

OPENING OF THE COURT 2005-2006

September 12, 2005

Address by The Honourable Allan H. Wachowich

Chief Justice of the Court of Queen's Bench of Alberta

Courtroom 203 of the Calgary Courthouse

Associate Chief Justice Wittmann, members of the Court of Queen's Bench, Assistant Chief Judge Stevenson of the Provincial Court, Masters of the Court of Queen's Bench of Alberta, members of the Bar, distinguished guests, ladies and gentlemen:

Thank you, Mr. O'Gorman, for your introduction to our ceremony today. I would like to welcome everyone to what I regard as a very significant occasion, as a time to consider the year just passed and also a special time to celebrate with the members of our community of justice - the judges, Masters, lawyers, representatives of government, court staff, and members of the media.

HISTORICAL BACKGROUND

Our celebrations this year are of special significance as we also commemorate the 100th anniversary of the Province of Alberta. The story of the establishment of our Courts begins as early as 1878 when the Supreme Court of the Northwest Territories was established as the Superior Court covering territory which included what would ultimately become the Province of Alberta. When Alberta joined Confederation in 1905, the Legislature passed the *Supreme Court Act*, and in 1907 the *District Courts Act*.

The *Supreme Court Act* transferred the jurisdiction of the Supreme Court of the North-West Territories to the Supreme Court of Alberta which consisted of only a Chief Justice of Alberta and four puisne judges, with jurisdiction over all civil and criminal matters.

The District Court, on the other hand, was a Court of Record presided over by a judge. The Deputy Judge of which held office at the pleasure of, the Lieutenant Governor in Council, which meant those Judges could be

fired Their jurisdiction was over all matters of debt, contract, validity of wills, interest in land and both legal and equitable jurisdiction over any claim for relief or right valued under \$400.

By 1906, the first Session of the First Legislative Assembly of the Province opened in Edmonton. It sat for only two months, from March until May and there were considerably fewer statutes at that time. If you have an opportunity to take a look at the Statutes of Alberta which existed at that time, they are a fascinating read. These are the Acts which incorporated the cities of Wetaskiwin, Medicine Hat, Lethbridge and Cardston and established the University of Alberta. The Statutes established the Department of the Attorney General, the Coroners, the Sheriffs and Clerks of the Supreme Court of the North-West Territories.

We are very much looking forward to celebrating, in a meaningful way, our Court's 100th anniversary in 2007.

NEW FACES IN THE COURT

Much has happened at the Court of Queen's Bench over the past twelve months. Three of our colleagues have now left the Court - Justices Earl Lomas, Alan Cooke, and Peter Power have retired and we wish them all the best in their new journeys. The Court is now composed of 78 Justices, soon to be 79. As a result of 4 judges electing supernumerary status, four new appointments were made in the last year. In Calgary, Associate Chief Justice Wittmann, who came to us from the Court of Appeal, was appointed to replace Justice Allen Sulatycky. Madam Justice Sheilah Martin, who will be sworn in at the end of this week, replaces Justice Donald McLeod. In Edmonton, Mr. Justice John Gill took the place of Justice James Lewis and Justice Dennis Thomas took over from Justice Del Perras. Each of our new Justices are stellar additions to our Court, bringing a variety of unique experience, talents and skills.

We also welcome a new Master-in-Chambers in Calgary, Judith Hanebury, who replaces Master Floyd who passed away earlier this year. Master Hanebury is Alberta's first female Master. Her appointment brings

our provincial total of Masters to 7, with 4 in Calgary and 3 in Edmonton. An additional Master for Edmonton has been requested due to the heavy workload, especially in the area of bankruptcies.

The Masters office in Edmonton and Calgary deals with no less than 24,000 matters a year. That works out to 6,000 per Master per year, or about 23 a day, which is a huge volume of work.

Within the past year, Alberta has also received a new Minister of Justice, the Honourable Ron Stevens. Working with Minister Stevens over the past months has been a most positive experience. We are confident that when the reputation of the administration of justice in this province is unjustly threatened, or if the principle of judicial independence is under seige, that the Attorney General will act in its defence. This is an honored traditional role of the office of the Attorney General. We commend Minister Steven's appointment to this important position, and look forward to developing a vision for better justice with the office of the Attorney General.

JUDGES' WORK

The work of the judiciary across the country has become much more complex as the role of a judge has greatly expanded over the past two decades. When I first became a judge in 1974 sitting on trials was the main job of judges.

In her address to the Fourth Worldwide Common Law Judiciary Conference in 2001, Chief Justice McLachlin remarked that “Judges face more difficult tasks than they ever have faced before. If judges are to meet these challenges they must be educated, competent and engaged.” Our daily court lists publically display the wide variety of matters, in addition to trials, that are brought before our Court - the civil and criminal pre-trial conferences, Judicial Dispute Resolutions, case management meetings, sentencings, regular and special Chambers for Civil, Family and Surrogate matters are some examples. There are also those special occasions such as Bar Admission ceremonies. What is not generally known to the public are those duties which judges perform outside of our courtrooms, such as the thousands of cases that are dealt with each year by desk procedure, or when

members of our Court sit as ex-officio members of the Court of Appeal, or the time spent in researching and writing decisions. In addition to these “behind the scenes” duties are many other interesting facets of our work which keep the Court “educated, competent and engaged”. Some examples are judicial committee work which covers every area of Queen’s Bench jurisdiction, joint Bench and Bar Committees which address legal reforms, judicial education programs which judges attend as students and teachers of other judges. Our judges must also keep apprised of matters occurring outside of the major centres as they all take turns traveling to the 9 Queen’s Bench locations in Drumheller, Fort McMurray, Grande Prairie, Lethbridge, Medicine Hat, Peace River, Red Deer, St. Paul, and Wetaskiwin, as well as to 2 additional circuit points located in Hinton and High Level.

Some members of our Court are also very active in national and international judicial associations, councils and institutes. One example is Justice Myra Bielby’s recent involvement in a public education initiative launched by the Canadian Superior Court Judges’ Association. The program is titled “Try Judging” and is publically accessible via the Internet.

Some members of the Court are also involved in teaching courses such as Advocacy and Professional Responsibility at the law schools, and many lecture periodically or judge student moot court competitions. Our judges are highly active in the area of public education as they make presentations at Legal Education Seminars, CBA Conferences, and participate in events such as Law Day and the Forum for Young Albertans.

Over the years we have learned that the demand during the summer months for regular sittings as well as for Judicial Dispute Resolutions has greatly increased. For example, the courtroom assignment lists from the last day of summer in 1996 indicates that 11 matters were scheduled, compared August 31st of this year when 29 matter were scheduled. As a result of increased demand the Court will consider adding extra judges to the summer schedule. The growing court lists also put considerable pressure on staff resources, particularly its human resources. Simply put, a clerk cannot attend to filing and other duties when he or she is sitting in the courtroom. Our clerks are in the courtroom for most of their working day, and we hope that this overload concern will soon be addressed.

LEAD TIMES

I am most pleased to report at this time that the Court remains well positioned in lead times compared with other jurisdictions, and we are in the best position we have ever been. The average booking time for short civil trials in Calgary during the 2004-2005 year was 15 weeks, and in Edmonton 17 weeks. Long civil trial lead times improved in Edmonton dramatically from 47 weeks in 2003-2004 to 29 weeks last year. In Calgary, the situation improved as well, from 29 to 16 weeks.

The changes in criminal trial lead times remained on an upward swing. Last year in Calgary, a short criminal trial could be booked in 14 weeks on average, and in 11 weeks in Edmonton. Long criminal trials could be booked dramatically sooner in Edmonton – 15 weeks in 2004-2005 versus 40 weeks the year before.

These lead times compare very favorably to other jurisdictions in Canada. In Ontario, Chief Justice Smith of the Superior Court of Justice reported serious delays in the civil justice system in Toronto. In response,

the judiciary there have pro-actively implemented fundamental changes to the case management regime. We are proud to say that we are free of these problems in Alberta.

Here in Alberta, we have requested that the government provide case flow management software. If we have case management officers, we can track every action commenced in the Court and this would ensure the efficient use of our manually-driven case management system.

There is currently a turnaround problem in the Surrogate section. Applications for probate are dealt with in 8 weeks instead of the targeted four weeks. A major part of the problem stems from staff shortages. These shortages are exacerbated in the summer during popular staff vacation periods, but are a recurring problem throughout the year. This problem has recently been addressed and we thank the Minister for supplying another position in Calgary.

Our trial co-ordinators are also in need of software which would link every judicial district in the province. The allocation of judges, clerks and courtrooms continues to be a concern. Inefficient use of any scarce resource impacts on access and use of the system. At present, the trial co-ordinators are still using manual methods.

Adequate resources for its justice system are fundamental to a democracy. We remain hopeful that the government will recognize how crucial a properly funded, modern court system is to the well-being of the citizens of Alberta, and with the arrival of Minister Stevens, we are optimistic that this need is recognized and will be addressed.

JUDICIAL DISPUTE RESOLUTION

The Alberta Court of Queen's Bench was the first in Canada to incorporate judicial dispute resolution weeks into judges' regular sitting schedules. In a given year, we hear about 700 JDRs. In about 75% of those cases, a settlement is reached prior to trial.

The Rules Project of the Alberta Law Reform Institute found that judges continue to be favored by lawyers to facilitate dispute resolution. Litigants also want to tell their story to a judge and hear a judge's view. However, one of the concerns cited was booking delays. In addition, it was found that trials were being delayed because judicial time and resources were being taken up by JDR activities. Preparation for a Judicial Dispute Resolution meeting is labor intensive, more so than for a trial, where the Judge's efforts arise during the course of, and at the end of the proceedings. The popularity of the JDR has now resulted in it being easier to book a short trial than a JDR.

The Court is pleased to say it has assigned a third JDR judge to sit every week in each of Calgary and Edmonton, as of September 1st. This corrective measure should reduce wait times. Lawyers can book a JDR judge through the Trial Co-ordinator, by letter or by phone. Self-represented litigants who want to schedule a JDR will need to seek leave from myself or from the Associate Chief Justice, or obtain an Order from another justice.

OTHER ALTERNATE DISPUTE RESOLUTION PROGRAMS

We know that mediation is an excellent way of providing litigants with an opportunity to test whether they really need a court resolution of their dispute. However, litigants still need an intake process in the courts. They need their options presented and explained, whether or not they are represented by counsel.

One of the steps that has been developed to address the need for further non-traditional means of resolving disputes is the Civil Mediation Program, a joint project between the Court and the Ministry. Since the inception of the program in January, 65 mediations have been booked. 88% of the mediations conducted so far have resulted in full resolution. The program is active in Edmonton and Lethbridge as a pilot project. Continued success may mean expansion to the Calgary judicial district.

The Court is also developing a Rural Video Courts project. This would be a video-conferencing system whereby Counsel in remote rural locations could appear by way of video-link with a Justice in Calgary or Edmonton for

a variety of civil, criminal and family law applications. The intention of this proposed project is to increase sittings so that the needs of litigants in rural areas are better met. There are video-conferencing facilities in some Provincial Courts now and we are hopeful that the government will extend the network to the rural Queen's Bench locations.

UNREPRESENTED LITIGANTS

Although delay in being heard is not a problem at the Court, the number of unrepresented persons who go to court is, to quote the Chief Justice of Canada, "rising at an alarming pace, creating serious consequences for citizens and the judicial system."

On this issue, the Court has participated in several interesting developments this year. One was a meeting of the Chief Judges from each of the three levels of Court with Alberta's Minister of Justice. This group was formed as a "think tank" organization to look at every aspect of the justice system in the province. The group was able to identify problems common to all levels of courts, such as litigation being too expensive and in effect

disallowing segments of the population from accessing justice. The fee-for-service model of Legal Aid was also examined and was regarded as not necessarily being the most effective way of delivering services. The group also identified the need to enhance communication between the courts, the justice ministry, the ministry of the Solicitor General and the ministry of Public Security. It was good to see that the participants understand fully that we are all in this together.

We need to look at providing staff counsel for unrepresented accuseds. Presently, the burden is on front-line court services workers, judges and court staff. All of us are restricted in the scope of assistance we can provide. Judges and staff can not give legal advice. Court service workers can provide some procedural assistance, but they are already overworked. We are hoping that the number of duty counsel can be increased from the sole family law duty counsel we have now in Calgary.

We would heartily endorse the establishment of a Pro Se Litigant Centre that has been suggested by government. Another option would be to

establish a clinic modeled on La Maison de Justice in Quebec City headed by retired Supreme Court of Canada justice The Honourable Claire L'Heureux-Dube. The clinic gives free legal advice to those who are not eligible for Legal Aid funds but still cannot afford a lawyer. It is staffed by retired judges and pro-bono counsel.

Speaking of pro bono initiatives, I commend the Bar in this City for their particularly immense contributions to the community by way of pro bono legal services. Lawyers have dedicated many hours over the last year to provide services for litigants, without fee, via initiatives such as the Family Law Dispute Resolution Project and Legal Guidance here in Calgary. In Edmonton, an incredible number of senior family law lawyers have volunteered with the Child Support Resolution Project and more lawyers are becoming involved with the Edmonton Centre for Equal Justice.

I understand that Red Deer will also soon have a pro-bono legal services clinic. It is the members of our justice community who dedicate countless hours to those in need that are deserving of the highest recognition.

When I hear reports such as the past President of the Canadian Bar Association, Walter Pavlic, and other executive members of the CBA having each volunteered hundreds of hours during their term, it makes me very proud to be a part of the Alberta community of justice.

We must keep in mind, however, that we cannot continue to rely on the public-spiritedness of volunteer lawyers. The demand is outpacing the availability, and it is unreasonable to expect any one to work more than a few hours a month without compensation. The workload of counsel is generally very heavy, and they are obliged to also meet family needs.

Education of the public about the legal system is a huge need. Litigants do not always understand the hazards of litigation and the potential costs. Judges have taken leadership in this through high school visit programs, and the development of comprehensive social studies teaching materials.

It was agreed that there is a need for a Public Education Officer so we can expand judicial involvement and leadership in public education

initiatives. The Court is in full agreement that we need to have a full discussion of the options among all players in the justice system: – lawyers, judges, ministry officials. I am confident we can find useful, cost-effective ways of dealing with this new and growing problem.

The Canadian Forum on Civil Justice, a national task force which was based at the University of Alberta, found that written sources are not necessarily the preferred method of seeking information about legal services. Its statistics show that 92% seek a lawyer's advice, 77% ask friends or co-workers. 65% rely on the assistance of court administrative staff. 50% use a court kiosk if it is available, 48% rely on the web, 44% use court pamphlets, and 40% learn from newspaper articles.

These numbers show that the majority of people would rather speak to a real person for information, a legally trained person being the overwhelming favorite.

However, a sizeable portion rely on news reports. I cannot emphasize enough the crucial role that the media play in the education of the public about the justice system. That makes thoroughness and accuracy even more important.

MEDIA

We are fortunate in Alberta to have competent members of the media reporting on the Court's activities. Some of them understand the courts and the legal process very well. However, the Court hopes that members of the media keep not only the business of the news in mind, but also the educational responsibility they have when they write reports and opinions on Court and judicial matters. Columnists and reporters are an integral part of the public perception of the administration of justice in this province.

We strive to assist the media as much as we can. For example, our email publication ban notice system should be up and running by the end of September. Media who register with us will receive an email notice from the

court clerk every time counsel apply for a publication ban, sealing order or other confidentiality order.

In addition, earlier this year we convened a seminar called “Media and the Law” when Judges, lawyers and members of the media discussed many issues which were common to all of us.

In addition, we continue to meet on issues of mutual interest, such as the media’s needs with respect to the new Calgary Courthouse Centre.

CALGARY COURTHOUSE CENTRE

The Calgary Courthouse Centre is under construction and consists of 2 towers, one 20 stories and one 24 stories, joined by a 24-storey glass atrium. The Court of Queen's Bench will occupy the North 24-story tower. The building is now at the 12th floor and being poured at the rate of about one floor every 10 days. We expect to move in during the summer of 2007 and this will become part of our 100th anniversary celebrations.

The total complex is about 850,000 square feet. It will hold 29 courtrooms for the use of Queen's Bench, and a number of courtrooms for the Provincial Court. Some of the courtrooms will be equipped for use by the Court of Appeal for criminal appeals. In addition, there will be extensive facilities to house our Court's growing judicial dispute resolution program and other mediation work. We have also been assured by government that the building will be provided with "state of the art technology" so that the Court of Queen's Bench can continue to respond to the needs of increasingly complex litigation.

By way of background, I note that in 1998 a survey was conducted to assess the future needs of the Edmonton Courthouse. It was determined that we would require an additional 90,000 square feet of space by 2005. We have reached this point in time, and Edmonton has also reached capacity for courtroom and office space in Edmonton.

In the Calgary facility there will be 360 court and external agency staff on the premises. Our Court Facilities Committee which besides myself

includes Associate Chief Justice Wittmann, Justices Rooke, McMahon and Romaine, is working very hard, together with court services staff, to ensure that the day-to-day needs of courthouse users are properly addressed at all stages of planning.

CONCLUSION

It has been a focus of our Court to constantly protect and enhance Albertans' ability to access their justice system. We know that the government recognizes that the pursuit of a judicial remedy can be a difficult, costly, time-consuming process. The present system can often appear daunting. We are confident that working together, we can continue to improve access to justice in Alberta.

I will conclude by offering words of congratulations. First, to the Masters for their hard work and top quality contributions during the past year. They are the backbone of the Court of Queen's Bench. We also wish to recognize the members of the Bar for their outstanding, unstinting

involvement over the past year. They have been exemplary in their unpaid devotion to committee work and volunteer programs.

I also want to commend the court services staff, our legal counsel and our legal assistants, for their integrity, loyalty and hard work. Although this is not said often enough, as we tend to take for granted those who do their job well, your contributions are noticed and appreciated every day.

Although there is a persistent rumor out there that legal systems are slow to change, I would vigorously challenge that assumption and say that it is outside perceptions that are slow to change. The way justice systems work now is a world apart from what they were 20 years ago. We all must deal with the need to change and adapt quickly. The improvements we have seen are due to the combined efforts of everyone involved in the our justice community, everyone here today. I extend to you congratulations on another successful year and on behalf of the Court we look forward to working together with you to continue to strengthen our justice system and our community of justice.

I leave you with the words of the distinguished American jurist,
Benjamin Cardozo:

**The process of Justice is never finished, but reproduces itself,
generation after generation, in ever-changing forms, and
today, as in the past, it calls for the bravest and the best.**

I thank you all for taking the time to attend today and I would now like
to invite everyone to go next door to Courtroom 202 to meet and share in
some refreshments.