



NOVA SCOTIA COURT *of* APPEAL

Annual Report

2022



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Message from The Hon. Michael J. Wood, Chief Justice of Nova Scotia

I am proud to introduce the 2022 Annual Report for the Nova Scotia Court of Appeal. We are starting this new initiative to reflect the Court's commitment to transparency and accountability in all aspects of our work. We believe that public confidence in the judiciary is strengthened when people are able to understand and appreciate the role of the courts in our society.

We have included information about appeal proceedings between Jan. 1 and Dec. 31, 2022, as well as the activities of the court staff and judges in relation to a wide range of topics, including access to justice improvements, engagement with the African Nova Scotian community, modernization of court technology and fostering judicial and legal education.

The COVID-19 pandemic had a significant impact on all Nova Scotians. Our Court is no exception. With the support of the Nova Scotia Department of Justice and our court staff, we were able to transition from the traditional in-person hearings to ones conducted virtually through Microsoft Teams. Although we have now generally returned to in-person hearings, we can offer virtual participation to parties and counsel in every matter. We are still exploring ways to best use this capacity to maximize the fairness and accessibility of our hearings.

Over the past year, we have prepared new practice directives for the Court giving guidance on a wide range of issues, including virtual appearances and electronic filing of appeal documents. Nova Scotia now has a Digital Task Force, which I co-chair with the Deputy Minister of Justice. It is a collaboration between the judiciary and the Department of Justice to facilitate the modernization of court processes throughout the province. As the work of the Task Force goes forward, we anticipate transitioning to a more efficient and technologically advanced justice system, which will improve access to justice for all Nova Scotians.

The Court acknowledges the importance of judicial engagement with historically marginalized communities and, in particular, the African Nova Scotian and Indigenous communities. In past years, our judges have participated in meetings throughout Nova Scotia to learn more about the life experiences and access to justice issues faced by African Nova Scotians. The most recent session took place in November 2022, when judges from all levels of court visited Yarmouth to hear from African Nova Scotians living in the southwest region of the province. The personal stories shared that day are an important part of our judicial education.

One of the most enjoyable aspects of appellate work is the collaboration and cooperation amongst the judges of the Court. Appeals are decided by panels of three or five judges and, as a result, teamwork is an important aspect of what we do. The Court, as an institution, is always evolving as judges retire and new ones are appointed. With each departing member, we lose their wisdom, guidance, and comradery; but with each new appointment we gain energy and new perspectives. On November 10, 2022, Justice M. Jill Hamilton retired after 27 years on the bench, 21 of these on our Court. Justice Hamilton was a wonderful colleague and a strong proponent of judicial collegiality. We miss her many contributions and constant good humour. We wish her all the best in her retirement.

In addition to deciding appeals, judges of our Court are actively engaged in a wide range of activities including serving on advisory committees for the Order of Nova Scotia and King's Counsel appointments, as well as various access to justice initiatives. Justice Cindy Bourgeois was chair of the Federal Electoral Boundaries Commission which provides advice to the House of Commons after the new census data is compiled every 10 years.

Many of our judges are also active in programs for legal and judicial education throughout Canada. They support the work of the Schulich School of Law at Dalhousie University in Halifax by presenting lectures, presiding over mock trials and offering advice to competitive moot teams. Our judges are actively engaged in various judicial committees related to the use of technology, media relations, and access to justice. Justice Anne Derrick supervised a project with students from Pro Bono Dalhousie which examined the impact of virtual court proceedings on historically marginalized individuals and communities in Nova Scotia.

I am very proud of the commitment and dedication of our judges and support staff over the last year. In addition to adapting to the impacts of COVID-19, we have been able to move forward and improve our practices and procedures in a way that benefits all Nova Scotians. I believe our Court is more accessible than it has ever been, and we will strive to continue that trend.

As I look forward to 2023, I am excited about the opportunities before us. The Digital Task Force will be engaging with the public and others in the legal community as part of its ongoing work towards a more modern and accessible court system. We will webcast an increasing number of our appeal hearings so that people throughout the province, and beyond, can see and understand the cases which come before us. In the same vein, we are exploring the possibility of the Court holding sittings outside of the Halifax region. This would present further opportunities to engage with the public and allow even more individuals the opportunity to observe Nova Scotia's highest Court in person.

I hope that you find our first Annual Report interesting and informative. I trust we have been successful in providing you with a small insight into what we do and how we function.



*The Hon. Michael J. Wood,
Chief Justice of Nova Scotia*

Introduction to the Court

The Nova Scotia Court of Appeal is the province's highest court. Through its judgments, the Court of Appeal clarifies and develops the law in Nova Scotia. The Court sits primarily at the Law Courts building in Halifax.

The Role of the Court of Appeal

The Court of Appeal hears appeals in civil, criminal and family matters from the Nova Scotia Supreme Court, and in criminal matters from the Provincial Court and the Youth Justice Court. It also hears appeals of decisions by tribunals, such as the Workers' Compensation Appeal Tribunal, the Nova Scotia Utility and Review Board, and the Nova Scotia Human Rights Commission.

The Court of Appeal does not re-try cases. It reviews the record of the trial or hearing to ensure the lower court or tribunal made no errors of law. The Court has the authority to dismiss the appeal, thereby confirming the decision of the lower court or tribunal; to allow the appeal and order a new trial or hearing; or to allow the appeal but change the order of the lower court or tribunal. It is generally the court of last resort, except in the very few cases that further appeal to the Supreme Court of Canada.

Judges of the Court of Appeal

The Court of Appeal has a Chief Justice, currently The Hon. Michael J. Wood, who is also the Chief Justice of Nova Scotia, and seven other full-time judges. As of Dec. 31, 2022, those judges included:

- ▶ Justice Duncan R. Beveridge
- ▶ Justice David P.S. Farrar
- ▶ Justice Peter M.S. Bryson
- ▶ Justice Cindy A. Bourgeois
- ▶ Justice Elizabeth Van den Eynden
- ▶ Justice Anne S. Derrick
- ▶ Justice Carole A. Beaton

The Court of Appeal may also include semi-retired, or supernumerary judges, who sit part-time. In 2022, there were three supernumerary judges on the Court of Appeal:

- ▶ Justice M. Jill Hamilton (retired, Nov. 10, 2022)
- ▶ Justice Joel E. Fichaud
- ▶ Justice J. Edward (Ted) Scanlan

Judges of the Court of Appeal do not sit on any other Court in Nova Scotia, and they have no previous involvement with the cases that come before them on appeal.

Federal Electoral Boundaries Commission

Justice Cindy A. Bourgeois, spent a significant part of 2022 engaged in an important democratic exercise. The work continues in 2023.

By Order in Council dated November 1, 2021, the Federal Electoral Boundaries Commission for the Province of Nova Scotia (the Commission) was established pursuant to the Electoral Boundaries Readjustment Act, R.S.C. 1985, c. E-3 (the Act).

The Commission is comprised of three members: Dr. Louise Carbert, Dr. David Johnson and Justice Bourgeois. Both Dr. Carbert and Dr. Johnson are political science professors, at Dalhousie University and Cape Breton University respectively, and were appointed by the Speaker of the House of Commons. Justice Bourgeois was appointed by Chief Justice Wood.

The role of the Commission is, in response to the 2021 decennial census, to examine and readjust the boundaries of the 11 federal electoral districts (also known as constituencies or ridings) within the province.

Following the publishing of its initial Proposal, the Commission received numerous written submissions from the public and held nine hearings throughout the province. The Commission's Final Report was tabled in the House of Commons in November 2022.

Three Members of Parliament have filed objections to the Final Report, and accordingly, in 2023, the Commission will be engaged in considering the objections and determining whether any amendments to its Final Report will be forthcoming.



Every year the Bench organizes a luncheon to bring together current and retired Court of Appeal judges.

From left to right:
Chief Justice Michael MacDonald (ret.), Justice Elizabeth Roscoe (ret.), Justice Anne Derrick, Justice Nancy Bateman (ret.), Justice Cindy Bourgeois, Justice Duncan Beveridge, Justice David Chipman (ret.), Justice Elizabeth Van den Eynden, Chief Justice Michael Wood and Justice Jill Hamilton (ret.).

Annual Court Statistics

Number of Appeals Filed

There were 123 appeals filed in 2022 (73 civil and 50 criminal). Looking at the previous five years, the total number of criminal appeals filed per year remains consistent. (see *Chart 1*) The decline in numbers is on the civil side, with the number of civil appeals filed yearly decreasing since 2017. (see *Chart 2*)

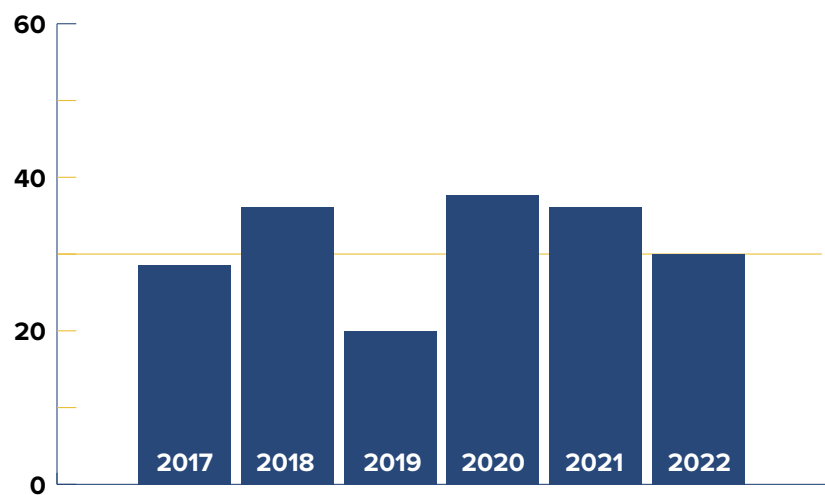


Chart 1: Criminal Appeals Filed in Nova Scotia Per Year

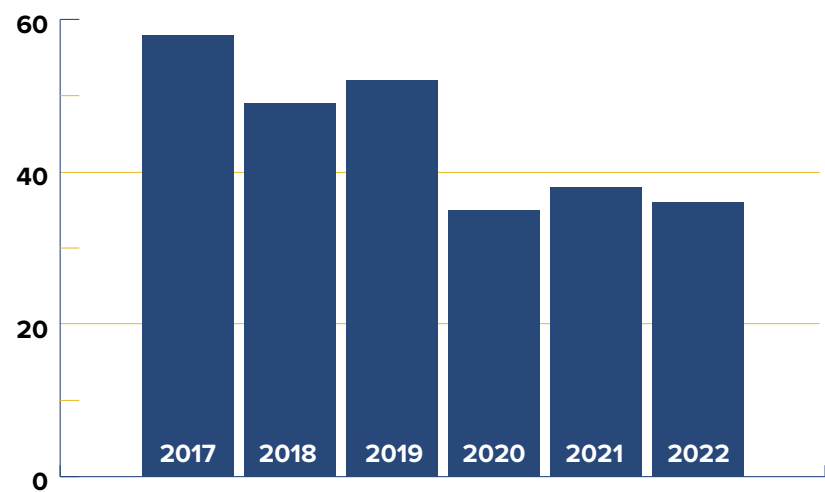


Chart 2: Civil Appeals Filed in Nova Scotia Per Year

Number of Appeals Disposed of by Judgment

Appeals disposed of by judgment are those in which a panel of judges ruled orally or in writing to dispose of a matter. There were 66 appeals disposed of by judgment in 2022.

Timeline for Judgment

There is currently no backlog of appeal matters, and there was typically no delay in scheduling appeal matters in 2022. As is shown in the tables below, the timeline from when the Notice of Appeal is filed to when it is disposed by judgment remains consistent with previous years. Most delays, if there were any, were during the period of filing the Notice of Appeal and what is referred to as “perfection” of the appeal (meeting all the requirements for filing).

NOTICE OF APPEAL TO JUDGMENT (CIVIL APPEALS)						
Year	0-6 mos	6-9 mos	9-12 mos	1-2 yrs	2 yrs +	Total
2017	11	21	14	10	1	57
2018	12	13	11	14	0	50
2019	11	7	15	16	2	51
2020	5	7	12	12	0	36
2021	4	12	4	17	1	38
2022	6	5	18	10	0	39

NOTICE OF APPEAL TO JUDGMENT (CRIMINAL APPEALS)						
Year	0-6 mos	6-9 mos	9-12 mos	1-2 yrs	2 yrs +	Total
2017	5	3	7	8	5	28
2018	1	6	10	12	3	32
2019	1	3	3	10	3	20
2020	2	7	6	21	3	39
2021	5	9	7	11	3	35
2022	0	3	5	14	5	27

Number of Appeals and Motions Heard

In 2022, panels of judges presided over 101 half-day appeal hearings* and 12 motions, including eight Workers' Compensation Appeal Tribunal (WCAT) leave to appeal hearings and four motions in criminal proceedings.

During the same period, the total number of motions heard by single judges was 471. This includes motions that were heard but adjourned to another day instead of being disposed of. This is an increase from recent years and is on the higher end of the range calculated over the last 10 years.

The trend of fewer civil motions (both with and without oral argument) continued in 2022. Approximately 40 per cent of court time in 2022 was dedicated to civil, including family law, appeals and motions (see *Chart 3*) and 60 per cent to criminal appeals and motions (see *Chart 4*).

** A full-day appeal was counted as two half-day appeals and appeals heard together but with separate file numbers were counted as two appeals heard.*

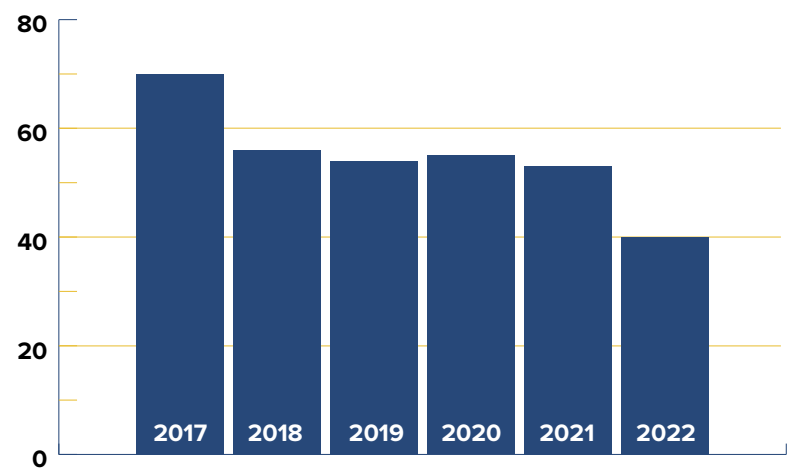


Chart 3: Percentage of Court Time Dedicated to Civil Appeals and Motions

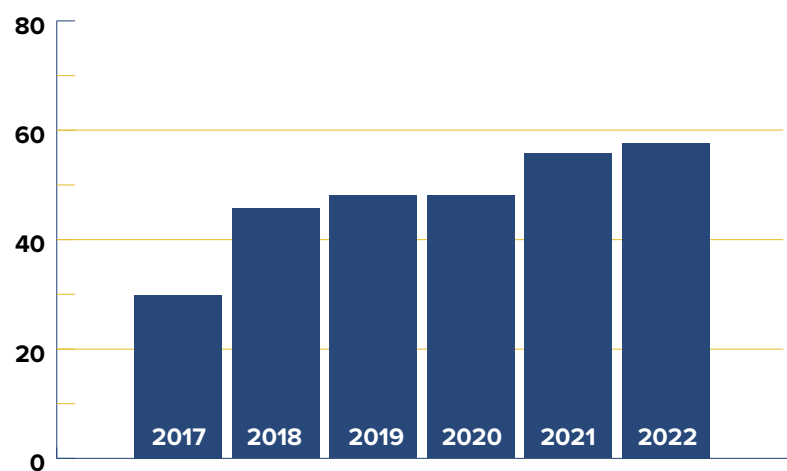


Chart 4: Percentage of Court Time Dedicated to Criminal Appeals and Motions

Self-Represented Litigants

In the 79 appeal hearings held in 2022, 19 parties (or approximately 10 per cent) had no lawyer and represented themselves in court. Twelve of those parties were appellants and seven were respondents.

FREE LEGAL CLINICS

The Nova Scotia Courts run free legal clinics in Halifax, Truro, Sydney and Yarmouth. These clinics provide services for people representing themselves in court who need assistance with their civil law matters and family law appeals, excluding child protection. Eligible clients can receive an hour of free legal advice from a volunteer lawyer, either in person or by telephone.

Contact Information to Schedule an Appointment

Halifax	902-424-6840	hfxfreelegalclinic@courts.ns.ca
Truro	902-893-3953	
Sydney	902-563-3550	
Yarmouth	902-742-0580	

Staff of the Nova Scotia Court of Appeal

- ▶ Caroline McInnes, Registrar
- ▶ Jessica Boutilier, Deputy Registrar
- ▶ Alanah Wallace, Court Clerk
- ▶ Cherri Brown, Chambers Clerk
- ▶ Alicia Whytewood, Executive Assistant to the Chief Justice
- ▶ Sarah McClare, Judicial Assistant
- ▶ Janet DeMone, Judicial Assistant
- ▶ Sharon MacLeod, Judicial Assistant



The inside of Courtroom 502 at the Law Courts in Halifax, where the Nova Scotia Court of Appeal primarily sits.

Webcasting

Live webcasts of court proceedings are a proven way to help educate the public about the legal system. The practice enables judges to reach audiences beyond the people physically in the courtroom. Webcasting also increases transparency and can enhance people's confidence in the judiciary and the Courts.

In 2022, the Court of Appeal livestreamed three civil and four criminal appeals:

- ▶ **March 9:** CA-467145 – Constitutional Reference re: Public Services Sustainability (2015) Act (871 unique viewers*)
- ▶ **March 22-23:** CAC-496279, CAC-496989 – Samanda Ritch & Calvin Sparks v. Her Majesty the Queen (653 unique viewers over the two-day hearing)
- ▶ **March 29:** CAC-472885 – Leslie Douglas Greenwood vs. Her Majesty the Queen (114 unique viewers)
- ▶ **April 11:** CA-507668 – Canadian Civil Liberties Association (242 unique viewers)
- ▶ **May 26:** CAC-506125 – Her Majesty the Queen Vs. Shawn Wade Hynes (96 unique viewers)
- ▶ **Dec. 6:** CA-515123 – Ecology Action Centre, NB Anti-Shale Gas Alliance vs. NS Department of Environment, Minister of Environment (86 unique viewers)

The archived video of all webcast proceedings is available on the [Courts of Nova Scotia website](#).

** A unique viewer is a single individual who watched a video. Whether they viewed the webcast on a computer or a mobile device, or if they watched the video more than once, that counts as one unique viewer. This measure typically gives a clearer picture of your audience size.*



During a visit to Nova Scotia in November 2022, The Hon. Justice Malcom Rowe spoke with law clerks and legal researchers in Halifax about the Supreme Court of Canada clerkship program and the important role that clerks play in helping the judges of the country's highest court prepare their decisions.

Clerkship Program

The Court of Appeal employs four law clerks, including a candidate selected from the Indigenous Blacks & Mi'kmaq Initiative at the Schulich School of Law.

Under the supervision of the judges, the law clerks provide legal assistance on appeals and other matters. Their responsibilities involve them in many areas of the law and since the clerks actively participate in the assignment of their cases, there are opportunities for them to focus on areas of interest and to explore previously unfamiliar areas of the law.

In 2021-22, the law clerks at the Court of Appeal included Marcus Marsman, Sarah Dobson, Sonia Kelly and Melanie Zetusian. The law clerks currently working with the court are Arthur Ferguson, Kali Robertson, Nolan Little and Molly Campbell.

A Glimpse into Clerking

By Arthur Ferguson, Lead Clerk, 2022-23



Clerking at the Nova Scotia Court of Appeal provides a unique opportunity to work with highly experienced justices, learn how judicial decisions are made and gain exposure to many different areas of the law. It is an opportunity to challenge yourself while benefiting from the mentorship and experience of justices who are genuinely engaged in your success.

As the Lead Clerk, I had the chance to work closely with my fellow clerks, as well as student clerks on placement from the Schulich School of Law at Dalhousie University.

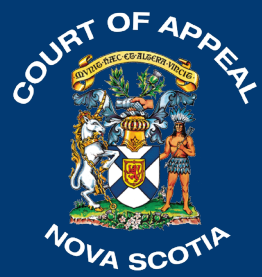
Understanding the role of an appellate court and how to approach cases from this unique point of view requires engaging with novel and complex arguments and learning the nuances of appellate-level procedure – from standard of review to the powers of the Court on appeal.

As clerks we benefit from reading and watching substantial written and oral advocacy, giving us a depth of experience not normally available to junior counsel at such a consistent and high level. The opportunity to engage with the justices on difficult issues, assisting them with legal research and discussing cases at length motivates you to produce work that you can stand behind.

Having your opinion be valued and of importance to a significant final decision is both daunting and extremely rewarding. My time at the Court has been shaped by the interesting work I've been able to do, the mentorship I've received and the fantastic working environment every member of the courthouse provides.

Cowan Internship

Every year, the Nova Scotia Court of Appeal supports a summer internship project for a law student to research a topic of the Court's choosing. The 2022 Cowan intern, George Philip, looked at the future of virtual courts in Canada in a post-pandemic era. The resulting report, *Listening and Responding to the Future of Virtual Court*, is available on the [Courts website](#).



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