

OPENING OF THE COURT 2004-2005

An Address by The Honourable Allan H. Wachowich

September 20, 2004

Edmonton Law Courts, Courtroom 317

Your Honour Lieutenant-Governor Hole, Associate Chief Justice Sulatycky, Assistant Chief Judge Franklin of the Provincial Court, judicial colleagues of the Court of Queen's Bench and the Provincial Court, and Masters, Dean Percy, Chief Rayner, Superintendent Fred Komis of the R.C.M.P., esteemed representatives of the Bar, distinguished guests, ladies and gentlemen:

Thank you, Mr. Pavlic, for that introduction to our ceremony here today.

It is only the third time in the history of this Court that we celebrate the opening of the new sitting year. This is an event jointly sponsored by the Canadian Bar Association and the Court of Queen's Bench. I would like to report

to the Bar and to members of the public on the affairs of the Court and administrative changes it has initiated over the past year.

We are on the cusp of celebrating 100 years as a province and as a court. When Alberta and Saskatchewan were carved out as provinces and joined Confederation in 1905, the Alberta Legislature passed the *Supreme Court Act*. The *District Courts Act* followed in 1907. Our Court as it exists today is the result of several legislated modifications to the structure of both these courts that culminated in the establishment of the Court of Queen's Bench in 1979 and the abolition of the District Courts.

Despite the legal profession's best efforts at hanging on to traditional methods, time and new social change have not left the court system untouched! We always talk about Edmonton and Calgary, but I think much of the real character of this province grew out of its smaller centres. Take Opal, Alberta, for example....

The only building left in Alberta that was built as a courthouse pre-1905 is in Fort McLeod. It was used as a courthouse until a new one was built 25 years ago, and that old courthouse now functions as the Town Hall.

We, as a Court, are hoping that in celebration of the province's centennial, we may bring the original judicial Bench out of storage and use the present Town Council's chambers as the site for a ceremonial occasion.

In 1905, Fort McLeod was the major centre in Alberta. On the occasion of the centennial, we would like to recognize Fort McLeod. Smaller centres could be used for this type of commemorative sitting. We are currently negotiating with the government to implement this plan during the next year.

JUDICIAL COMPLEMENT

The Court of Queen's Bench currently has 78 justices. This year, two more of our justices chose to become supernumerary, bringing the total to 15 supernumerary. They were Justice James Lewis and Justice Del Perras. We will have a full complement in the fall – when we fill the vacancy left by the supernumerary election by Justice Lewis – with a new appointment in Edmonton.

The judges who have retired over the past year are Justice Virgil Moshansky, Justice Ernest Hutchinson, Justice Bernard Feehan, Justice Earl Lomas, and Justice Berky Dea. We will miss them – and wish them all the best in their current and future endeavours.

We lost two justices this year – Justice Cawsey, who retired in 1997, and Justice Bracco of the Court of Appeal, who retired in 2000. We will always remember their wonderful contributions to our Court both as justices and as individuals.

The whole Court was very happy to welcome our two new appointments – Justice Adam Germain and Justice June Ross. Both come from very distinguished – and different – prior careers. They are outstanding additions to our Bench in Edmonton.

NATURE OF THE COURT'S WORK

Judges of the Court of Queen's Bench do much more than hear and adjudicate motions and trials. They also conduct a variety of proceedings that assist litigants and counsel with cost-effective and timely processes. Pre-trial

conferences, judicial dispute resolutions, case management, mini-trials and summary trials are alternative and improved ways of carrying on the traditional work of a judge.

As an example, the Court handles hundreds of case management files – 704 this year in Calgary alone. An individual judge is assigned anywhere from 3 to 40 files. The Associate Chief Justice, for example, handles 76 case management files.

Another rarely seen aspect of our work is a result of the increase in numbers of self-represented litigants. These litigants have given rise to extra administrative duties, for both the judiciary and the court services staff.

Parties who act for themselves in proceedings designed to be navigated by experienced counsel present new challenges. They can have a significant effect on the length of a proceeding. In circumstances when one party is represented by counsel and the other is not, the question is how far can a judge go in assisting the unrepresented party without inadvertently appearing to favour him or her?

The Court continues to examine ways in which the unrepresented may be assisted without jeopardizing the fairness of the process, especially in family law matters.

This work is not reflected in court statistics. It is in addition to the ongoing continuing education courses, public-speaking engagements, and innovative programs that the Court undertakes. As a Court, we travel to all jurisdictions. Many of us sit in the Northwest Territories and the Yukon. Justices are prepared to travel anywhere in the province, and outside our judicial districts if it is warranted.

COURT COMMITTEES

Our Court has 13 major committees, numerous *ad hoc* committees and several joint committees with the Court of Appeal and the Provincial Court. Their mandate is to find ways to improve administrative or substantive aspects within certain areas of the law. A few examples of their recent projects are:

The Continuing Education Committee offers annual sessions for all judges to keep abreast of changes in the law and other aspects of the legal system. Recent

topics have included: The Charter and the Criminal Trial, Privacy and Technology, Sentencing, and Class Proceedings.

The Criminal Practice and Procedure Committee has revised procedures to improve trial fairness and to increase time-savings for legal counsel. For example, the process for accepting guilty pleas was recently reviewed, as were desk bail forfeitures.

The Media Relations Committee, whose name has been changed to the Communications Committee, has one of the best media relations programs in the country. Among its many projects, you will shortly be seeing a streamlined process for providing notice of publication bans using the internet. I was very pleased to see that our Court was recently cited by the Canadian Judicial Council as being a “best practice” model for other jurisdictions for its media relations programs.

A further goal of the Communications Committee is to promote a greater public and media understanding of their role and the operation of the court system, a goal recognized by the Canadian Judicial Council as an important function of the

judiciary. This is most effectively accomplished through a wide variety of educational initiatives; to name a few, bringing judges into high school classrooms and students to the courthouse, working with community colleges and universities to promote courses on the role of judges, and arranging for judges to participate in forums or panels to explain fundamental concepts like judicial independence, impartiality, and the operation of the courts. The Canadian Judicial Council has emphasized that these types of public outreach initiatives should come from the judiciary, as who is in a better position to explain their role than judges themselves?

The Family Law Committee has several successful projects. It has received positive comments on its implementation of Practice Note 8 - dealing with Allegations of Sexual Abuse. It is also a participant in a group that will be training legal counsel who have expressed an interest in representing children in Court. It is also proud of its introduction of a simplified procedure that permits Children's Services to intervene in divorce actions and other custody and access matters where it has concerns about a child's interests or welfare.

These innovations represent the tip of the iceberg of the work of Court committees, and I commend them for their dedication.

MASTERS

The Masters in Chambers position goes back to the year 1913, at which time there was one Master in Edmonton and one in Calgary. Then in 1982, the workload of the 3 Masters in Edmonton and Northern Alberta increased nearly one-hundred-fold from the 1960s – they handled about 10,000 ex parte applications and 7,000 foreclosures. In 2002, to give you an idea of the sheer volume of work they deal with, our 7 Masters handled 32,000 applications.

Today, I want to recognize them for the invaluable contribution they make to the justice system. They handle a large variety of applications including summary judgments, service of documents, setting aside of default judgments, garnishees, replevin of goods, and foreclosures, to name only a few. The quality of their contribution is very much appreciated by all of us.

STAFF

The other essential component of court services is its administrative staff. Congratulations to our senior management staff and judicial assistants, some of whom are here today. They provide us with excellent support and are a credit to the smooth-running operation the Court provides to members of the public. We appreciate their dedication and their competence.

WORK OF THE COURT

The Court of Queen's Bench is committed to providing access to legal procedures that are timely and affordable. The Court and the judiciary have only limited control over the cost of access. Government decides what fees the public must pay and similarly the cost of lawyers' fees are out of our hands. Nonetheless, the Court tries in every way to create new procedures that shorten time that must be spent in courtroom proceedings. Besides cost reductions, the benefits of these measures are fewer documents are filed and fewer issues require argument.

Some of the newer programs that we have either spearheaded or participated in over the past year are:

Consolidated Notices to the Profession

We will shortly be releasing a directive entitled *Consolidated Notices to the Profession*. This will establish a complete public record of the procedural rules in civil and criminal actions. Until now, there have been issued a variety of Notices, Directions or Guidelines, and some were even practices that developed informally without publication.

The Consolidated Notices will be published in the *Alberta Rules of Court* binders and are available on the Court website. We anticipate that this Consolidation will assist all members of the Bar to be consistently kept abreast of new procedural rules, and to have a ready source of up-to-date information.

We would also like to emphasize our willingness as justices to be accessible to members of the Bar -- if they require our assistance, we will meet the need.

Family Matters

We are extremely pleased with the Family Law Duty Counsel project which the Court, together with Catherine Christopher, counsel at the Calgary Legal Guidance, spearheaded in Calgary. It has moved out of the pilot phase and is a

valuable service to persons without legal representation. This service is also an excellent opportunity for law students to attain first-hand experience and training from duty counsel.

The Court is also fully participating in the Child Support Resolution Pilot Project in Edmonton and the Dispute Resolution Officer program in Calgary. An early evaluation of the mandatory mediation project reported that these programs were successful, particularly the more broadly based and earlier Calgary program. Issues were settled or narrowed 80% of the time. The authors estimate that the program has saved 1,004 court hours.

Divorce Backlog in Calgary

Unfortunately, we are still encountering problems with timely turnarounds for divorce files. In Calgary, divorce files were seriously backlogged again last year. While the file turnaround target is 4 weeks, the average turnaround time in that jurisdiction rose to 9 weeks.

Once again, the problem arose because of lack of staff at the divorce counter. Early in 2004, the usual staff of 4 clerks fell to two, and they are entitled

to holidays. The backlog became so severe that the divorce counter was closed in June, and all applications were handled by the main clerk's office.

During September, the divorce counter in Calgary was re-opened. There have been some new administrative staff hired, but the supervisor estimates it will take a year to get back to full capacity. This is an example of the direct effect of lack of adequate resources on timely service to the public.

In order to help circumvent this problem, the Court has decided to start a divorce docket court in Calgary beginning September 13. Once a month, a chambers judge will hear urgent divorce applications, those that are more complex, or those that have not gone through the desk process, but would benefit from being before a judge. The sitting judge will also hear divorces that have been rejected numerous times. Parties may enter oral evidence. This new process is designed to assist lawyers with difficult cases. Most importantly, it will accelerate the divorce process where necessary.

Lead Times and Workload

Two highlights of our lead times are the short civil and criminal trials in our two major centres. For civil short trials in Edmonton, we have gone from an average 24 weeks time-to-trial to only 17 weeks last year. Compared to other jurisdictions, that is outstanding.

In criminal short trials, the average lead time in Edmonton improved by 8 weeks, from 22 to 14 weeks time-to-trial, and in Calgary, average time-to-trial went down by 4 weeks to 8 weeks.

It is surprising that the Court can often give a date earlier than counsel is available. In fact, actual lead time at the Court is unofficially measured in days, not months. In criminal trials in Edmonton, counsel can often get a date well before the official average when, for example, a five-day scheduled trial collapses. The fact that the official average lead time is actually the earliest date that counsel selected short trials, and not the earliest date the Court has available.

The government has instituted a change in the way it compiles statistics on court operations. This affects both the manner of collection and of calculation. Although this makes it more difficult for us to make comparisons between last

year and future years, we are hopeful that the efficiencies realized will make the change worthwhile!

The popularity of the Court's Judicial Dispute Resolution process continues unabated. Last year, the Court conducted 477 JDRs. These usually involve far more preparation time than sitting for trials. The Court continues to dedicate two judges every week in each of Edmonton and Calgary to hear JDRs. In 2003, we began scheduling JDRs in the summer. That is one of the reasons trial dates remain manageable.

A new and innovative procedure that may well improve civil trial lead times is about to be implemented under a new Practice Note – Court Annexed Mediation. This procedure, to be available in the judicial districts of Edmonton and Lethbridge, will apply to civil actions commenced after September 1, 2004. However, applications to mediate under this procedure cannot be brought until January 1, 2005.

PUBLIC EDUCATION

The Court has undertaken some educational initiatives for the benefit of the public. We are responding to extensive proposals by the Canadian Judicial

Council which has recognized the need for better understanding by the public of the role of the judiciary and the court system. It has emphasized that public outreach initiatives should come from the judiciary – as who is in a better position to explain their role than judges themselves? The Minister of Justice and Attorney General, under our Constitution, is responsible for the administration of justice in this province. He or she has a key role to play in funding these types of court-based projects, which I am confident would go a long way to assist in demystifying a fundamental component of the legal process. We hope that resources for that purpose will be forthcoming, so that we can branch out into public education in a substantial way.

PRO BONO

It is very gratifying to see the many hours spent by members of the Bar in offering services without compensation to persons who would otherwise have no recourse in the legal system. Court appearances without expectation of a fee is really going the extra mile.

Our warm regard to counsel who do pro bono work, extends to Dispute Resolution Officers. Not everyone is aware that they offer their services for no

remuneration, and they are to be congratulated for fulfilling their obligations as counsel beyond the usual standards.

According to Paul Schabas of Blake, Cassels & Graydon, the top 100 or 200 law firms in the United States – the most profitable – the most successful – are the law firms that do the most pro bono work. Other Canadian research has come to the same conclusions.

The Canadian Bar Association magazine, *The National*, this month discussed some of the benefits of pro bono work. They are:

- . The firm that encourages pro bono work attracts the best and brightest lawyers
- . Working on socially relevant matters instills enthusiasm for the practice of law
- . It provides supervised training and experience for articling students and new associates

The Court wants to encourage this extraordinary work, most of which is unrecognized and unacknowledged. As individual justices, we notice and greatly appreciate a lawyer who provides pro bono services that are in the best tradition of his or her profession.

THE CALGARY COURTHOUSE

The Court is very pleased that construction of a new courthouse is underway after so many years of discussion.

We are completely supportive of the concept of consolidating the courts in one location. Regrettably, the Court of Appeal is not included in the project at this time, but that decision was driven by factors beyond the control of our Court. The building will stand across the street from the old Court of Appeal building, and a block away from the old Queen's Bench building. No plans have yet been made on the future of those two buildings.

We are hopeful the design chosen by the government will permit the Court of Queen's Bench in Calgary to adequately fulfill its obligations to the public. We had looked at the P3 model with a great deal of skepticism. It presented potential

threats to the principles of judicial independence. We now appreciate the progress the government is making.

Construction has begun on a twin tower complex for occupancy in 2007. As all new court buildings are now, the first 40 feet will be bullet proof. Also, although it is not – contrary to reports -- “terrorist-proof”, all new public buildings are designed for progressive collapse. This means that if one part of the structure collapses, the rest of it will remain standing.

Security in this new courthouse remains a major concern for the courts, just as it is in any public facility. Bringing both courts together is efficient, but raises new security issues.

There is concern that the use of private sector personnel at any level in the courthouse system has serious confidentiality implications. Unlike the other floors, on the judges’ floors, where documents relating to ongoing litigation are kept, we currently have government cleaning staff. This is important where, for instance, a judge is drafting a judgment whose outcome may have an effect on

share prices. Another example is if an accused were to learn in advance that he not be granted bail or be acquitted he might leave the jurisdiction.

We are confident that working together with government, these concerns will be resolved to everyone's satisfaction.

CONCLUSION

It is one of the privileges of my function as Chief Justice to work with all the dedicated and talented people in the courtroom today. It is you who make the abstract principles of a free and democratic society into a reality for the citizens of Alberta. It is hard to think of a more important contribution to our society.

If we follow the news at all, it becomes clear that many people are less fortunate in the quality of their justice system. Compared to numerous other jurisdictions worldwide, we are truly blessed. It is easy to forget this while we carry on with our daily professions.

I believe that when all components of the justice system – the courts, the lawyers, government officials, and media too – when we put our heads together we

can really make a difference in providing the public with justice that is fair, affordable and accessible. That is why we are here – to serve Albertans to the best of our abilities.
