



COURT OF APPEAL FOR ONTARIO  
ANNUAL REPORT 2012



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## *Message from Chief Justice Warren Winkler*

It is with bittersweet emotion that I reflect on the past year, 2012, and look forward to 2013. As I write these remarks I am conscious of the fact that I will, at the end of 2013, be reaching the age of mandatory retirement. As such, this will be the last Annual Report that is released while I am still Chief Justice.

The Court of Appeal published its first Annual Report four years ago, and every year I take pride in its presentation. It allows me to share publicly the significant accomplishments of the judges and the staff of the Court of Appeal. Furthermore, it serves to increase the openness, transparency, and accountability of the Court, all necessary if we are to maintain public confidence in our valued legal system.

The publication of an annual report is but one of the many initiatives this Court has undertaken in recent years with a view to increasing public awareness of our ongoing activities. Other examples include the Court's role in transforming and broadening attendance at the Annual Opening of the Courts ceremony; establishing new *pro bono* legal assistance programmes; working with a distinguished historian to prepare a book on the history of the Court; and increasing outreach activities to regional bar associations, courts, and law schools. Law students face enormous challenges today, yet they are the natural wellspring of the legal profession. Their interests and needs must also be ours.

Another recent achievement of this Court has been its two meetings with the Court of Appeal of Québec in the last three years. These historic conferences between our country's two busiest appellate courts have provided important educational and collegial opportunities for our judges. In addition they have been a bridge, in my view, to the unity not merely of courts but also of languages and court cultures.

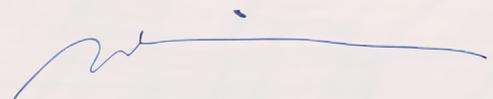
We must continue to promote and maintain public transparency about the relationship between our courts and government. This relationship is central to democracy and the rule of law. The Memorandum of Understanding entered into in 2012 between our Court and the Government of Ontario codifies the administrative relationship between the judiciary and the executive branch of government.

During my tenure, I have tried to increase the visibility of our Court and to deepen the public's awareness of its operations. To the extent that I have succeeded at all, our goal could not have been accomplished without the dedicated, diligent work of my colleagues at the Court of Appeal. The members of this Court have justly earned their reputation as the most capable appellate court in this country. I am honoured to serve with them.

I am also indebted to the legal and administrative staff for their hard work and commitment to the Court. Each one of them is a devoted public servant, dedicated to assisting the judiciary and helping the public to obtain efficient access to justice, a core value in our free and democratic society.

Finally, I am especially grateful to Associate Chief Justice Dennis O'Connor who retired at the end of 2012. He was and will always remain a friend and, by any standard of excellence, a brilliant and respected leader of this Court.

I look forward to my final year as Chief Justice and I will continue to cherish the friendships and wise counsel of my colleagues.



The Honourable Warren K. Winkler  
Chief Justice of Ontario





## *Message from Associate Chief Justice Dennis O'Connor*

By the time this Annual Report is published, I will have retired from the Court. I have had the privilege to sit on the Bench of this Court for nearly fifteen years. While much has changed in society and in the legal world during that time, several very important aspects about our Court's work have remained the same.

Throughout my time at the Court, the judges have been committed to excellence both in the way the Court conducts its business and in the quality of the judgments rendered. When I first arrived at the Court in 1998, I was immediately impressed by a culture that expected the judges to thoroughly prepare prior to hearing appeals, to listen carefully and be sure to understand oral arguments, and to work supportively and collegially in deciding cases and rendering judgments. The judges were completely engaged in the work of the Court and appreciated the important role they played in our system of justice.

Happily that culture has continued. As I leave, I am confident that the high standards handed down from earlier generations of judges on this Court will be carried on into the future. I will miss my colleagues and thank them for their friendship and support.

I also want to extend my appreciation to the highly professional staff of the Court of Appeal. They have been of great assistance to me over the years. The Court is very well-served by the Registrar Huguette Thomson and her staff, and the Senior Legal Officer John Kromkamp and his staff. Special thanks also go to my assistant Dana Davis. She has been a terrific help to me and an absolute pleasure to work with.

Finally, a tip of the hat to the litigation Bar in Ontario. The Court of Appeal benefits enormously from the very professional and skilled counsel who regularly appear before it. Without their assistance, the Court would not be able to render the high quality of judgments and reasons for which it has become known.

I extend my best wishes to all of those who will continue to work within this wonderful institution in the years to come.



The Honourable Dennis R. O'Connor  
Associate Chief Justice of Ontario  
*Associate Chief Justice (October 2001 – December 2012)*  
*Judge of the Court of Appeal (June 1998 – 2001)*



Judges of the Court of Appeal - December 2012. Missing from the photo: Doherty J.A.; Ducharme J.A.

## *Judges of the Court of Appeal*

2012 was a year of substantial change for the Court of Appeal for Ontario. The Court began the year with two judicial vacancies that had been created when Justices Michael J. Moldaver and Andromache Karakatsanis were appointed to the Supreme Court of Canada in the fall of 2011. Additional judicial vacancies were created during 2012 when Justices Robert P. Armstrong and Harry S. LaForme elected to take supernumerary status. These four vacancies were filled during the course of the year, and by December 2012 the Court returned to a full complement of 22 full-time judges and five supernumerary judges.

### *New Judicial Appointments*

The Court of Appeal for Ontario received four new judicial appointments in 2012. Justices Sarah E. Pepall, Edward W. Ducharme, Michael H. Tulloch and Peter D. Lauwers were all appointed during the year.

#### *Justice Sarah Pepall*

Justice Sarah Pepall was appointed to the Court of Appeal on April 5, 2012. Her appointment filled the vacancy created by Justice Karakatsanis's elevation to the Supreme Court of Canada on October 21, 2011.

Justice Pepall had been a judge of the Superior Court of Justice in the Toronto Region since 1999, and was the team leader of the Superior Court's Commercial List from 2006 to 2010.

Before being appointed as a judge of the Superior Court of Justice, Justice Pepall was a litigator, first at Bassel, Sullivan, Lawson and Leake, and later at McMillan Binch, where she became the firm's managing partner.

She is a past chairperson of the Board of Directors of the Multiple Sclerosis Society of Canada and past president of the Ontario Superior Court Judges' Association.

Justice Pepall was called to the Bar of Ontario in 1978, having received her B.A. in political science and her LL.B. from McGill University. She received her LL.M. in Public Law from Osgoode Hall Law School in 1983.

#### *Justice Edward Ducharme*

Justice Edward Ducharme was appointed to the Court of Appeal on April 5, 2012. He filled the vacancy created by Justice Michael Moldaver's elevation to the Supreme Court of Canada on October 21, 2011.

Prior to his appointment to the Court of Appeal, Justice Ducharme had been a judge of the Superior Court of Justice since 2002. He became the Regional Senior Justice for the Southwest Region of the Superior Court of Justice in 2009.

Before turning to the practice of Law, Justice Ducharme had been an English Professor at the University of Windsor, where he also served as the Chair of the English Department, Assistant Dean, and Assistant Vice-President. Later he practiced litigation, first at Sutts, Strosberg LLP, and then as a founding partner of Ducharme Fox LLP, where he headed the firm's Labour and Employment Department. From 1999 to 2002, Justice Ducharme was a Bencher of the Law Society of Upper Canada.

Justice Ducharme was called to the Bar of Ontario in 1987, having received his LL.B. from the University of Windsor in 1985. He received a Ph.D. in English and Education from the University of Michigan in 1980.

### ***Justice Michael Tulloch***

Justice Michael Tulloch's appointment to the Court of Appeal took effect on June 30, 2012. He filled a vacancy created when Justice Harry LaForme elected supernumerary status, which also took effect on the same day.

Justice Tulloch had been a judge of the Superior Court of Justice in the Central West Region since 2003.

Prior to being appointed a judge, Justice Tulloch had been an Assistant Crown Attorney, a Special Prosecuting Agent for the Federal Department of Justice, and the principal counsel at Michael H. Tulloch & Associates, a mid-sized criminal law firm which he founded.

He is the past president of the Canadian Association of Black Lawyers and a founding member and patron of the Second Chance Scholarship Foundation Inc.

Justice Tulloch received his LL.B. from Osgoode Hall Law School in 1989 and was called to the Bar of Ontario in 1991. He has received honorary degrees from the University of Guelph and Tyndale University College.

### ***Justice Peter Lauwers***

Justice Peter Lauwers was appointed to the Court of Appeal on December 13, 2012. He filled a vacancy created when Justice Robert Armstrong elected supernumerary status effective September 1, 2012.

Justice Lauwers had been a judge of the Superior Court of Justice in the Central East Region since 2008.

Before being appointed a judge, Justice Lauwers

was a partner at Miller Thomson LLP, where he was a civil litigator specializing in education law.

Justice Lauwers appears frequently as a speaker at legal functions and has published numerous articles.

Justice Lauwers received his LL.B. from the University of Toronto in 1978 and his LL.M. from Osgoode Hall Law School of York University in 1983. He was called to the Bar of Ontario in 1980.

### ***Associate Chief Justice Dennis O'Connor Retires from the Court***

Associate Chief Justice Dennis R. O'Connor retired from the Court of Appeal on December 31, 2012, after eleven years as Associate Chief Justice and almost fifteen years at the Court of Appeal. As Associate Chief Justice, he served as the chief administrative judge for the Court. He was widely respected for his leadership, wisdom and collegiality.

His tireless service to the people of Ontario was highlighted by his leadership of two public inquiries while he was at the Court of Appeal – the Walkerton Inquiry from 2000 to 2002 and the Arar Inquiry from 2004 to 2006. His participation in both underlined his ongoing commitment to justice in the province.

He is the recipient of numerous awards and honours, including four honorary doctorates of law, as well as awards of distinction from the Toronto Lawyers Association and the Ontario Bar Association. In February 2013, he will be receiving the Advocates' Society Medal.

After retiring from the Court of Appeal he returned to legal practice at his former law firm, Borden Ladner Gervais LLP.

## *Dates of Appointment of Judges of the Court of Appeal*

### **The Honourable Warren K. Winkler (C.J.O.)**

- Chief Justice of Ontario June 1, 2007
- Regional Senior Judge of the Superior Court of Justice (Toronto Region) March 12, 2004
- Superior Court of Justice April 19, 1999
- Ontario Court of Justice (General Division) June 16, 1993

### **The Honourable Dennis R. O'Connor (A.C.J.O.)**

- Associate Chief Justice of Ontario October 30, 2001
- Court of Appeal June 11, 1998

### **The Honourable David H. Doherty**

- Court of Appeal September 1, 1990
- Supreme Court of Ontario, High Court of Justice September 2, 1988

### **The Honourable Karen M. Weiler\***

- Court of Appeal March 12, 1992
- Ontario Court of Justice (General Division) September 1, 1990
- Supreme Court of Ontario, High Court of Justice February 21, 1989
- District Court of Ontario January 1, 1985
- County and District Courts of Ontario November 27, 1980

### **The Honourable John I. Laskin**

- Court of Appeal January 27, 1994

### **The Honourable Marc Rosenberg**

- Court of Appeal December 12, 1995

### **The Honourable Stephen T. Goudge**

- Court of Appeal December 19, 1996

### **The Honourable Kathryn N. Feldman**

- Court of Appeal June 11, 1998
- Ontario Court of Justice (General Division) December 24, 1990

### **The Honourable James C. MacPherson**

- Court of Appeal May 25, 1999
- Superior Court of Justice April 19, 1999
- Ontario Court of Justice (General Division) June 24, 1993

## *Dates of Appointment of Judges of the Court of Appeal*

### **The Honourable Robert J. Sharpe**

- Court of Appeal May 25, 1999
- Superior Court of Justice April 19, 1999
- Ontario Court of Justice (General Division) February 28, 1995

### **The Honourable Janet M. Simmons**

- Court of Appeal August 22, 2000
- Regional Senior Judge of the Superior Court of Justice (Central West Region) October 12, 1999
- Superior Court of Justice April 19, 1999
- Ontario Court (General Division) September 16, 1991
- Ontario Court (Provincial Division) December 21, 1990

### **The Honourable Eleanore A. Cronk**

- Court of Appeal July 31, 2001

### **The Honourable Eileen E. Gillese**

- Court of Appeal January 25, 2002
- Superior Court of Justice April 19, 1999
- Ontario Court of Justice (General Division) January 8, 1999

### **The Honourable Robert P. Armstrong\***

- Court of Appeal January 25, 2002

### **The Honourable Robert A. Blair**

- Court of Appeal November 5, 2003
- Regional Senior Judge of the Superior Court of Justice (Toronto Region) October 12, 1999
- Superior Court of Justice April 19, 1999
- Ontario Court of Justice (General Division) March 22, 1991

### **The Honourable Susan E. Lang\***

- Court of Appeal March 12, 2004
- Superior Court of Justice October 12, 1999
- Regional Senior Judge of the Superior Court of Justice (Toronto Region) April 19, 1999
- Regional Senior Judge of the Ontario Court of Justice (General Division) (Toronto Region) October 29, 1996
- Ontario Court of Justice (General Division) September 1, 1990
- District Court of Ontario February 21, 1989

**The Honourable Russell G. Juriansz**

- Court of Appeal March 12, 2004
- Superior Court of Justice April 19, 1999
- Ontario Court of Justice (General Division) March 17, 1998

**The Honourable Jean L. MacFarland\***

- Court of Appeal November 19, 2004
- Superior Court of Justice April 19, 1999
- Ontario Court of Justice (General Division) February 6, 1996
- Regional Senior Judge of the Ontario Court of Justice (General Division) (Central East Region) September 1, 1990
- Supreme Court of Ontario, High Court of Justice September 23, 1987

**The Honourable Harry S. LaForme\***

- Court of Appeal November 19, 2004
- Superior Court of Justice April 19, 1999
- Ontario Court of Justice (General Division) January 27, 1994

**The Honourable Paul S. Rouleau**

- Court of Appeal April 14, 2005
- Superior Court of Justice May 31, 2002

**The Honourable J. David Watt**

- Court of Appeal October 12, 2007
- Superior Court of Justice April 19, 1999
- Ontario Court of Justice (General Division) September 1, 1990
- Supreme Court of Ontario, High Court of Justice October 4, 1985

**The Honourable Gloria J. Epstein**

- Court of Appeal December 13, 2007
- Superior Court of Justice April 19, 1999
- Ontario Court of Justice (General Division) June 17, 1993

## *Dates of Appointment of Judges of the Court of Appeal*

### **The Honourable Alexandra H. Hoy**

- Court of Appeal December 2, 2011
- Superior Court of Justice January 25, 2002

### **The Honourable Sarah E. Pepall**

- Court of Appeal April 5, 2012
- Superior Court of Justice June 30, 1999

### **The Honourable Edward W. Ducharme**

- Court of Appeal April 5, 2012
- Regional Senior Judge of the Superior Court of Justice (Southwest Region) November 26, 2009
- Superior Court of Justice May 31, 2002

### **The Honourable Michael H. Tulloch**

- Court of Appeal June 30, 2012
- Superior Court of Justice September 26, 2003

### **The Honourable Peter D. Lauwers**

- Court of Appeal December 13, 2012
- Superior Court of Justice July 30, 2008

\*Supernumerary

**2012**  
**The**  
**Year**  
**in**  
**Review**



## *The Work of the Court*



The Court of Appeal is Ontario's highest court. It hears appeals from the province's two trial courts in all areas of law. Less than 3 percent of its cases are heard by the Supreme Court of Canada. This means that the Court of Appeal offers the final opportunity for a hearing for most Ontario litigants.

The Court, which is located in Toronto's historic Osgoode Hall building, is Canada's busiest appellate court. As the appeal court for Canada's most populous province, it hears approximately one-third of the total number of cases adjudicated by all of Canada's provincial appellate courts combined.

The overall volume of cases heard by the Court in 2012 was relatively consistent with recent years. Despite experiencing judicial vacancies for large parts of the year, the Court continued to hear cases and release decisions in a timely manner. The Court heard most of its civil appeals within five months of perfection and criminal appeals within four. The thorough judgments of the Court

continued to be released within the targeted six-month time period, except in extraordinary circumstances.

### *Committee Work*

In addition to their case-related workload, judges of the Court show great leadership participating in a variety of committees including: the Canadian Judicial Council, the Federal Judicial Advisory Committee, the National Judicial Institute, the Canadian Superior Courts Judges Association, the French Language Services Bench and Bar Advisory Committee, the International Association of Judges, the Ontario Courts Accessibility Committee, the Chief Justice of Ontario's Advisory Committee on Professionalism, the Chief Justices' Information and Technology Committee, the Criminal Appeals Committee, the Civil Rules Committee, and the Family Rules Committee. They also sit on many internal administrative and policy committees of the Court of Appeal, including its Media, Education, Security, Facilities and Law Clerk Committees.

### *Judicial and Legal Education*

The judges of the Court of Appeal are active in judicial and legal education across Canada and throughout the world. They frequently publish and present scholarly works, give lectures and participate in panels at law schools, seminars and conferences.

In addition, Court of Appeal judges are frequently asked to contribute to judicial training programmes within Canada and throughout the world.

Judges and staff lawyers at the Court of Appeal have in recent years contributed to legal education sessions for lawyers and judges from various countries including Australia, Bangladesh, Botswana, Brazil, Chile, China, Costa Rica, England, Ethiopia, France, Ghana, Jamaica, Japan, Kenya, the Netherlands, Nigeria, Scotland, Tanzania, Uganda, Ukraine, the United Arab Emirates and Vietnam.

## *Law Clerk Programme*

There are 17 law clerks in the Law Clerk Programme at the Court of Appeal. The clerks are either recent law school graduates fulfilling their articling requirements or lawyers who have recently been called to the Bar. The Law Clerk Programme is overseen by the Law Clerk Committee, consisting of Justices Laskin, Feldman, Gillese, Blair and Pepall. The law clerks provide significant assistance to the judges of the Court of Appeal and gain invaluable and unique experience during their term at the Court.

The law clerks work on a diverse range of cases, including constitutional, criminal, civil, commercial, family and administrative law matters. They prepare pre-hearing memos, conduct legal research, edit judgments and work on a wide variety of special projects assigned by the judges, often supervised by and working closely with staff research lawyers. During the course of their time, the law clerks are encouraged to attend court proceedings at the Court of Appeal and the nearby trial courts, allowing them to obtain insight into different styles of oral advocacy. A highlight of their year is a trip to Kingston, Ontario, where they observe and assist the judges with inmate appeals.

The clerkship begins each year in either August or September and continues for a period of 10 to 12

months. Each law clerk is paired with either one or two judges of the Court, and then changes assignment halfway through the year to provide the law clerk with greater exposure to the various activities and judges of the Court.

### *Law Clerks 2011-2012*

Jeff Carolin, Osgoode; Alan Cliff, Harvard; Graham Jenner, Osgoode; Natasha Kanerva, Toronto; Brent Kettles, Osgoode; Joanna Langille, NYU; Ryan Liss, Toronto; Adriana Morrison, Western; Danielle Mulaire, Ottawa; Kim Potter, Toronto; Mary Race, McGill; Ziad Reslan, Osgoode; Sarah Reynolds Repka, Queen's; Shirley Smiley, UBC; Carly Stringer, Ottawa; Eric Wagner, Toronto; and Lauren Wilhelm, Windsor.

### *Law Clerks 2012-2013*

Suzanne Amiel, McGill; Joanna Baron, McGill; Ryan Cookson, Western; Lauren Epstein, Toronto; Sanam Goudarzi, Queen's; Kathleen Heap, Ottawa; David Lingard, Osgoode; Terrence Liu, Windsor; Shea Loewen, Ottawa; Matthew Mundy, Toronto; Brandin O'Connor, Osgoode; Matthew Parker, Harvard; Daniel Rohde, Toronto; Amy Rose, Toronto; Ezra Siller, Yale; Akash Toprani, Toronto; and Claire Truesdale, Victoria.



## *Joint Judicial Meeting - Québec Court of Appeal and Court of Appeal for Ontario*



In October of 2012, the Court of Appeal for Ontario and the Québec Court of Appeal held a joint judicial meeting in Québec City. This was only the second meeting of its kind. The first historic meeting of the two Courts was held two years earlier in Ottawa.

These joint meetings provide the judges of the two courts with an opportunity to share experiences and discuss matters of mutual interest. Discussions and seminars at this year's meeting focused on criminal, constitutional, societal and administrative matters of common concern.

As the two busiest appellate courts in the country, the Québec and Ontario appeal courts face many similar issues, and the judges of the two Courts were able to learn enormously from each other's experiences and practices. The meetings have fostered strong and ongoing collegial ties.



Chief Justice  
Nicole Duval Hesler  
(QCA)

Chief Justice  
Warren K. Winkler  
(COA)



**Joint Judicial Meeting Organizers**

Goudge J.A. (COA), Gagnon J.A. (QCA), Dutil J.A. (QCA), and  
Rouleau J.A. (COA)

## ***Outreach Activities***

The Court of Appeal continues to engage in outreach activities across the province.

In April of 2012, the judges of the Court of Appeal held a formal outreach meeting with their judicial colleagues of the Superior Court of Justice in the Toronto Region. This completed a cycle of outreach meetings the Court began in 2003. The Court has now met with the Superior Court and the Ontario Court of Justice in every region in Ontario. These gatherings provide the judges from the trial and appeal courts a useful opportunity to share observations about their common mission to provide fair and efficient access to justice to Ontarians.

In 2013 the judges of the Court of Appeal will commence a new series of outreach visits with a trip to Ottawa where they will be meeting with their judicial colleagues from the Federal Court of Appeal and the trial courts in the East Region as well as members of the local Bar. The Court will also be visiting the students and faculty at the Faculty of Law at the University of Ottawa. This will continue a tradition started in 2011 when the Court held a highly successful visit to the Faculty of Law at the University of Windsor.

## ***Memorandum of Understanding with the Government of Ontario***

In 2012 the Court of Appeal entered into a Memorandum of Understanding with the Government of Ontario. This Memorandum, signed by the Chief Justice of Ontario and the province's Attorney General, sets out roles and responsibilities for the operation and administration of the Court of Appeal.

Ontario's *Courts of Justice Act* specifically authorizes the Chief Justice and the Attorney General to enter into a Memorandum of Understanding relating to the administration of the Court of Appeal. However, this is the first time such a document has been signed.

This historic Memorandum recognizes the collaborative relationship that exists between the Court of Appeal and the Province of Ontario. It specifically addresses such matters as resources, planning, information technology and staffing. It

acknowledges the distinct constitutional roles of the executive and judicial branches of government and sets a framework for the continuation of their productive and respectful relationship.

## ***Writing the History of the Court of Appeal for Ontario***

Christopher Moore, a prominent author and legal historian, is completing a book on the history of the Court of Appeal. Mr. Moore has previously written histories of the British Columbia Court of Appeal, the Law Society of Upper Canada and the law firm of McCarthy Tétrault LLP.

In the summer of 2012, Mr. Moore led a team of law students, hired from every law school in Ontario, in a review of all published decisions of the Court of Appeal to provide a thorough review of its jurisprudential history. Mr. Moore has continued his research throughout the year, combing through archives and conducting interviews. He will be completing the manuscript in 2013.

The book, which is being funded by a grant from the Law Foundation of Ontario to the Osgoode Society for Canadian Legal History, will make a valuable contribution to historical legal scholarship.

## ***Information Technology Updates***

Members of the Court of Appeal, along with judges from the Superior Court of Justice and the Ontario Court of Justice, lead an independent information technology organization, the Judicial Information Technology Office (JITO), which is responsible for ensuring the security and confidentiality of all judicial information in the province. Each year, enhancements are implemented to safeguard the integrity of judicial information and to enhance the ability of the judiciary and court staff to retrieve court information.

In 2013 the Court will continue working with JITO to improve the accessibility and usefulness of the Court of Appeal website. The Court will soon also be developing a policy regarding the use of electronic devices to transmit electronic messages from the Courtroom.

# Support to Litigants, the Legal Profession and the Public

## *Duty Counsel and Amicus Curiae*

Duty counsel and *amicus curiae* services continue to be available to self-represented litigants in criminal inmate appeals and appeals from the Ontario Review Board.

Pro Bono Law Ontario has also continued its successful programme, first established in 2010, of providing duty counsel service to self-represented litigants bringing and responding to motions in the Court of Appeal. The programme continues to provide significant assistance to self-represented litigants and the Court. The service is offered on Wednesday mornings, and self-represented litigants are encouraged to schedule their motions for that day so that they may take advantage of this valuable service.

## *Report on Access to Justice in French*

In addition to hearing cases, judges of the Court of Appeal are often asked by the provincial or federal governments to review and report on matters of public concern. In response to complaints received related to the difficulties Ontarians have had accessing justice in French, the Attorney General for Ontario asked a committee co-chaired by Justice Paul Rouleau of the Court of Appeal and Paul Le Vay of Stockwoods LLP to report on French language services in the Ontario legal system.

In response to this request, Justice Rouleau and the Committee published a report in 2012 titled *Access to Justice in French*. The Committee concluded there is a need for improved coordination of French language services, better communication of French language rights and more clearly defined responsibilities in the provision of French language services.

The Report makes concrete recommendations for the improvement of French language and bilingual

services for the Ministry of the Attorney General and other relevant partners in the justice system, including the Government of Canada, the judiciary and the legal profession. The Court is committed to working with the Ministry to implement recommendations from the Report in the coming years. The Report can be found online at the Ministry of the Attorney General's website at: [www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench\\_bar\\_advisory\\_committee/full\\_report.pdf](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench_bar_advisory_committee/full_report.pdf).

## *Family Law Initiatives*

In 2012 the Court of Appeal developed a quick reference self-help guide for family law appeals. The guide will be available on the Court of Appeal website in 2013. A large percentage of family law litigants are self-represented and this guide will assist them in determining the procedures they need to follow in filing their appeals.

The Court of Appeal has continued its programme to expedite crown wardship appeals. The Court continues to track these matters electronically and assign a single judge with specific expertise in child protection cases to monitor the progress of these cases.

Also continuing is a pilot project that was launched in 2011 with Pro Bono Law Ontario and the Advocates' Society to assist self-represented litigants obtain timely results in crown wardship appeals. Senior family law counsel, acting on a *pro bono* basis, review selected appeals in the Court of Appeal and the Superior Court of Justice to determine sources of delay, identify cases that may be eligible for free assistance, and match unrepresented litigants with appropriate counsel where possible. In 2012 this programme expanded its reach and was able to assist an increased number of self-represented litigants.

In 2012 judges and staff of the Court of Appeal assisted the Office of the Children's Lawyer and the

Law Society of Upper Canada with several continuing legal education events for the family law Bar. Justices Feldman, Cronk and Blair participated in a day-long symposium on appellate advocacy in child protection appeals. Justice Lang also spoke at a continuing legal education programme on The Voice of the Child in Family Law. In addition Justice Laskin conducted an in-house workshop for staff at the Office of the Children's Lawyer.

### ***Criminal Appeal Reform***

Justice Marc Rosenberg is continuing his work leading a committee examining the Criminal Appeal Rules. The Committee, composed of representatives from the Ministry of the Attorney General, the Public Prosecution Service of Canada, Legal Aid Ontario, the Criminal Lawyers' Association and the staff of the Court of Appeal, is continuing a multi-year project to review and modernize the Criminal Appeal Rules. It is anticipated that the Committee will complete its work in 2013.

### ***Court Accessibility***

The Court has a designated Accessibility Coordinator who responds to requests made by persons with disabilities to accommodate specific needs relating to counter service or court proceedings.

In 2012 the Court took steps to increase the accessibility of judgments and endorsements posted on its website. Decisions now published on the website incorporate standard accessibility features designed to reduce technological barriers for members of the public reading the decisions.

### ***Administrative Improvements***

The Court of Appeal has established a shared electronic resource for monitoring trial transcript requests that are needed for upcoming appeals. Regional transcript representatives of the Ministry

of the Attorney General from across the province are able to monitor the fulfilment of transcript orders and their associated deadlines. The resource is available for all non-inmate criminal and civil appeals at the Court of Appeal. Regional representatives can now track the filing of court reporter certificates for their respective court location or region; identify transcripts that are not complete after 90 days of the transcript being ordered; monitor the progress of cases reaching transcript status court eligibility; and, be better prepared to provide the Court of Appeal with an update on the status of transcript completion.

The Court has similarly improved the inmate appeal process by sharing all inmate notices of appeal via e-mail to all interested parties and stakeholders who require the notice to advance an appeal. At an appeal's preliminary stage, this reduces the potential delay associated with regular mail or in-person pick up of hard copy documents. It is also a small but important way the Court can support Ontario Public Service green initiatives.

### ***Working with the Media***

Recognizing the important role the media plays in ensuring an open and transparent justice system, the Court of Appeal's Media Committee continues to maintain a dialogue with representatives of the media on ways to improve media access to court information.

The Court has continued to maintain an online subscription service (RSS feed) to notify the media of matters of specific interest to them, such as publication bans, *in camera* notices and media lockups. The Court continues to use media lockups for high profile cases, allowing members of the media to gain advance access to cases with high levels of public interest.

# Opening of the Courts Celebration



Every year the Court of Appeal, the Superior Court of Justice and the Ontario Court of Justice jointly celebrate the opening of the courts for the beginning of the fall judicial term. This celebration is marked by three events held in Toronto: a special divine interfaith service, a ceremonial joint sitting of the three courts, and a Law Society reception at Convocation Hall. The purpose of these events is to reflect upon the achievements of the previous year, highlight the challenges that face the justice system, and mark the renewal of the ongoing work of the courts. This year these events took place on September 12th, 2012.

## *Special Divine Interfaith Service and Musical Celebration*



As in previous years, members of the judiciary, honoured guests, and members of the legal community joined this celebration, hosted by the Church of the Holy Trinity. Reflecting the diversity of Ontario, this event has become increasingly pluralistic, with the participation of many denominations and faiths. This year eleven spiritual leaders representing as many denominations and faiths participated in the proceedings. In recent years the event has featured a lively musical programme, with performances by students, lawyers, and members of the judiciary, singing and playing in a wide variety of musical traditions.



Honoured guests included The Honourable David C. Onley, Lieutenant Governor of Ontario, who spoke about history, how it has shaped our society, and the important role of the courts and the judiciary. The Honourable Nicole Duval Hesler, Chief Justice of Québec, and The Honourable François Rolland, Chief Justice of the Superior Court of Québec, both graciously participated with readings. The Chief Justice of Ontario and the Chief Justices of the Superior Court of Justice and the Ontario Court of Justice, as well as the Treasurer of the Law Society, also each read selected passages.



Under the enthusiastic musical direction of Justice Julie Thorburn of the Superior Court of Justice, the attendees were uplifted by musical performances that ranged from African spirituals to Schubert sonatas, and from 16th century church music to 20th century folk music. Once again, the Jarvis Collegiate Choir performed (led by Anita Kwok), as did the Bar and Bench Voices, as well as several other vocalists and instrumentalists from the

Bench and Bar including Helena Likwornik (cello soloist) and Chris Chorney (double bassist), both legal counsel at the Court of Appeal. The recession was sounded out by traditional bagpipe melodies played by Rory Sinclair, from the Highland Cathedral.

### ***Special Joint Sitting of the Courts of Ontario***

Members of the Bench, honoured guests, the Bar, and the media were invited to a special joint sitting of the courts of Ontario, presided over by Chief Justices Winkler, Smith and Bonkalo. This yearly event formally opens the courts for their annual sittings. It also provides the Chief Justices with an opportunity to publicly celebrate the achievements of their respective courts and review the challenges facing our justice system. Their remarks can be found at [www.ontariocourts.ca](http://www.ontariocourts.ca).

The following dignitaries also addressed the court: The Honourable David C. Onley, Lieutenant Governor of Ontario; The Honourable John Gerretsen, Attorney General for Ontario; Elaine Krivel, General Counsel, Department of Justice Canada, representing the federal Minister of Justice and Attorney General of Canada; and Thomas Conway, Treasurer of the Law Society of Upper Canada. In addition to the Associate Chief Justices of all three courts, many members of the courts attended. Further honoured guests included: The Honourable Pierre Blais, Chief Justice of the Federal Court of Appeal; The Honourable Nicole Duval Hesler, Chief Justice of Québec; The Honourable François Rolland, Chief Justice of the Québec Superior Court; and The Honourable R. Roy McMurtry, former Chief Justice of Ontario. Many other honoured guests representing organizations in the legal community also attended.

### ***Law Society Reception at Convocation Hall***

All attendees were invited to a concluding reception at Convocation Hall, hosted by the Treasurer of the Law Society of Upper Canada. This social event provides a more informal occasion at which members of the Bench and Bar and the wider legal community can meet or get reacquainted. The event fosters collegiality and assists in building relationships that are valuable in meeting the complex challenges that face the courts in the ensuing year.



## *Promoting Professionalism*

The Chief Justice of Ontario's Advisory Committee on Professionalism, a body with membership from the judiciary, the Bar, the Law Society and legal academics, has continued its work on a number of initiatives to support and promote legal professionalism.

In recent years the Committee, co-chaired by the Chief Justice of Ontario and the Treasurer of the Law Society of Upper Canada, has played a role in initiating three important awards to recognize professionalism and support scholarship and research in this area.

### *The Catzman Award for Professionalism and Civility*

In 2009 the Catzman family, together with the Advocates' Society and the Chief Justice of Ontario's Advisory Committee on Professionalism, established an award in memory of the late Honourable Marvin A. Catzman, former Justice of the Court of Appeal.

Announced annually by Chief Justice Winkler at the Opening of Courts celebration, the award recognizes an individual who has demonstrated a high degree of professionalism and civility in the practice of law. Award winners are nominated by their peers and selected by a distinguished panel of judges, lawyers, and a member of the Catzman family.

Chief Justice Winkler delivered the 2012 Catzman award to Connie Reeve of Blake, Cassels & Graydon LLP at this year's Opening of Courts Ceremony.



Julie Catzman presents 2012 Catzman Award to Connie Reeve

## *Rueter Scargall Bennett LLP Essay Prize in Legal Ethics*



Prize recipients Jeremy Tatum, Megan Seto and Kaitlyn MacDonell with Chief Justice Winkler, Randy Bennett and Laurie Pawlitza (63rd Treasurer, Law Society of Upper Canada)

In 2010, the Chief Justice of Ontario's Advisory Committee on Professionalism established an annual prize, sponsored by the law firm Rueter Scargall Bennett LLP, to be awarded to three law students registered in a J.D. or LL.B. programme at a law school in Ontario. The prize encourages law students to think about legal ethics and professionalism and awards students who have submitted the best papers on a topic relating to these areas.

The recipients of the 2012 Essay Prize were Jeremy Tatum of the University of Windsor, Megan Seto of the University of Ottawa, and Kaitlyn MacDonell, also of the University of Windsor.

Sadly, Randy Bennett, of Rueter Scargall Bennett LLP, who initiated the funding for this award and played a central role in planning, adjudicating and presenting it to the students every year, died shortly after the year ended on January 3, 2013. Randy was an outstanding professional who was committed to upholding the highest values and traditions of the legal profession. He will be profoundly missed.

### *The Chief Justice of Ontario Fellowships in Legal Ethics and Professionalism*

In 2011 the Chief Justice of Ontario's Advisory Committee on Professionalism established two fellowships in Legal Ethics and Professionalism: a research fellowship awarded to a faculty member at a university or college, and a studies fellowship awarded to a law student, licensed paralegal, or lawyer.

The fellowships are funded by various law associations and members of the legal community.

The research fellowship for 2012-2013 was awarded to Professor W. Brent Cotter of the University of Saskatchewan and Professors Richard Devlin and Jocelyn Downie of Dalhousie University. They will use the fellowship to develop five video vignettes about ethical dilemmas commonly encountered by lawyers, for use in law schools, bar admissions courses and in professional development programmes for lawyers.

The studies fellowship was awarded to Hannah Askew at Osgoode Hall Law School. She was awarded the fellowship to research educational strategies to foster intercultural understanding of Aboriginal legal perspectives amongst newly graduating legal professionals.

# The Year Ahead

The coming year will be another active year for the Court of Appeal.

The Court will continue to enhance its use of technology, increasing its internal efficiency so as to better meet the needs of Ontarians. In 2013 the Court will be making more changes to its website and the methods it uses to share and receive information with members of the legal profession, the media and the public.

In October the judges of the Court will travel to the City of Ottawa, resuming their tradition of making outreach visits to different regions of the province. While there, they will meet with members of the local Bar and the judges of both trial courts in the East Region. In addition, as part of this outreach, the Court will be visiting the Federal Court of Appeal and the Faculty of Law at the University of Ottawa. The judges of the Court are looking forward to meeting as a group with the students and faculty of this dynamic and innovative law school.

The approaching year will be a year of significant change for the Court. Following the retirement of Associate Chief Justice O'Connor, the Court anticipates the appointment of a new Associate Chief Justice in 2013. To help bridge this transition, Justice Stephen Goudge has graciously agreed to assume the Associate's substantial internal administrative responsibilities on an interim basis. This will be of tremendous assistance to Chief Justice Winkler and the other judges of the Court, who are grateful to Justice Goudge for agreeing to take on this role.

Later in the year, Chief Justice Winkler will himself be retiring, as he reaches the age of mandatory retirement in December 2013. As this date approaches, judges of the Court and members of the Bar will be planning certain events to mark this occasion and celebrate the Chief Justice's many contributions to the justice system in Ontario.

The appointments of a new Chief Justice and an Associate Chief Justice will be significant events in the Court's history. This will add to the substantial changes already undergone in recent years. The Court will inevitably evolve as it continues to be enriched by the appointment of new judges to its bench. Amidst these changes, certain things will remain constant. Benefitting from a strong institutional culture, the Court's dedicated and skilled judges will maintain the excellent standards for which it has become known. The judges of the Court collectively look forward to new challenges as they continue to carry out the important responsibilities entrusted to them by the citizens of Ontario.

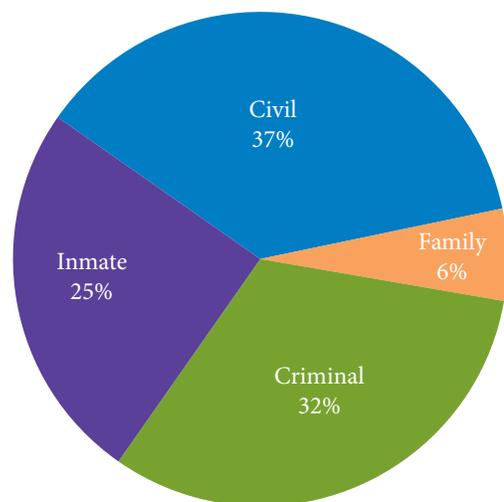
# Statistical Information



# Nature of Cases Received in the Court of Appeal for Ontario

## Appeals Received

For statistical purposes, Court of Appeal cases are categorized into one of four types of appeals: civil, family, criminal and inmate. Inmate appeals are criminal matters in which sentenced inmates file an appeal without representation of legal counsel. In 2012, the proportion of appeals filed in these four categories was 37% civil, 6% family, 32% criminal, and 25% inmate. Administrative law cases are included in the civil category and provincial offences matters are included in the criminal category.

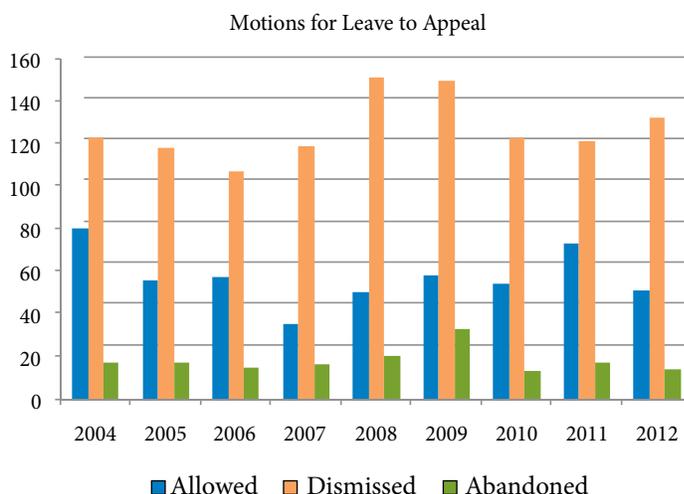


Although the proportions in these categories have fluctuated slightly from year to year, they have remained relatively consistent for the last several years, as summarized in the following table.

Appeals Received	2004	2005	2006	2007	2008	2009	2010	2011	2012
Civil	42%	42%	39%	40%	40%	39%	38%	43%	37%
Family	6%	6%	8%	5%	7%	7%	7%	5%	6%
Criminal	32%	32%	31%	32%	31%	32%	32%	30%	32%
Inmate	20%	20%	22%	23%	22%	22%	23%	22%	25%

## Appeals for Which Leave is Required

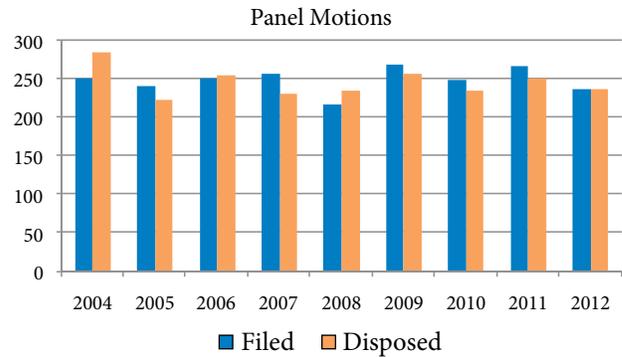
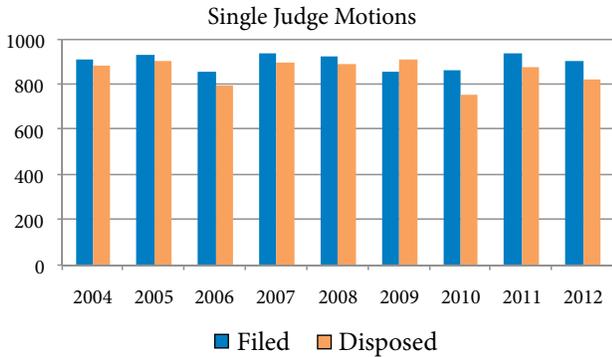
Although most appeals at the Court are filed and heard as of right, others require leave of the Court to be heard. This is the case in all provincial offences cases, in some civil cases, and more rarely in some family cases. When leave is required in criminal matters, it is usually argued as part of the appeal hearing and is, therefore, not accounted for in the Court's motion for leave statistics. In cases requiring leave prior to the hearing of the appeal, the party seeking leave must bring a motion, and the adjacent chart summarizes the number of such motions brought each year and how many are allowed, dismissed, or abandoned. The following table shows the proportion of motions for leave to appeal that are allowed versus those that are dismissed.



Motions Heard for Leave to Appeal	2004	2005	2006	2007	2008	2009	2010	2011	2012
Allowed	39%	32%	35%	23%	25%	28%	31%	38%	28%
Dismissed	61%	68%	65%	77%	75%	72%	69%	62%	72%

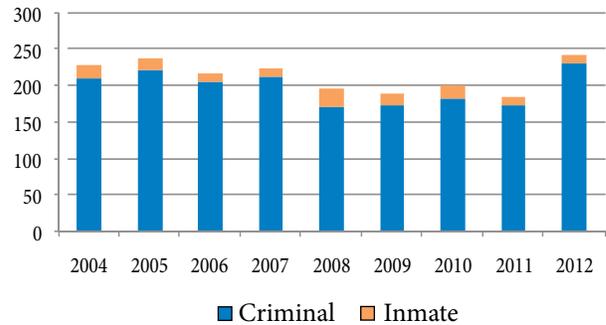
## Single Judge and Panel Motions

A variety of motions are heard at the Court of Appeal prior to hearings on the merits of appeals. Depending on the governing statute or court rule, some of these motions are heard by a single judge while others must be heard by a panel. The number of single judge motions and panel motions has remained relatively constant over the last several years.



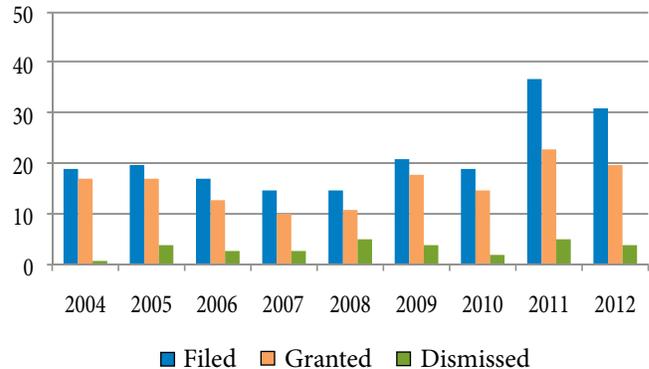
## Bail Applications and Reviews

The Court hears a number of bail applications and reviews in criminal and inmate matters. The number of such applications and reviews had declined somewhat in recent years, but increased significantly in 2012.



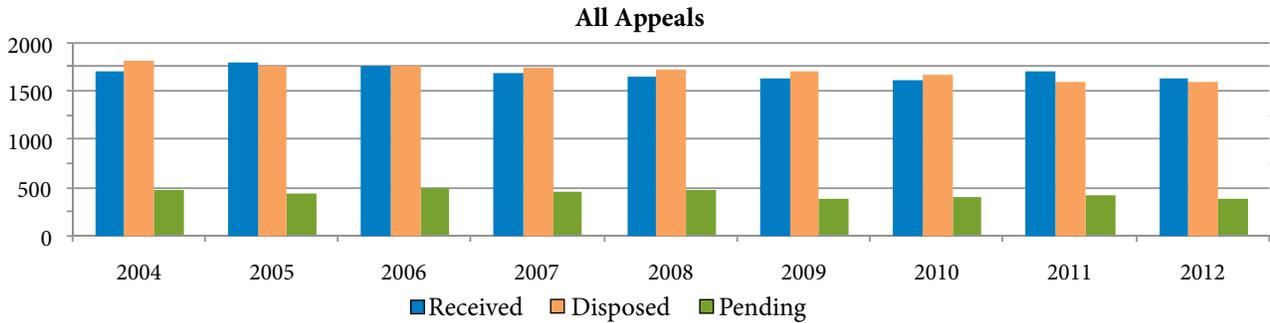
## Motions for Third Party Interventions

The Court hears a relatively small number of motions brought by third parties, usually representing special groups who wish to make submissions in particular cases. These interventions, when granted, increase the length of appeals. In 2011 there was a significant increase in the number of motions to intervene filed and granted, which declined slightly in 2012.

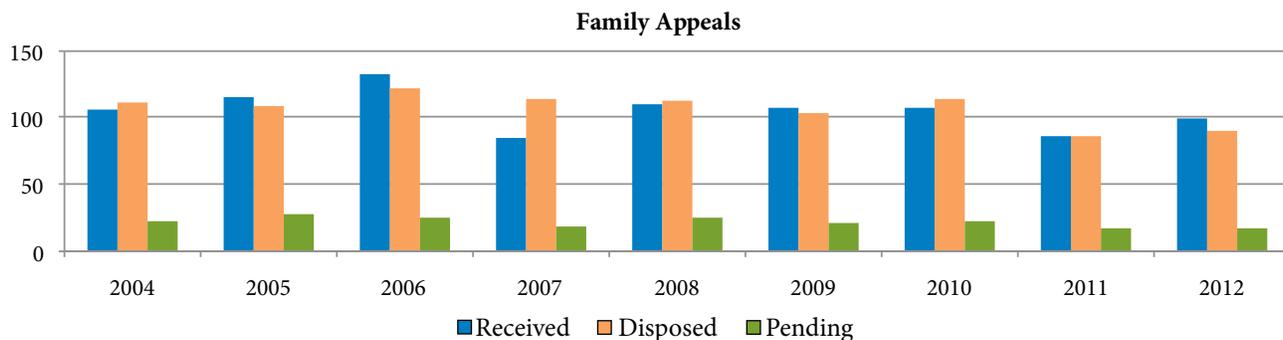
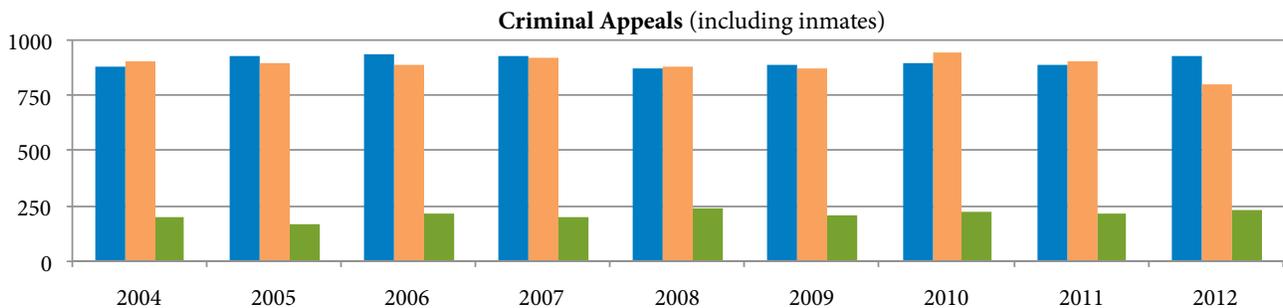
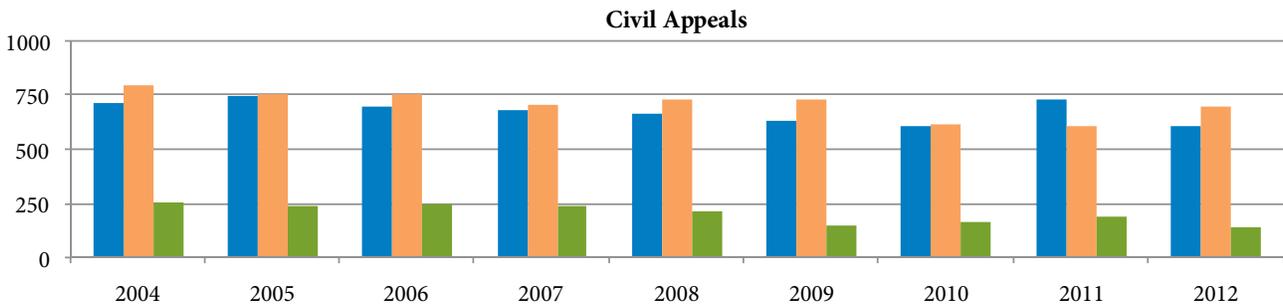


# Case Flow

In each year the Court of Appeal records the number of appeals that have been received, are disposed of, and are pending at the end of the year. If leave to appeal is required to file the appeal, the appeal is not counted as having been received unless and until leave is granted. Appeals finally disposed of are recorded in the year in which they were disposed, but many were received in previous years. The appeals recorded as pending at the end of the year are those that are perfected and awaiting their hearings on the merits. The following chart depicts the appeals received in each year and disposed of in each year, as well as the number of appeals pending at the end of each year.

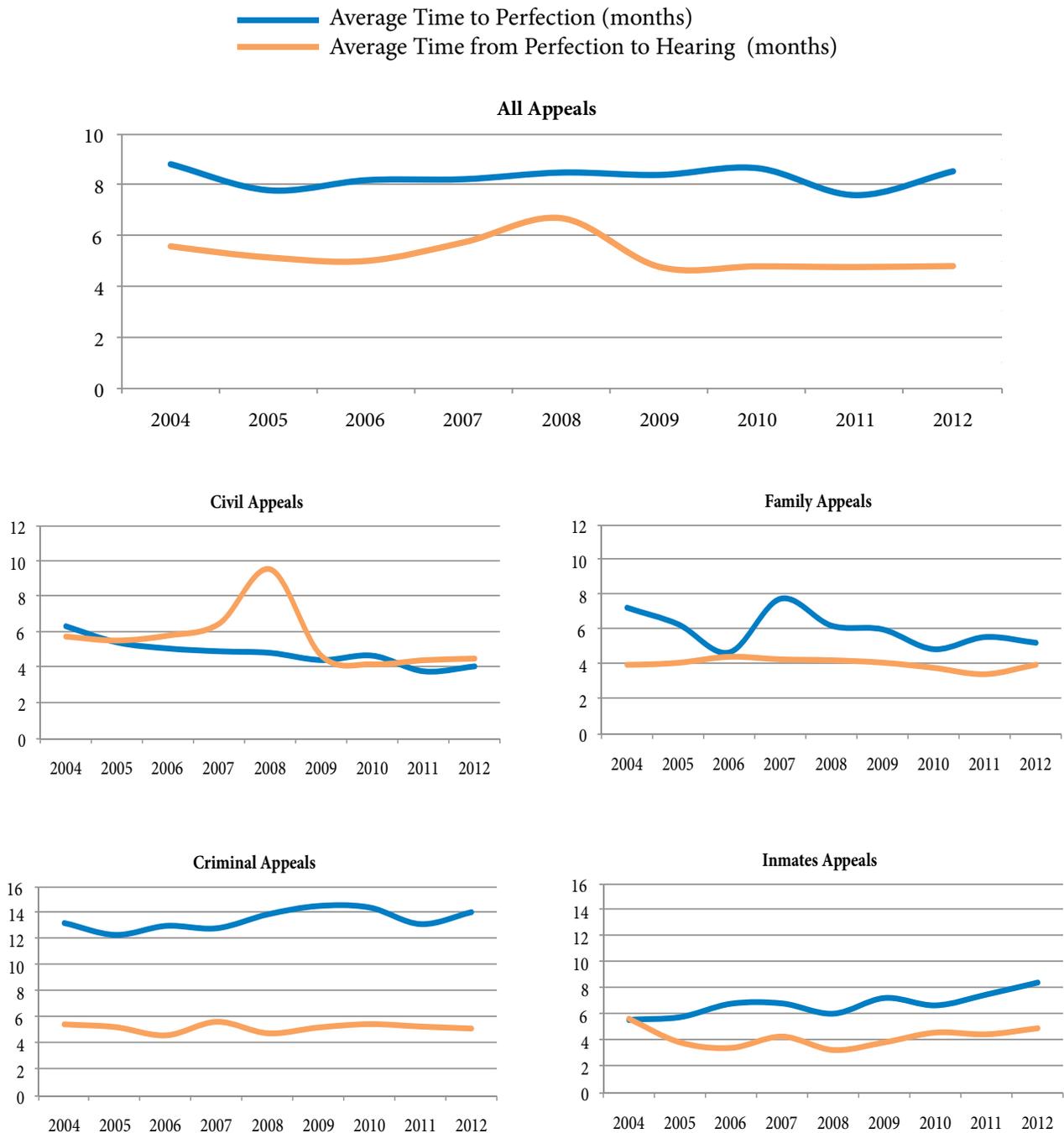


The following charts similarly depict the number of appeals received and disposed of in each year, and the appeals pending at the end of the year, in each category of cases.



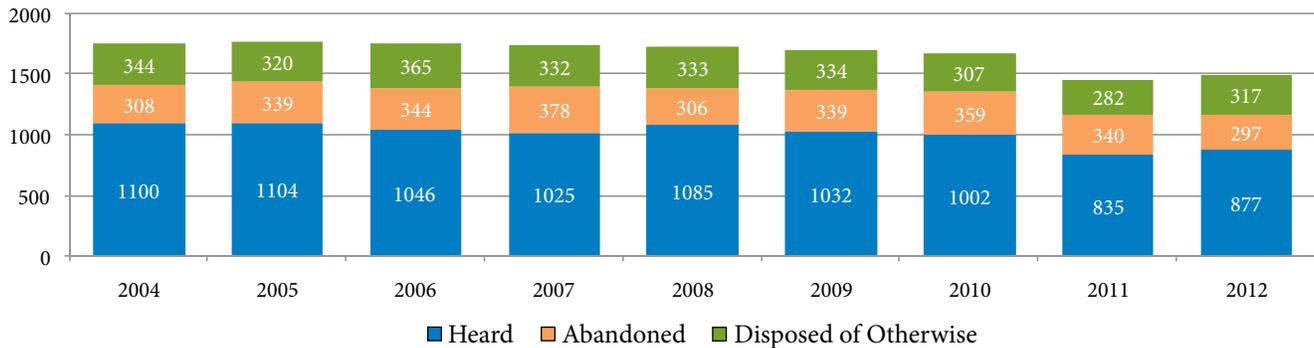
## Time to Perfection and Hearing

Two timeframes are measured in the progress of appeals at the Court. The first timeframe is from the time a Notice of Appeal is filed (either as of right or after a motion for leave to appeal has been granted) to the time the appeal is perfected and ready to be set down for a hearing. The second timeframe is from the time the appeal is perfected and ready to be set down for a hearing to the time it is heard by the court on the merits. These timeframes are called “the time to perfection” and “the time from perfection to hearing”. Averages are calculated from cases that reach perfection or their hearing on the merits in each year. These averages for all appeals, and appeals in each category of cases, are depicted in the following graphs.



## Disposition of Appeals

When appeals are disposed of they are either allowed, dismissed, abandoned, or disposed of otherwise. Most of the matters disposed of otherwise are appeals in which the parties have settled their matter, or matters that have been dismissed on consent prior to the hearing. The following chart depicts the breakdown of appeals into those heard, abandoned, or disposed of otherwise.

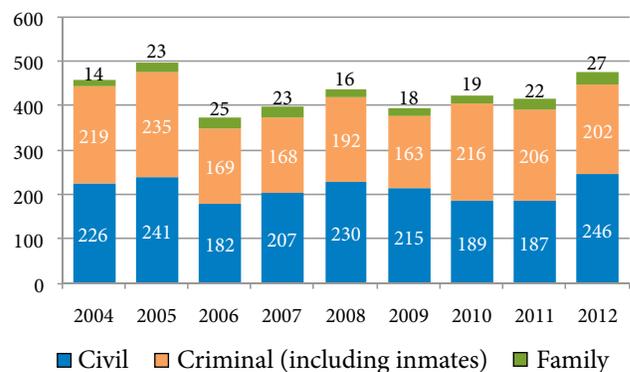


Of the matters that are heard, the following tables summarize the proportions of appeals allowed or dismissed.

Appeals Heard		2004	2005	2006	2007	2008	2009	2010	2011	2012
Civil	Allowed	30%	34%	36%	32%	28%	28%	29%	27%	25%
	Dismissed	70%	66%	64%	68%	72%	72%	71%	73%	75%
Family	Allowed	24%	42%	50%	32%	29%	38%	30%	29%	32%
	Dismissed	76%	58%	50%	68%	71%	62%	70%	71%	68%
Criminal	Allowed	39%	38%	36%	34%	33%	36%	30%	33%	30%
	Dismissed	61%	62%	64%	66%	67%	64%	70%	67%	70%
Inmate	Allowed	41%	18%	26%	18%	16%	18%	17%	18%	22%
	Dismissed	59%	82%	74%	82%	84%	82%	83%	82%	78%
All Appeals	Allowed	34%	34%	36%	31%	29%	30%	28%	29%	27%
	Dismissed	66%	66%	64%	69%	71%	70%	72%	71%	73%

## Appeals Reserved

Whether cases are allowed or dismissed, judges of the Court often reserve their judgments after the appeal has been heard. In many cases, the reasons for judgment can be complex and lengthy. Preparation of these reasons represents one of the most significant and time-consuming aspects of the workload of the Court.



## Self-Represented Litigants

Another aspect of the hearing of appeals and motions that contributes to the workload of the Court relates to whether parties are represented by counsel or self-represented. Counsel are often able to focus the issues and shape argument to assist the members of the Court in reaching their decisions in the most efficient manner. In many cases in which parties are self-represented, matters can take significantly more time. The following table summarizes the number of appellants, respondents and moving parties who were self-represented.

Self-Represented Litigants in Appeals and Motions*		2004	2005	2006	2007	2008	2009	2010	2011	2012
Civil	Self-represented Appellant	94	103	91	96	124	113	111	143	125
	Self-represented Respondent	71	34	30	46	28	22	35	37	43
Criminal	Self-represented Appellant	36	37	50	36	36	47	69	47	46
	Self-represented Respondent	17	22	41	22	26	37	57	60	40
Family	Self-represented Appellant	26	26	41	28	34	27	42	31	29
	Self-represented Respondent	8	15	27	16	14	15	16	22	17
Motions	Self-represented Moving Party	358	327	374	408	428	481	470	492	433
	Self-represented Responding Party	254	104	138	215	183	298	228	161	196
TOTAL		864	668	792	867	873	1040	1028	993	929

\* does not include inmate appeals, in which the inmates are by definition all self-represented

## Ontario Review Board Appeals

Finally, a relatively small but significant portion of the Court's workload relates to the Court's jurisdiction to hear appeals from the Ontario Review Board. The ORB has jurisdiction pursuant to the *Criminal Code* over persons found not fit to stand trial or not criminally responsible by reason of a mental disorder. Until 2010 there had been a modest increase in these appeals. This number has declined slightly in the last two years.

