-type: none"> ■ retired on October 31, 2022 ■ appointed a judge of the Court of Appeal on March 7, 2013 ■ appointed Associate Chief Justice of the Court of Queen's Bench (General Division) on February 3, 2011 ■ appointed a judge of the Court of Queen's Bench on September 9, 2009
The Honourable Mr. Justice Christopher J. Mainella	<ul style="list-style-type: none"> ■ appointed a judge of the Court of Appeal on October 1, 2013 ■ appointed a judge of the Court of Queen's Bench on October 4, 2012
The Honourable Madam Justice Jennifer A. Pfuetzner	<ul style="list-style-type: none"> ■ appointed a judge of the Court of Appeal on June 19, 2015 ■ appointed a judge of the Court of Queen's Bench on October 9, 2014
The Honourable Madam Justice Janice L. LeMaistre	<ul style="list-style-type: none"> ■ appointed a judge of the Court of Appeal on June 19, 2015 ■ appointed Associate Chief Judge of the Provincial Court on September 9, 2009 ■ appointed a judge of the Provincial Court on November 22, 2006
The Honourable Madam Justice Karen I. Simonsen	<ul style="list-style-type: none"> ■ elected supernumerary status on October 8, 2022 ■ appointed a judge of the Court of Appeal on August 31, 2018 ■ appointed a judge of the Court of Queen's Bench on December 9, 2004

The Judges of the Court of Appeal

Judges	Date of Appointment
The Honourable Madam Justice Lori T. Spivak	<ul style="list-style-type: none"> ■ elected supernumerary status on September 1, 2022 ■ appointed a judge of the Court of Appeal on March 26, 2019 ■ appointed a judge of the Court of Queen's Bench on May 19, 2005
The Honourable Mr. Justice James G. Edmond	<ul style="list-style-type: none"> ■ appointed a judge of the Court of Appeal on August 23, 2023 ■ appointed a judge of the Court of Queen's Bench on October 1, 2013
The Honourable Mr. Justice David J. Kroft	<ul style="list-style-type: none"> ■ appointed a judge of the Court of Appeal on August 23, 2023 ■ appointed a judge of the Court of Queen's Bench on October 20, 2016
The Honourable Madam Justice Anne M. E. Turner	<ul style="list-style-type: none"> ■ appointed a judge of the Court of Appeal on August 23, 2023 ■ appointed a judge of the Court of Queen's Bench on June 27, 2019



From left to right (standing): Madam Justice Anne Turner, Mr. Justice James Edmond, Madam Justice Karen Simonsen, Madam Justice Janice leMaistre, Madam Justice Lori Spivak, Mr. Justice David Kroft

From left to right (sitting): Mr. Justice Christopher Mainella, Mr. Justice Marc Monnin, Madam Justice Freda Steel, Chief Justice Marianne Rivoalen, Madam Justice Holly Beard, Madam Justice Diana Cameron, Madam Justice Jennifer Pfuetzner

Chief Justice Chartier's Retirement

Education Program

In honour of Chief Justice Chartier's retirement, an education seminar was held on October 27, 2022 entitled "Context Matters: Rediscovering the Origins of Manitoba Law". It was jointly presented by the Court, the University of Manitoba Faculty of Law, the Manitoba Bar Association and the Law Society of Manitoba. Presentations were made by The Honourable Mr. Justice Nicholas Kasirer of the Supreme Court of Canada, The Honourable Chief Justice Richard Chartier and The Honourable Madam Justice Jennifer Pfuetzner from the Court, as well as Professor Aimée Craft from the University of Ottawa Faculty of Common Law. Thank you to the members of the planning committee for organizing this event:

- The Honourable Madam Justice Holly Beard, Manitoba Court of Appeal
- The Honourable Madam Justice Jennifer Pfuetzner, Manitoba Court of Appeal
- Melanie Bueckert, legal researcher, Manitoba Court of Appeal
- Professor David Ireland, University of Manitoba Faculty of Law
- Michelle Falk, Manitoba Bar Association
- Eileen Derksen, Law Society of Manitoba
- Betta Wishart, Law Society of Manitoba

Gala Dinner

Later that evening, the legal community gathered to celebrate the distinguished career of The Honourable Richard Chartier, Chief Justice of Manitoba. The gala dinner at the RBC Convention Centre, hosted by The Honourable Madam Justice Diana Cameron, was a memorable and classy event where attendees had the chance to celebrate Chief Justice Chartier's achievements and wish him well in his retirement. Colleagues, dignitaries, members of the profession and family assembled to honour Chief Justice Chartier's significant contributions to the judiciary and the justice system.



Gala Dinner

The program featured greetings brought by The Honourable Madam Justice Freda Steel, The Honourable Chief Justice Glenn Joyal and The Honourable Chief Judge Margaret Wiebe, as well as special remarks by The Right Honourable Richard Wagner, Chief Justice of Canada.

The event also included the unveiling of Chief Justice Chartier's portrait by Premier Heather Stefanson, a video tribute showcasing moments from his career and the announcement of the Richard J. Chartier Fund for Access to Justice in French. Chief Justice Chartier expressed his gratitude in heartfelt remarks, acknowledging the support of his family and colleagues throughout his career.

Thank you to everyone who helped to organize this event, including the Law Society of Manitoba and the Manitoba Bar Association. A special thank you to Andrea Mancini and her staff at Soirée Event Planning Ltd., The Honourable Madam Justice Diana Cameron, The Honourable Madam Justice Janice LeMaistre, Suzanne Gervais, Sandy Kuchinski, Aimee Fortier, Stéphanie Boissonneault and Kirsty Hyduk.



From left to right: The Rt. Hon. Richard Wagner; the Hon. Richard J. Chartier; and Her Honour the Honourable Anita R. Neville, P.C., O.M., Lieutenant Governor of Manitoba

Rule Changes and Practice Directions

Statutory Changes

The Court of Appeal Act, CCSM c C240, was amended twice between April 1, 2021 and March 31, 2024. As of January 1, 2022, leave to appeal was required for interlocutory orders (The Court Practice and Administration Act (Various Acts Amended), SM 2021, c 40). On January 1, 2023, the Act was amended to permit settlement conferences (The Court of Appeal Amendment and Provincial Court Amendment Act, SM 2022, c 11).

Rule Changes

Between April 1, 2021 and March 31, 2024, five major changes were made to the MB, Court of Appeal Rules (Civil), Man Reg 555/88R. First, Man Reg 9/2021 introduced revised tariffs. Second, Man Reg 117/2022 changed r 29(1) to require that bilingual statutory provisions be included in parties' materials. Third, in conjunction with the statutory amendment noted above, Man Reg 118/2022 added r 32.1 regarding settlement conferences. Fourth, Man Reg 127/2022 updated r 37.2 regarding remote hearings. Finally, Man Reg 141/2022 updated r 21 and the procedure for adducing further evidence.

Practice Directions

The Court's notices and practice directions are available on its website. Between April 1, 2021 and March 31, 2024, the Court issued several notices and practice directions. A number of them were related to remote hearings during the COVID-19 pandemic.

On May 27, 2021, a practice direction was issued regarding Forms of Address and Pronouns. On December 8, 2021, a protocol was enacted regarding appearances by articling students in the Court of Appeal. On November 3, 2022, the Court issued a practice direction regarding Remote Hearings. In December 2022, the Court issued two practice directions: one related to Allegations of Ineffective Assistance of Counsel and the second explained the rule changes regarding Further Evidence.

On February 5, 2024, the Court issued a consolidated practice direction.

Statistics

The Manitoba Court of Appeal Inventory

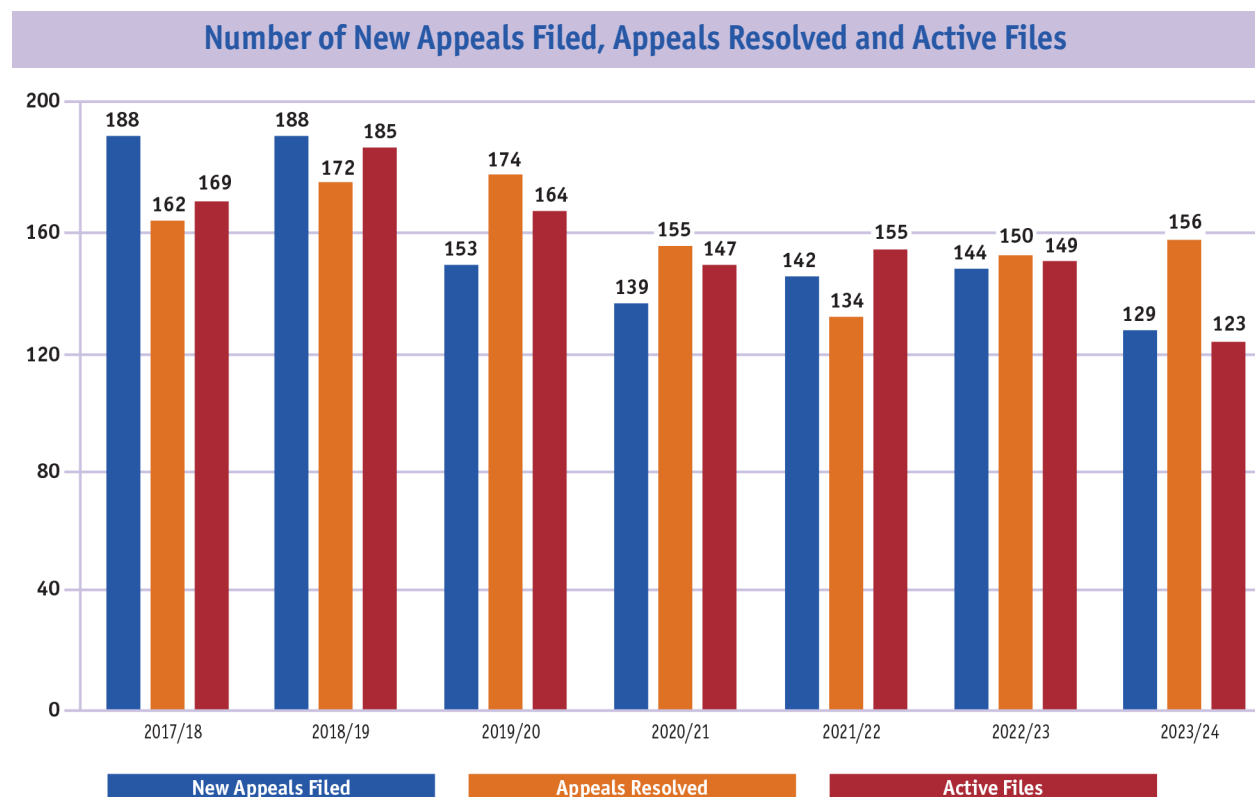
The Manitoba Court of Appeal inventory represents all appeal files that are in our registry system that have not yet been resolved. The inventory includes:

- 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 with assigned hearing dates that are waiting to be heard
- appeals that have been heard but a decision has not yet been released

In essence, the total number of appeals filed, less the total number of files resolved, represents our inventory. The goal of the Court is to maintain an inventory of less than 125 files.

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 the last three years was 138 per year.

An appeal is resolved 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 resolved in any particular year. The noticeable trend is that the total number of active files has been reduced to 123, from a high of 185 in 2018/19. In 2023/24, the Court achieved its goal of reducing its inventory below 125 active files.



Statistics

Number of Written Decisions Delivered by the Court

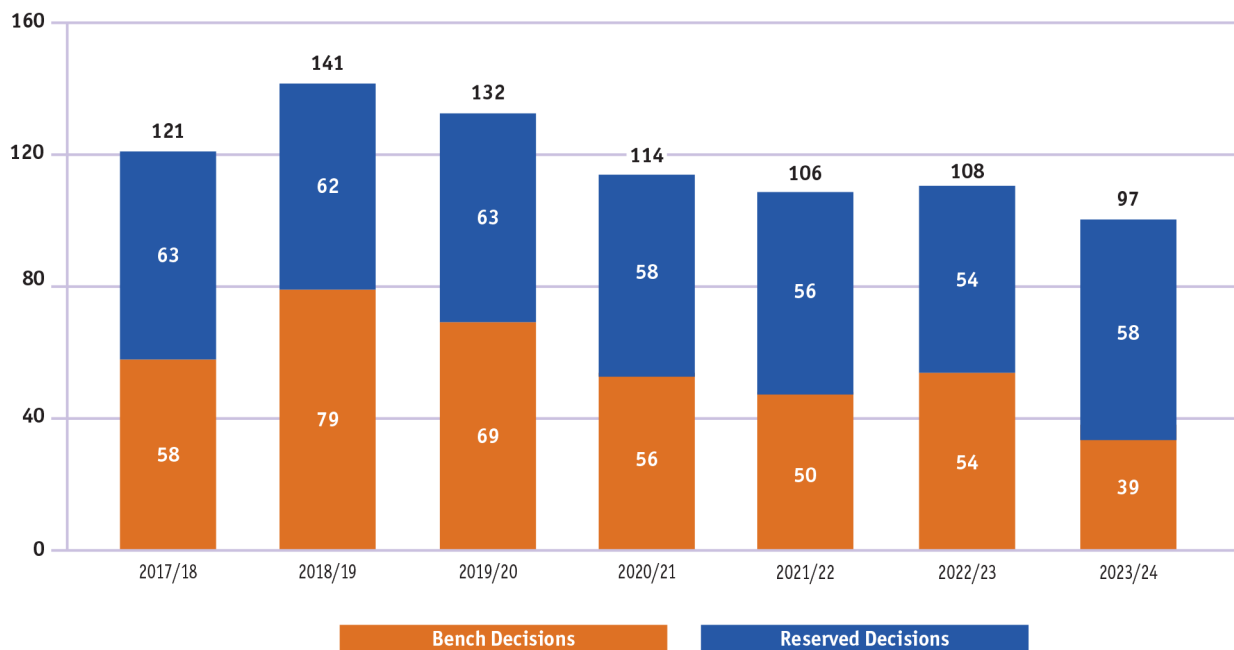
A panel of three judges typically hears appeals. Each time the Court hears an appeal, it delivers written reasons. When a motion or an application is filed with the registry, a judge sitting alone will hear it. From time to time, written reasons are issued for motions or applications to the Court but,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

Ratio Between Number of Bench Decisions 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 goal of the Court is to achieve a 50/50 ratio between bench and reserved decisions.

In 2021/22, the Court issued 50 bench decisions and 56 reserved decisions. In 2022/23, the Court issued 54 bench decisions and 54 reserved decisions. Included in the reserved decisions were four paper appeals and two rehearing motions. In 2023/24, the Court issued 39 bench decisions and 58 reserved decisions. Included in the reserved decisions were four paper appeals and four rehearing motions.

Ratio Between Number of Bench Decisions and Reserved Decisions

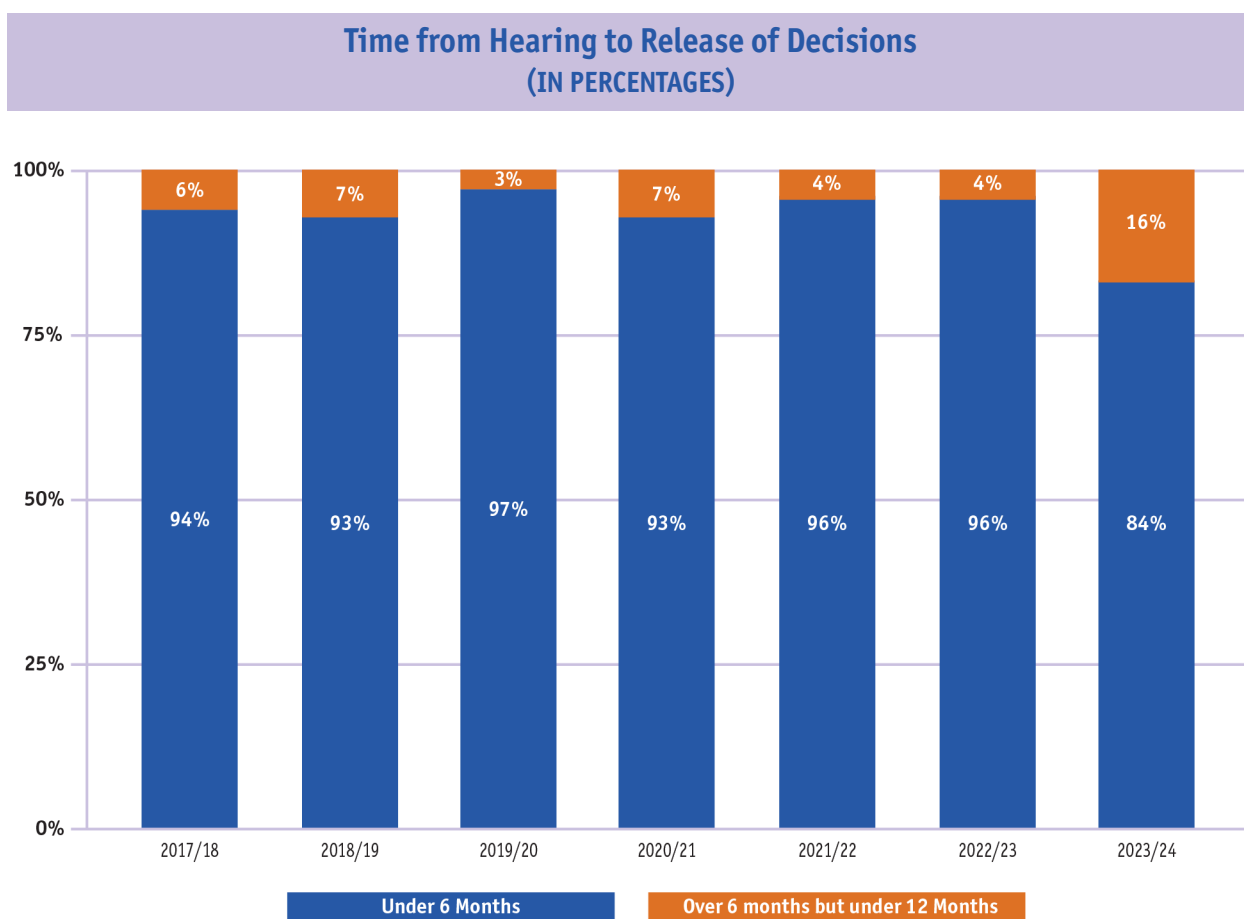


Statistics

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. The 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. The timeliness of reasons can also be affected by personnel and human resources issues.

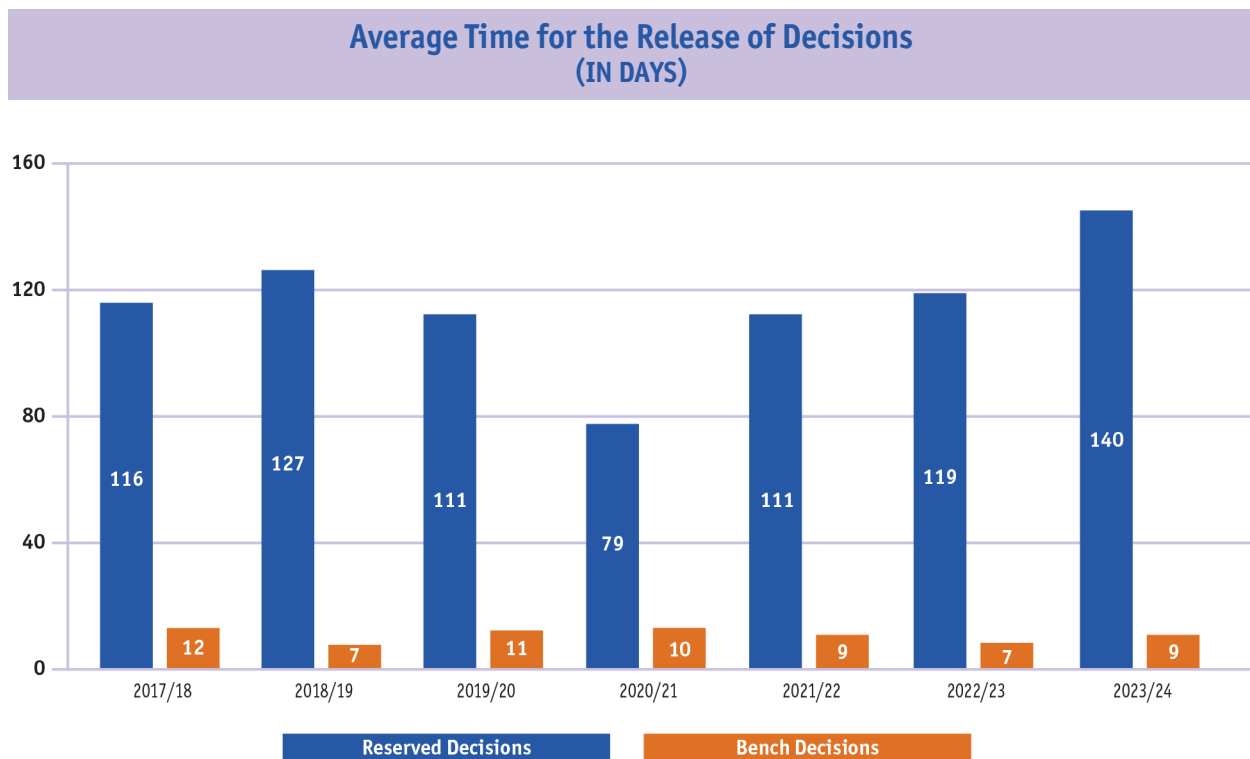
In the vast majority of cases, the Court issues its reasons for decision less than six months after an appeal is heard. For example, in the last three years, the Court has issued reasons for decision within six months in 92 per cent of cases.



Statistics

Average Time for the Release of Decisions (IN DAYS)

Justice delayed is justice denied. The Court 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.



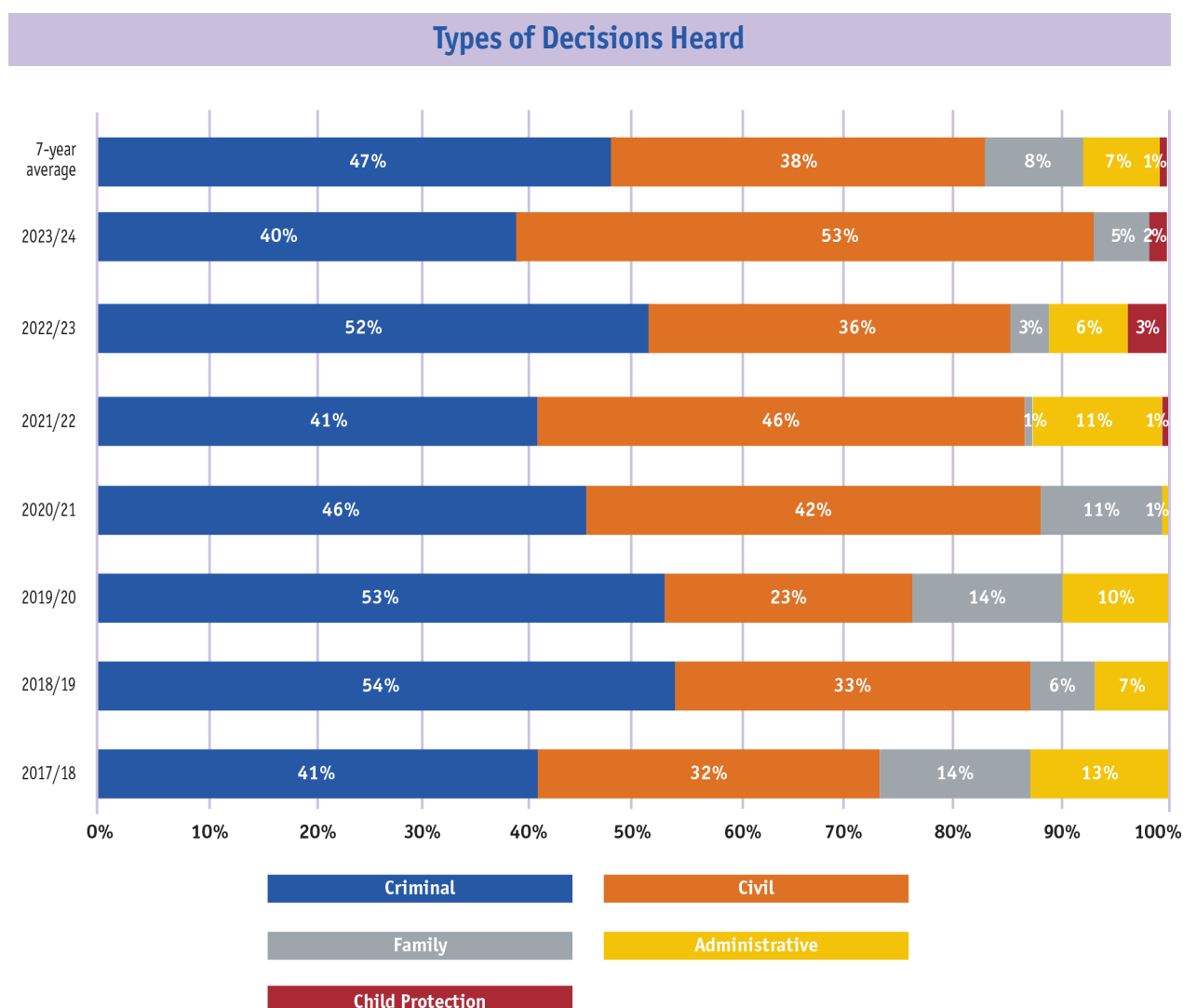
Statistics

Appeals by Area of Law

The types of appeals that the Court hears can essentially be broken down into five areas of law:

- criminal
- civil
- family
- administrative
- child protection

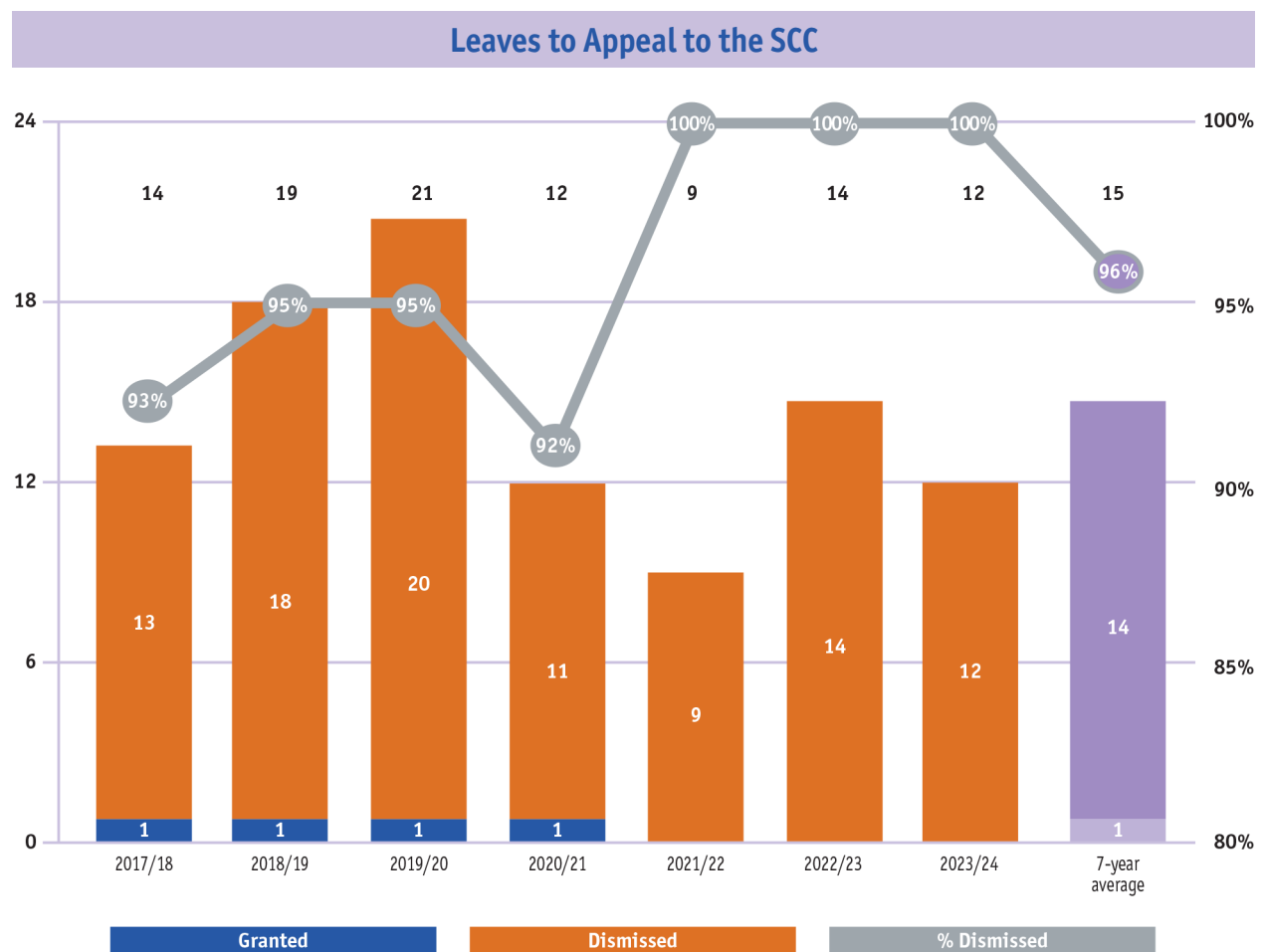
Historically, approximately half of our appeals related to criminal law matters. One third were civil law matters, while family law and administrative law matters each represented 10 per cent of our cases. However, recent trends reveal a sharp decline in the number of family law appeals, as well as an increase in civil appeals.



Statistics

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

The Court averages over 115 decisions a year. In the last three years, the average number of decisions per year is 104. When a party disagrees with a decision of the Court, it sometimes has a right to appeal directly to the Supreme Court of Canada. However, most of the time it must be granted permission and apply for leave to appeal. On average, the Supreme Court of Canada hears only one appeal from the over 115 decisions rendered each year by the Court. Most of the time (96 per cent) permission to appeal is refused. Indeed, in the last three years, the Supreme Court of Canada has not granted leave to appeal from any decision of the Court. The table below shows the numbers:



Closing Remarks

I am pleased to submit the Manitoba Court of Appeal's Annual Report for the fiscal years 2021-2022, 2022-2023 and 2023-2024.

During these three fiscal years, the composition of the Court changed significantly. The Court now has its first female Chief Justice since its creation in 1906. In addition, the Court consists of more female judges than male judges.

In January of this year, I was incredibly honoured to be the recipient of the Isabel Ross MacLean Hunt Award. This award celebrates a Manitoba Canadian Bar Association member whose contributions as a role model for women lawyers deserves special recognition. It is one of eight Manitoba Bar Association Recognition Awards, honouring colleagues who demonstrate excellence and commitment to the law, the legal profession and the community at large.

Despite a pandemic, the Court continued to deliver quality judicial services in a timely manner by offering remote hearings to litigants. The pandemic permanently shifted the way the Court provides services so that virtual hearings continue to be available to litigants.

There is no doubt that the period between the retirement of former Chief Justice Chartier and my appointment was challenging for the Court. Notwithstanding the Court being at half complement, because of the judges' commitment and discipline, the Court continued to function and deliver judgments promptly. Thank you to my judicial colleagues for shouldering this heavy load.

The prompt delivery of judicial services, especially the Court's judgments, cannot be achieved without the assistance and hard work of the Court staff. I will take this opportunity to say a few words about the Court staff.



Photo Credit: Leif Norman

From left to right: Jason Gisser, President of the Manitoba Bar Association; The Honourable Chief Justice Marianne Rivoalen; and Stacey Soldier, Director Advocacy/Public Relations

First, the Court is fortunate to have the best legal researchers in the profession. Their legal expertise and excellent writing skills allow the Court to render sound, clear judgments. As has been noted earlier, the Supreme Court of Canada granted no leaves to appeal any of the judgments of the Court. As the highest court in Manitoba, the Court's judgments during this period were the last word on the matters in dispute. Consequently, the need for excellence in legal research cannot be overstated.

Next, I would like to thank the registrar and the registry staff for their professionalism and positive approach to their work. The registry staff are the face of the Court, as they interact with members of the profession and the public on a daily basis. The Court is fortunate to have such fine individuals in this important role.

I am grateful to the dedicated judicial assistants who support the judges with the delivery of the Court's services. Their teamwork, competence and good cheer are welcome in chambers.

Finally, thank you to the executive legal officer and executive assistant to the Chief Justices and Chief Judge for their assistance with matters that are of common interest to the three Courts. The Court values and appreciates the daily support provided by everyone in the Courts Division of Manitoba Justice, including Court Operations, Judicial Services and Sheriffs Services.

Marianne Rivoalen
CHIEF JUSTICE OF MANITOBA