



The Manitoba Court of Appeal

# Annual Report

2019 ■ 2020





**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 Cameron Friesen  
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, 2019 to March 31, 2020.

Sincerely,

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. Last year, *The Court of Appeal Act* was amended to include a requirement that the Court of Appeal prepare an annual report about the operation, functioning and administration of the court during the year. The purpose of this annual report is to discharge our court's public accountability responsibilities. It also serves as a communication tool for providing broader information on the activities of our court.

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.

I am pleased to submit the first Annual Report of the Manitoba Court of Appeal for the fiscal year April 1, 2019 to March 31, 2020.



# 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 2019/2020, the Court of Appeal was comprised of 13 judges who are federally appointed pursuant to the *Judges Act*, RSC 1985, c J-1. Five of the 13 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 Mr. Justice Michel A. Monnin	<ul style="list-style-type: none"> <li>■ Elected supernumerary status on July 1, 2013</li> <li>■ Appointed a Judge of the Court of Appeal on July 26, 1995 (effective August 3, 1995)</li> <li>■ Appointed a Judge of the Court of Queen's Bench on March 23, 1984</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 Barbara M. Hamilton	<ul style="list-style-type: none"> <li>■ Elected supernumerary status on January 1, 2014</li> <li>■ Appointed a Judge of the Court of Appeal on July 16, 2002</li> <li>■ Appointed a Judge of the Court of Queen's Bench on July 26, 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 Judges of the Court of Appeal

Judges	Date of Appointment
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 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



# 2019, A Year Like No Other

## Manitoba Welcomes the Supreme Court of Canada to Winnipeg

During its week in Winnipeg, in addition to hearing appeals, the Supreme Court of Canada (SCC) held its annual retreat (on September 24) and participated in a number of outreach events with members of the Manitoba Court of Appeal (MBCA). Below is a brief summary of these events:



**September 22, 2019**

*Last year, history was made. For the first time in its existence, as part of its commitment to increase access to justice, the SCC decided to hear cases outside of Ottawa and it chose Winnipeg as the first location. The Manitoba Court of Appeal was asked to host this historic event that took place during the week of September 22, 2019.*



**September 22, 2019**

*The Chief Justice of Canada, the Right Honourable Richard Wagner, left his robes at the courthouse, donned a Winnipeg Jets jersey and did the ceremonial puck drop for a hockey game between the Jets and the Calgary Flames.*

**September 23, 2019**

*In the evening, the Mayor of Winnipeg, his Worship Brian Bowman, hosted a reception at City Hall for the SCC, where over 100 representatives from Winnipeg's different communities attended.*



**September 25, 2019**

*After their first appeal hearing, the SCC Justices went to the Canadian Museum for Human Rights, where hundreds attended a Meet-and-Greet session that was open to the public.*

**September 25, 2019**

*In the evening, the SCC Justices attended an event at the Assiniboine Park Zoo with over 100 appeal court judges from across the country who were in Winnipeg for the National Appellate Courts Seminar.*

# 2019, A Year Like No Other



**September 26, 2019**

*After their second appeal hearing, the SCC Justices, along with judges from all three levels of Manitoba courts, participated in an Eagle Feathers presentation. During the presentation, Eagle Feathers were gifted to the courts by the Indigenous Community, members of whom will now be able to hold an eagle feather in all Manitoba courtrooms when giving evidence or speaking in court.*



**September 27, 2019**

*In the morning, the SCC Justices, along with the Chief Justices from all three levels of Manitoba courts, met with representatives from the First Nations, the Métis and the francophone communities at the Forks, the Hotel Fort Garry and the Université de Saint-Boniface, respectively.*



**September 26, 2019**

*In the evening, the SCC Justices were hosted at an 800-person, sold-out event at the Winnipeg RBC Convention Centre that was attended by members of Manitoba's legal profession.*



**September 27, 2019**

*In the afternoon, the SCC, along with a number of members of the MBCA, attended to the University of Manitoba's Robson Hall Faculty of Law to meet with law students and answer their questions.*



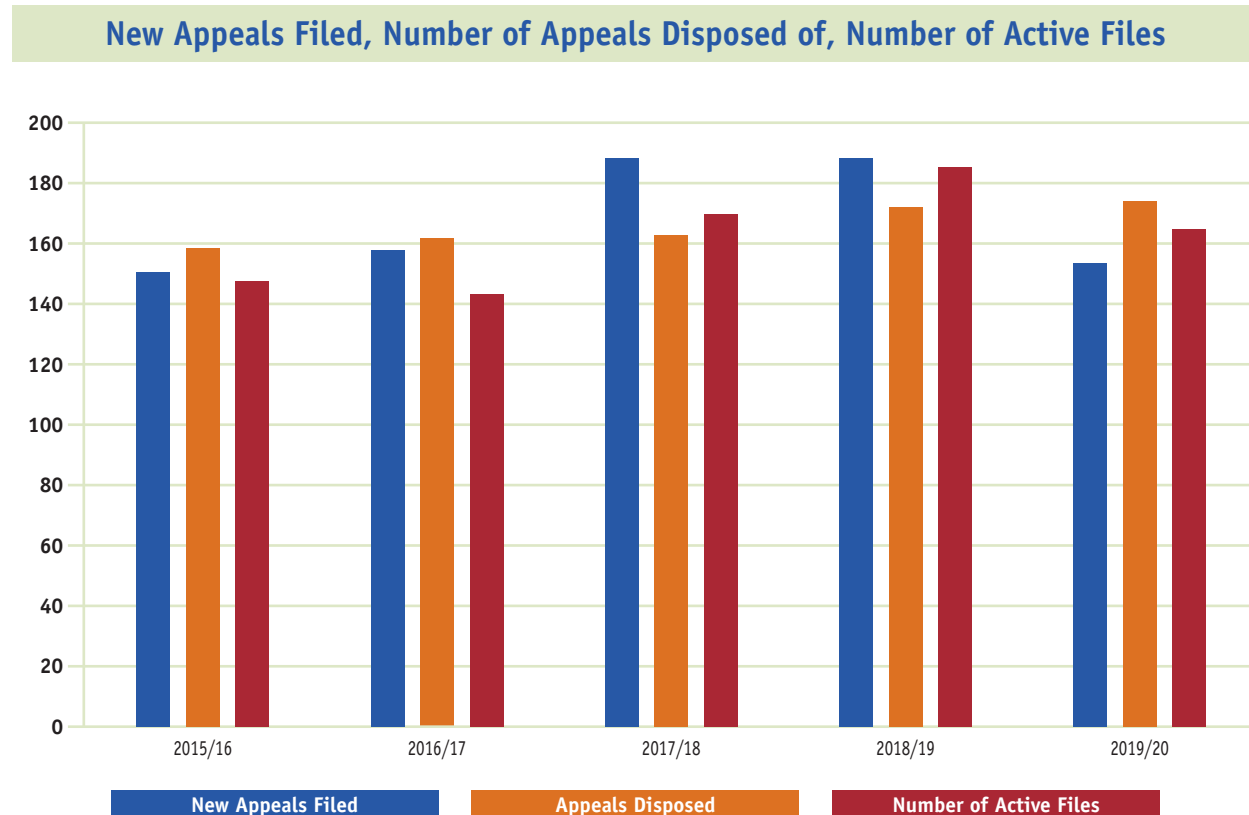
# Summary of the Year in Numbers

## 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 169 per year. The only discernable trend is that the last three years (176 on average) saw a 9% increase over the previous three years (162 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.



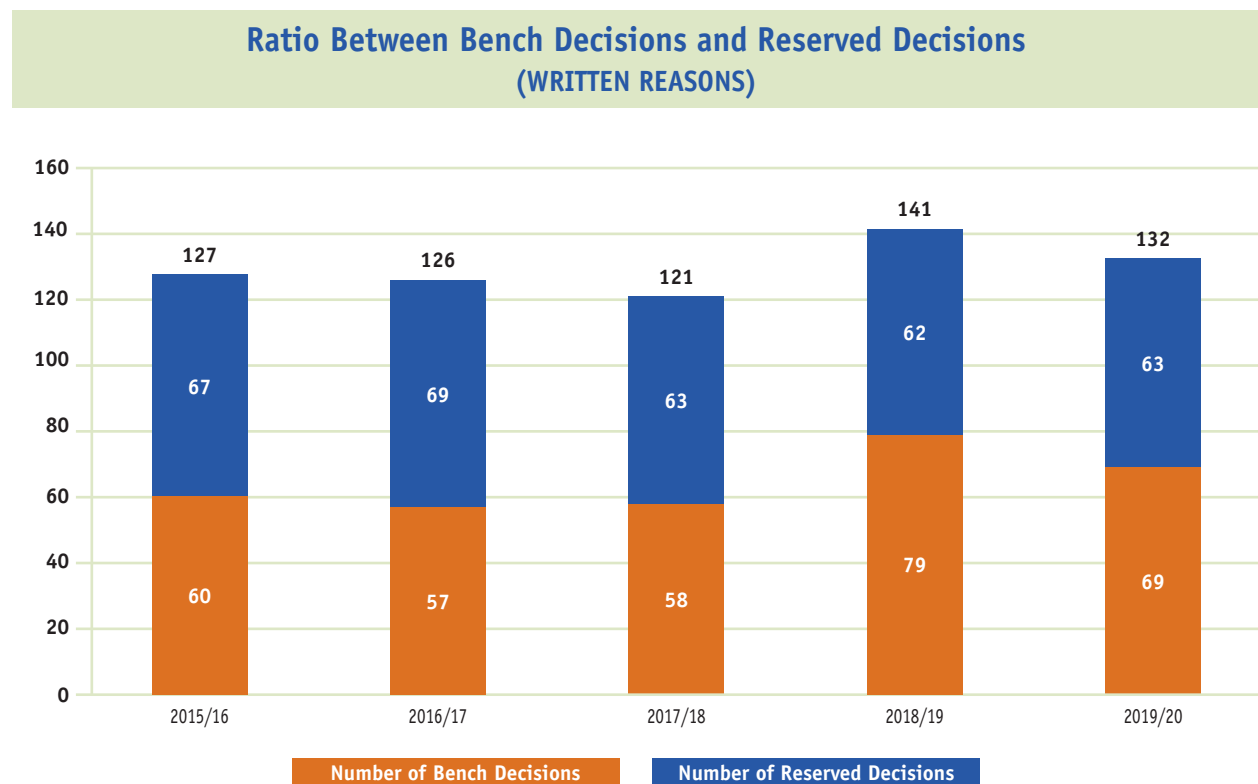
# Summary of the Year in Numbers

## 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.



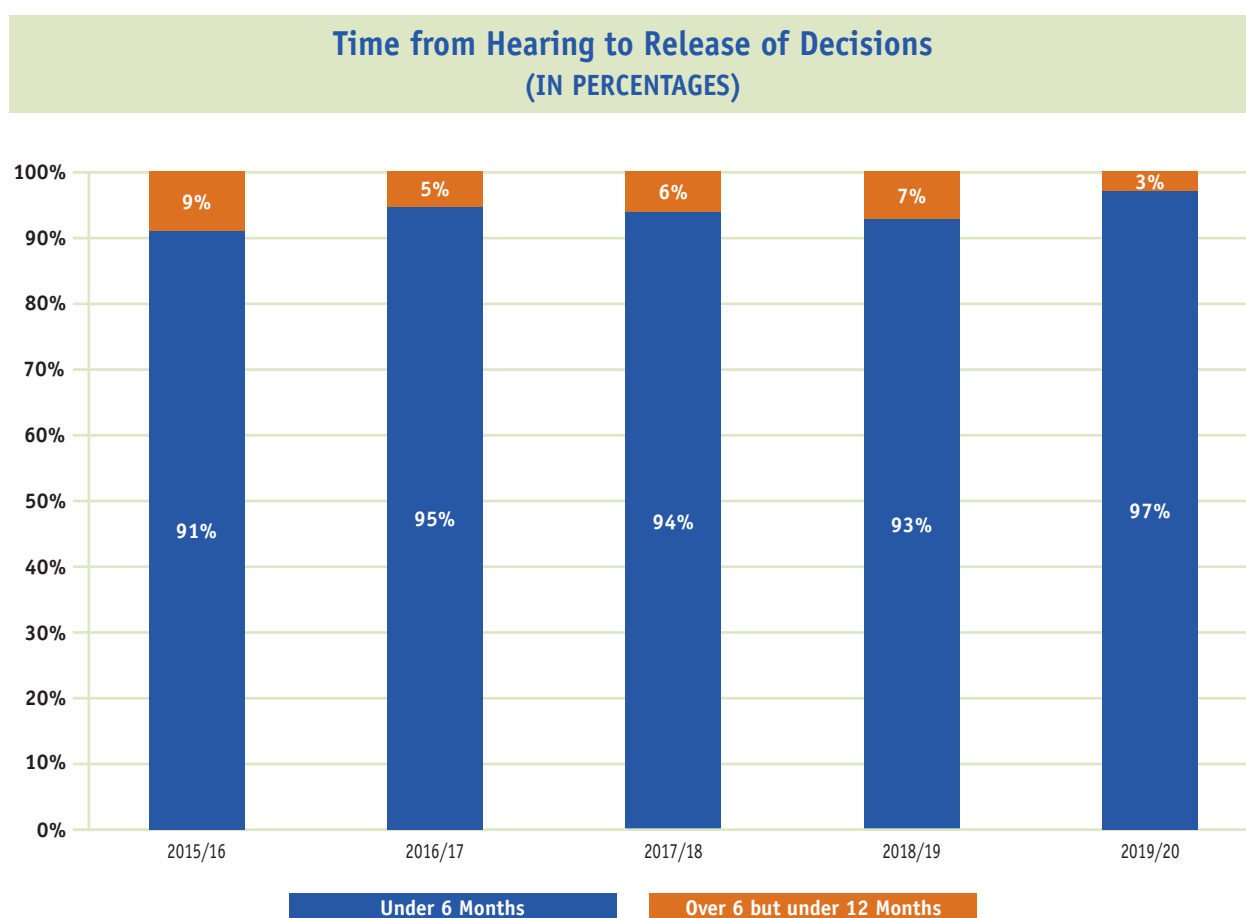


# Summary of the Year in Numbers

## Time from Hearing to Release of Decisions

(IN PERCENTAGES)

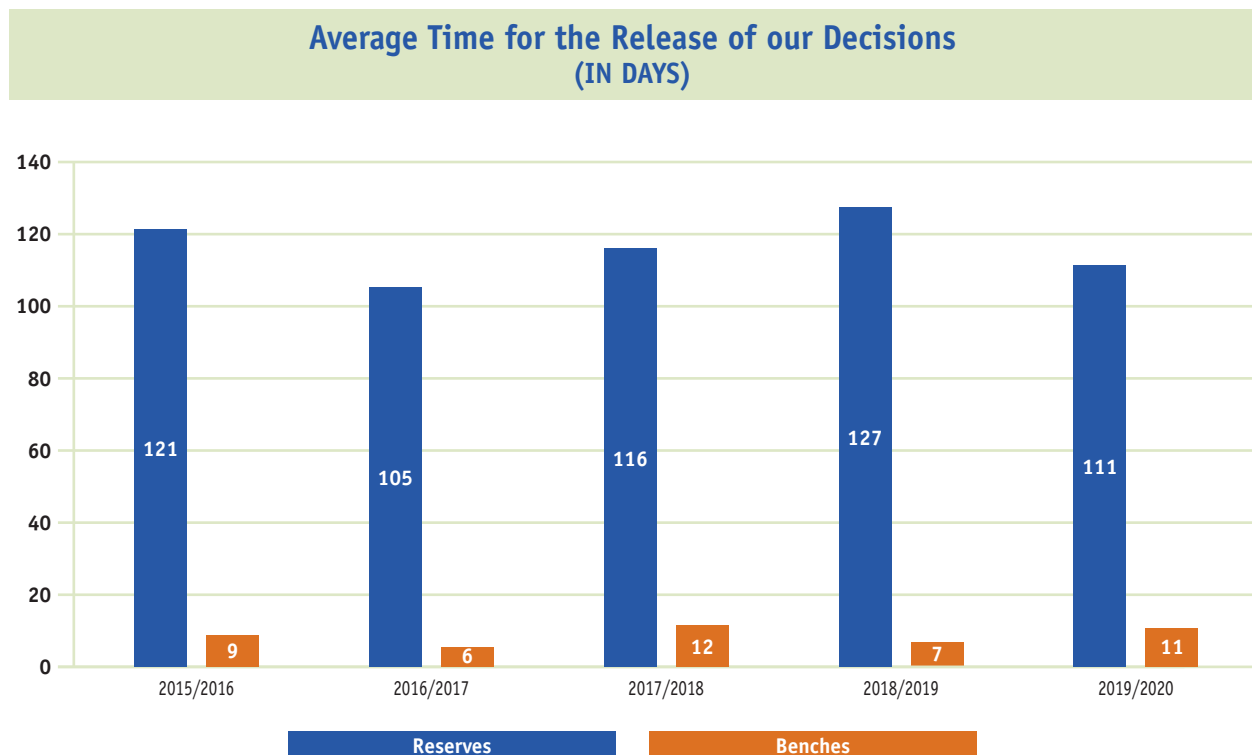
The Canadian Judicial Council issued guidelines stating that trial court decisions should be delivered within six months after the trial hearing, except in special circumstances. Our court tries to follow those guidelines as much as possible. In certain circumstances, that is not possible; for example, 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.

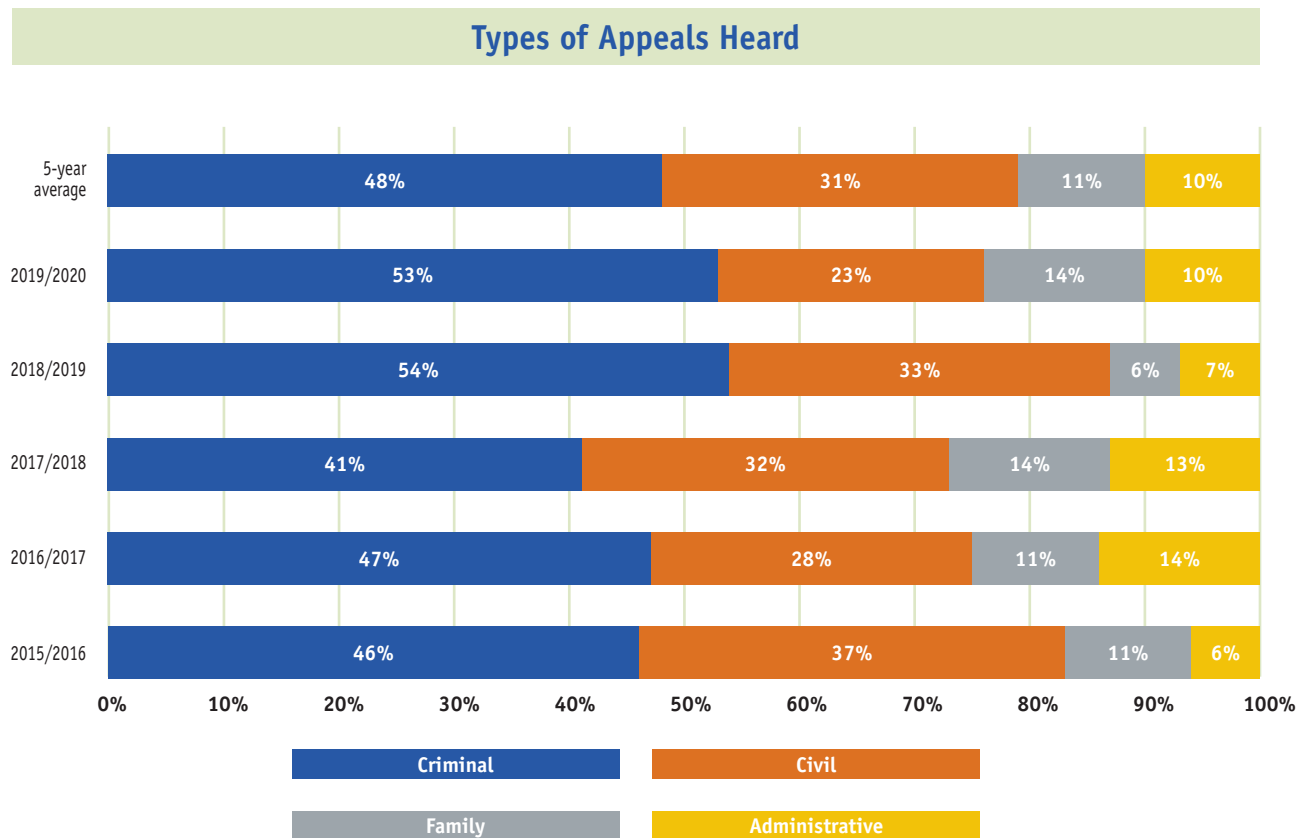




# Summary of the Year in Numbers

## 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:

