SUPREME COURT

OF BRITISH COLUMBIA

ANNUAL REPORT

1997-1998

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MEMBERS OF THE SUPREME COURT

OF BRITISH COLUMBIA

1997-1998

The Honourable Chief Justice Williams

The Honourable Associate Chief Justice Dohm

The Honourable Mr. Justice Drake*

The Honourable Mr. Justice Skipp+

The Honourable Mr. Justice Bouck+

The Honourable Mr. Justice Paris

The Honourable Mr. Justice Spencer+

The Honourable Mr. Justice Millward+

The Honourable Mr. Justice Lander+

The Honourable Mr. Justice Catliff+

The Honourable Mr. Justice Arkell+

The Honourable Mr. Justice Low

The Honourable Mr. Justice Fisher+

The Honourable Mr. Justice Cowan+

The Honourable Mr. Justice W.H. Davies+

The Honourable Mr. Justice Callaghan+

The Honourable Mr. Justice Hardinge+

The Honourable Mr. Justice Melvin

The Honourable Mr. Justice Hutchinson+

The Honourable Mr. Justice Macdonald+

The Honourable Mr. Justice Oppal

The Honourable Mr. Justice Singh

The Honourable Mr. Justice Cohen

The Honourable Mr. Justice Shaw

The Honourable Mr. Justice Owen-Flood

The Honourable Mr. Justice Melnick

The Honourable Mr. Justice Preston

The Honourable Mr. Justice Coultas

The Honourable Mr. Justice Scarth

The Honourable Mr. Justice Maczko

The Honourable Mr. Justice Stewart

The Honourable Mr. Justice Rowan

The Honourable Madam Justice Allan

The Honourable Mr. Justice Hood

The Honourable Mr. Justice Collver

The Hon. Madam Justice Sinclair Prowse

The Honourable Mr. Justice Harvey

The Honourable Mr. Justice Fraser

The Honourable Mr. Justice Holmes

The Honourable Mr. Justice Josephson

The Honourable Mr. Justice Wilkinson

The Honourable Mr. Justice Thackray

The Honourable Mr. Justice Murphy*

The Honourable Mr. Justice Wong

The Honourable Mr. Justice Lamperson

The Honourable Mr. Justice Boyle+

The Honourable Mr. Justice Hutchison+

The Honourable Mr. Justice Lysyk

The Honourable Mr. Justice Leggatt+

The Honourable Mr. Justice Errico

The Honourable Mr. Justice Drost

The Honourable Mr. Justice Drossos

The Honourable Madam Justice Boyd

The Honourable Mr. Justice McKinnon

The Honourable Mr. Justice Curtis

The Honourable Mr. Justice Tysoe

The Honourable Mr. Justice Shabbits

The Honourable Madam Justice Kirkpatrick

The Honourable Madam Justice Koenigsberg

The Honourable Mr. Justice E.R.A. Edwards

The Honourable Mr. Justice Smith

The Honourable Madam Justice Baker

The Honourable Mr. Justice R.D. Wilson

The Honourable Mr. Justice J.L.T. Edwards

The Honourable Mr. Justice Sigurdson

The Honourable Mr. Justice Williamson

The Honourable Mr. Justice Humphries

The Honourable Madam Justice Quijano

The Honourable Mr. Justice Parrett

The Honourable Madam Justice Gill

The Honourable Mr. Justice Clancy

The Honourable Mr. Justice Warren

The Honourable Mr. Justice Lowry

The Honourable Mr. Justice Meiklem

The Honourable Madam Justice Dorgan

The Honourable Mr. Justice Vickers

The Honourable Madam Justice Saunders

The Honourable Mr. Justice Hunter

The Honourable Mr. Justice Mackenzie

The Honourable Mr. Justice Brenner

The Honourable Mr. Justice Blair

The Honourable Mr. Justice Romilly

The Honourable Mr. Justice Taylor

The Honourable Mr. Justice B.M. Davies

The Honourable Madam Justice Satanove

The Hon. Madam Justice Stromberg-Stein

The Honourable Mr. Justice Cole

The Hon. Madam Justice MacKenzie

The Honourable Mr. Justice Grist

The Honourable Mr. Justice Bauman

The Honourable Madam Justice Morrison

The Honourable Mr. Justice McEwan

The Honourable Madam Justice Beames

The Honourable Madam Justice Loo

The Honourable Mr. Justice Henderson
The Honourable Madam Justice Dillon
The Honourable Mr. Justice A.F. Wilson
The Honourable Madam Justice Levine
The Honourable Madam Justice Downs
The Honourable Mr. Justice Chamberlist
The Honourable Mr. Justice Burnyeat
The Honourable Madam Justice Smith
The Honourable Mr. Justice Pitfield
The Honourable Mr. Justice Macaulay
The Honourable Mr. Justice Ralph
The Honourable Madam Justice Bennett

+ Supernumerary

* Retired in 97/98

MASTERS OF THE SUPREME COURT

Master Barber
Master Bolton
Master Donaldson
Master Joyce
Master Nitikman
Master Powers
Master Bishop
Master Brandreth-Gibbs
Master Doolan
Master Horn
Master McCallum
Master Patterson
Master Tokarek

Supreme Court of British Columbia

Staff

Howard Greenstein Director, Judicial Administration

Delia Moran Deputy Director, Judicial Administration

Elizabeth Dunn Registrar

Katherine Wellburn District Registrar

Kathryn Sainty Law Officer

Judith Smith Executive Assistant to the Chief Justice

Lois McLean Executive Assistant to the Associate Chief Justice

Pat Davis Manager, Personnel & Finance

Tammy McCann Secretary, Judicial Administration

Yvonne Samek Finance & Administration Clerk

The Honourable Lloyd McKenzie Information Officer

Shihong Mu Information Analyst & Statistician

Jinger Jutla Manager, Information Systems and Application Development

Judicial Administrative Assistants

Vancouver	Adele Whelan	**New Westminster**
Misty Alexander	Olivia Canete	Margaret Henderson
Elizabeth Anderson		Val Medlock

Sue Chalmers

Doreen Chiew

Monelle Clement

Barbara Moss

Sharon Dunn

Cecilia Eadie

Joy Eliasson

Ada Jansen

Gail Woods

Alice Kushner

Margaret Neuhaus

Pat Lloyd

Ruth Scott

Julie Warren

Wanda Wilk

Mary Williams

Wanda Lam (temp)

Tannes Gentner

Lynn Marchand

Chilliwack

Laura Burgess

Cranbrook

Catherine Olson

Kamloops

Eleanor Thomas

Linda Mann-Harnett

Kelowna

Barbara Ryan

Nanaimo

Pat McKeeman

Patricia Robison

Nelson

Bonnie Stanley

Sylvia Wilson

Kimberley Tillyer/Debbie Soroka

Prince George

Susan Johns

Lynn Potosky

Prince Rupert

Sharon Tattersall

Vernon

Linda Garrett

Victoria

Karen Gurney

Margaret Lewis

Cherry Luscombe

Victoria Osburne-Hughes

Trial Coordinators (Judicial Administration Staff)

Cindy Friesen, Administrative Trial Coordinator

Vancouver – Civil

Val Gosney

Mary Ellen Pearce

Sue Smolen

Brenda McPhee

Chilliwack

Margaret Fisher

Courtney/Campbell River

Diane Utendale

Nanaimo

Bonnie Murphy

New Westminster

Tanya Dixon

Katherine Moir

Anna Sokes

Christine Hutton

Vancouver – Criminal

Betty Lambert

Lisa Wrinch

Kamloops

Dave McCoy

Kelowna

Sandra Sanderson

Laura Weninger

Prince George

Joan Foisy

Victoria

Judy MacFarlane

Michelle Rose

Information Technology Group

Alexander Ivanoff (Manager)

Susan Church

Eugene Drioukker

Eugene Evers

Paul Lukianiuk

Katie McCann

Alex Salvador

Ushers

Michael Cadeau

Gerry Cumming

Bill Mitchell

David O'Brien

Law Clerks

Vasiliki Antoniou

Gillian Calder

Jessica Clogg

David Crerar

Anne Fitzpatrick (Victoria)

Barbara Hawes (Victoria)

Jason Herbert

Debra Parkes (New Westminster)

Sarah Picciotto

Heidi Woodman

Library

Michael Howcroft

Christine Judd

Matthew Kirchner

Jennifer Lamont

Julia Lawn

Patrick McGowan (New Westminster)

Denise Oliver

Anne Rector

Lisa Taylor

Leaellen Gurney

REPORT OF THE HONOURABLE

CHIEF JUSTICE WILLIAMS

This is the second annual report of our Court. It is intended to provide a review of the events since last year's conference in Victoria and something of a forecast for the year ahead. I am truly delighted by the efforts and accomplishments of each chair of the various Court Committees. You will see the volume of work which has been done from the reports included in this Annual Report.

I wish to take advantage of this opportunity to express my gratitude for the time and energy expended particularly by the Chair but also by all members of these Committees, including an extraordinary effort on the part of Mr. Justice Don Brenner as Chair of the Advisory Committee.

You will note in the Advisory Committee's report, Mr. Justice Cohen was asked to head a new group responsible for reviewing the overall management of the Court. That Committee will be reporting at our Annual Meeting on an interim basis and will submit its final report in November 1998.

The composition of the Bench has not changed much since our last conference in May 1997. The appointments of Madam Justice Bennett from practice and Mr. Justice Chamberlist from the position of Master have added to the Court's complement and I look forward to working with both of them in the years to come. Two of our distinguished colleagues, Justices Drake and Murphy, retired during the past year and two others, Justices Hutchison and Leggatt have become Supernumerary. Their presence, as regular sitting members of the Bench, will be missed.

It has certainly been a busy year and what follows is a brief summary of the Committee work, much of which has been ongoing from the year before.

1. The Case Management Program

The Case Management initiative (for cases of 11 days or longer), continues to

expand, so much so that the demand may exceed the supply of judicial resources available to intensively manage the cases in the program. Mr. Justice Macdonald has prepared a report outlining some the benefits of the program and examining some of the difficulties we expect to face as this project continues to develop. Justice Macdonald will be reporting further on these issues at the annual meeting.

2. The Rule 65 Chambers Project

The Chambers Committee, under the direction and leadership of Madam Justice Sinclair Prowse has collected and begun analyzing the data with respect to Rule 65. A questionnaire was forwarded to members of the bar, legal support staff, registry staff and Judges and Masters soliciting comments in respect of the new Rule. The majority of bar and legal support staff responses were positive. Almost all Registry staff, Judges and Masters found the new Rule to be a large improvement over past practice. The Chambers Committee is reviewing the Rule and it is expected that Justice Melnick will shortly start canvassing the Judiciary and Bar in areas outside of Vancouver regarding the possibility of implementing the Rule in all areas of the Province. The application of the current Rule has been extended to January 1, 1999 to allow for the review and consultative process.

3. Video/Teleconferencing

This program under the co-chairmanship of Mr. Justice Bruce Cohen and Mr. Justice Glen Parrett commenced for real, in the first part of 1997. It is clearly one of the most exciting programs the Court has ever undertaken.

New technology has allowed us to introduce innovative ways to hear applications and even in the manner in which testimony may be given at trial. A teleconferencing room has been made available (and extensively used) at the Vancouver Law Courts for the hearing of Vancouver chambers applications by judges sitting in other court locations. In addition, this technology has been used with the Early Intervention Project to allow a party to attend by telephone, rather than in person, thereby saving considerable time and expense where a party resides outside the jurisdiction.

Even more exciting are the Videoconferencing facilities that have been installed and will, by the time of this report, be operational, in Courtroom 71 in Vancouver and the Prince George Courthouse. This allows for applications to and from

Judges in Prince George and Vancouver connecting with videoconference facilities from almost any judicial centre in British Columbia. At the outset, we will have to use existing facilities in most of these centres in connection with colleges, universities, government offices etc. but I am assured by our good friend Guy Goulard in Ottawa that because of the significant saving in judicial travel time, they will be prepared to install centres in the court houses in what I hope will be many or all, of the other centres, apart from Prince George and Vancouver. Further, videoconferencing technology can be used where witnesses reside out of the jurisdiction. Justice Melnick has described how effective video-conferencing can be in his memorandum attached to the report of the Videoconferencing Committee.

4. Electronic Filing (The Paperless Registry)

A joint committee has been established under the chairmanship of Chief Justice McEachern, the Assistant Deputy Minister of Court Services and myself. This brings in the expertise of both the Computer Committees from the Court of Appeal and our Court, along with a working group from the Registry and other branches of Court Services. This is a longer term project than most but we do hope by the end of 1999 to have the system up and running. At the present time, the Committee is focusing on a pilot project which will involve some 50 firms utilizing computer technology to file all court documents (save and except affidavits which will be left out of phase 1). This is certainly a revolutionary change and another time and money saver for all, though a great deal of work has yet to be done.

5. Trial Scheduling

In a continuing effort to reduce delays and better serve the public, in trial scheduling for Vancouver and New Westminster, the booking window for civil trials of four to 10 days and family trials of six to 10 days has been reduced from two years to 18 months. The objective in this program is to bring the 10-day minus trials down from 18 months to one year, but the decision as to when and how to achieve this second reduction has been put over until October 1998.

I am delighted to report that in the past year we seem to have significantly reduced the overflow list on Monday mornings to the point where occasionally we have had an extra judge or two. This is a welcome development, and while we are not sure how it has been achieved we are very pleased that it has. The question of course

is whether this is truly a "sea change" or whether it is only temporary relief.

6. ADR Committee

Madam Justice Saunders chaired the Committee until the end of 1997. Madam Justice Saunders concentrated mostly on the arbitration overload problems of the Court while Mr. Justice Vickers, the newly appointed Chair of the Committee, concentrated on settlement.

In June 1997, in an effort to assist in promoting settlement of cases before the Court, I announced a Supreme Court mediation initiative which provided for Judges and Masters to conduct mediations at the behest of the parties. As the initiative raised some concerns regarding the extent to which the Court, as a whole, would be involved in the mediation process and some confusion as what functions would be encompassed under Rule 35 of the *Rules of Court*, the mediation initiative announced in June was suspended. Following a September meeting of the Court called for the purpose of considering the June initiative, the ADR Committee went back to the drawing board and produced a report which geared settlement to Rule 35 of the *Rules of Court*. This initiative was passed by the Fall meeting of the Court in November and resulted in a Notice dated November 17, 1997. The ADR Committee at the present time is endeavouring to emphasize with the Court and the Bar the value of settlement negotiations and the contribution which can be made by those Judges who have expressed an interest in assisting parties to resolve the dispute short of trial.

It is interesting to note in terms of alternate dispute resolution that the government initially pressed very hard to have us agree to a mandatory mediation program which is now being implemented in Ontario. I have continued to express strong opposition to mandatory mediation. The resulting compromise, which was acceptable to the committee and myself, is the notice to mediate concept. This government program which started on April 14, 1998 will be limited (at least at first) to motor vehicle cases and will permit either party to issue a notice to mediate. This will result in mediation unless the other side is able to persuade the Court that mediation would not be productive in the circumstances.

7. Litigation Management

Under the leadership of Mr. Justice Shaw this Committee has indeed had a busy

year. This Committee has some 21 members with good representation from our Bench, the Law Society, the Canadian Bar Association, the Trial Lawyers Association, the Registry, the Provincial Government and lay members. In its first year it has produced a report to deal with fast track litigation for cases of 2 days or less in length. The report has been carefully considered by the Rules Revision Committee and is being forwarded to Cabinet for approval. This rule will be in place for two years during which time it will be monitored in the hope that both the Bar and the public will find it useful.

8. The Communications Committee

The Communications Committee chaired by Mr. Justice Frank Maczko has worked this past year with the able assistance of our good friend Lloyd McKenzie to arrange meetings with the media and in developing the speakers' bureau.

9. 12-Month Rota

We do not know as yet what affect our 12-month rota will have except that we do know it has alleviated the need for more court rooms in the sense that trials are now spread out over 12 instead of 10 months. We also know that to the surprise of some the summer schedule has been filled up with trials. We are however only sitting at one-third of our normal complement.

10. Education

The Education Committee chaired by Mr. Justice Jon Sigurdson has certainly had the busiest year since it began. It established the Law at Lunch program which at least for those who are regular attendees has been very successful and indeed once the video program is up and running in the months and years to come Law at Lunch can easily be made a province-wide program. The Committee's major work this year was the Social Context Conference entitled "Judging in a Diverse Society" held in March at the Sutton Place Hotel. From all reports this was a resounding success.

11. Family Law

The Family Law Committee has also had a busy year under Mr. Justice Ross Collver, what with the implementation of the guidelines and the pressure from Ottawa to establish a unified family court program. Our Province has not asked to be included in the 1998 unified family court initiative. We have, though, been asked to consider same for the year 2000.

(a). Early Intervention

This project now into its third year has certainly turned out to be a winner. While we have no statistics to prove anything by, the sense that most Judges have is that where cases have not settled after early intervention the issues have at least been sharpened so that the parties and their lawyers have a better focus.

(b). The New Westminster Family Law Project

The New Westminster Family Law Project under Justices Preston and McKinnon, initiated in September 1996, is currently being evaluated. This project provides for individual case management of family law cases commenced in the New Westminster Registry. It allows for the Judges and Masters participating in the project to familiarize themselves with individual cases and encourage parties to reach an early settlement of issues. The majority of reports regarding the project, to date, have been extremely positive.

14. Rules Revision Committee

Although this Committee is an Attorney General Committee, our Court plays a very large role and indeed has had the benefit of an able chair in Madam Justice Marion Allan. They too have had a very busy year, particularly in respect of the overhaul of the rules related to family law matters.

15. The Travel Committee

The Travel Committee established for the purpose of ascertaining whether our Court should continue as a circuit court and if so on what basis was headed by Mr. Justice Lowry. His report as you know was delivered at the November meeting.

In addition to the above, our thanks go out to those who have chaired other committees such as Madam Justice Humphries, Workplace Harassment, Mr. Justice Holmes, Structured Settlements, Mr. Justice Tysoe, Practice Committee, Mr. Justice Melnick and Madam Justice Kirkpatrick, Law Clerks Committee, Mr. Justice Henderson, Criminal Rules, Madam Justice Allan and Mr. Justice Henderson, Computer Committee, Mr. Justice Oppal, Law Courts Education Society, Madam Justice Loo and Mr. Justice Bauman, the Annual Meeting Committee and Master Doolan for heading up the new pre-trial program.

One of the more controversial issues raised during this year but which had already been brought in at the time of last year's Annual Meeting is the Court Reporter issue. It was clear from the start that the government was determined to eliminate court reporters and all we were able to do was to extend the time until December 1997, and leave available the opportunity for a Judge to order a reporter where it seems to that Judge to be essential in the circumstances.

Administration

Although our good friend Fred Messenger seemed ageless and indispensable, the Court was faced with what to do when he made the decision to accept a retirement package. We have missed Fred but have been very fortunate in filling the Provincial Trial Coordinator function with Cindy Friesen. Cindy has been with us since last summer, and has developed some new concepts in coordination. She has certainly won the support of her staff and the Judges.

Fred's management position as Director of Judicial Administration has also been filled. We are very fortunate to have hired Howard Greenstein who comes to us from Dade County, Florida with a wealth of experience and a record as a very able administrator.

Ever since I arrived I have been continually frustrated in my efforts to develop a management information system for the Court so that we will know which programs are effective and which are not. Unfortunately we still have nothing to show for our efforts though I will say that JUSTIN, which is being developed by Court Services, is much further along since Howard arrived than it was at the latter part of 1997. I shall allow Howard to elaborate on that in his report to the Court.

Another concern I have had, almost since I first began as Chief Justice, is requests which have come from centres where the Court does not traditionally sit. I refer to Massett in the Queen Charlotte Islands, Port Hardy, Fort Nelson and Bella Coola. These of course are very small

centres which do have Provincial Courts Houses. One of the features which distinguishes these four sites is the great distance from a centre where the Supreme Court does sit. This imposes a burden of cost and inconvenience to both litigants and lawyers from other small centres.

It was clear to me in considering this issue that if we wished to service these centres it could not be taken from Vancouver sitting time without increasing the overflow problem which we have traditionally had in Vancouver.

Last June 1997 I travelled to Massett and sat there for a week where the Registry was complimented by both the litigants and lawyers since it allowed support groups and witnesses to come to Court without the great expense of an overnight trip by boat to Prince Rupert with the additional costs of hotel and food once there. Court will again be sitting in Massett this July and the time will be taken from the Prince Rupert rota. At the end of March I travelled to Port Hardy at the request of the Coordinator and Counsel there to hear a trial. Again, the Registry and the few law firms who practice there were delighted. This accommodated many witnesses who live in the Port Hardy region. The time for sitting in Port Hardy was taken from the Courtenay/Campbell River rota where that trial would normally have been heard. Again, the Court will be travelling to Port Hardy as needed but not on a regular scheduled basis.

We have as yet not scheduled trials for the other two locations, Fort Nelson and Bella Coola but it is expected that will happen within the next year.

Another change in court administration in our Court this year is Shelagh Scarth's move to Law Officer in the Court of Appeal and part-time Registrar and the selection of her able replacement Kathy Sainty. Kathy has been and continues to be of invaluable assistance in sorting out a variety of issues and problems which arise at least on a weekly basis.

And finally the job of Chief Justice of the Supreme Court while not an easy one at the best of times has certainly been made a more pleasant task by the very fine and very friendly people I deal with on a daily basis. Pat Dohm, the Associate Chief Justice is of inestimable value as is his Executive Assistant, Lois McLean and of course my own "knows just where it is" Judith Smith. Howard, Delia Moran and the staff in Judicial Administration have been extraordinarily helpful and are always there when needed. In trial coordination once again on a daily basis Cindy, Val Gosney, Betty Lambert and all of those who work with them continue to amaze me "how do they do that - how did they solve that problem". Also, our Systems Staff, under the direction of Alexander Ivanoff has managed to keep us computer literate with a staff of only half what is really needed. Many thanks as well to our Registrars.

I have also felt that our dealings throughout the year with Court Services have been on a most cooperative basis. In the end - my sincere thanks to all of the members of this Court, including of course the hard working Masters. We do have a dedicated and creative Court; there is no question in my mind about that. In my view this bodes well for the years ahead.

"B. Williams, CJSC"

COMMITTEES AND PROJECT COMMITTEES

As at April 21, 1998

ADVISORY COMMITTEE

Chair:	Brenner, J.
Members:	Edwards, ERA, J.
	Shabbits, J.
	Humphries, J.
	Lowry, J.
	Parrett, J.
	Leggatt, J.
Ex Officio:	C.J.S.C.
	A.C.J.S.C.

VIDEO-CONFERENCING PROJECT COMMITTEE

Chairs:	Cohen, J.
	Parrett, J.
Policy Group:	Dillon, J.
	Henderson, J.
Operations Group:	Richard Rondeau
	Director, VLC
	Ms. V. Gosney
	Ms. B. Lambert
	Ms. D. Ginther
	Mr. E. Trueman
	Mr. H. Greenstein

Ms. C. Friesen

CASE MANAGEMENT IMPLEMENTATION COMMITTEE

Chair:	Macdonald, J.
Members	Cohen, J.
	Brenner, J.
	Humphries, J. (now resigned)

CHAMBERS PROJECT COMMITTEE

Chair:	Sinclair Prowse, J.
Members:	Kirkpatrick, J.
	Melnick, J.
	Master Patterson
	Registrar Wellburn
	Mr. R.W. Gourlay, Q.C.
	Mr. E. Rice, Q.C.
	Mr. N.H. Smith
	Ms. K.S. Sainty
	Ms. D. Grant
	Mr. S. Mu
	Mr. R. McCandless
Ex Officio	C.J.S.C.

COMMUNICATIONS COMMITTEE

CRIMINAL LAW COMMITTEE

Chair:	Maczko, J.	Chair:	Henderson, J.
Members:	Bouck, J.	Members:	Humphries, J.
	Morrison, J.		Koenigsberg, J.
	Kirkpatrick, J.		Mackenzie, A., J.
	Leggatt, J.		Oppal, J.
	Oppal, J.		Paris, J.
	Finch, J.		Stewart, J.
	McKenzie, Hon		Williamson, J.
Ex Officio:	C.J.S.C.		
	A.C.J.S.C.		

EDUCATION COMMITTEE

Chair:	Sigurdson, J.

FAMILY LAW COMMITTEE

Chair:	Collver, J.

Members:	Levine, J.	Members:	Preston, J.
	Williamson, J.		Kirkpatrick, J.
	Baker, J.		Sigurdson, J.
	Mackenzie, J.		Donaldson, Master
	Oppal, J.		Registrar Wellburn
			Ms. K.S. Sainty
Ex Officio	C.J.B.C.	Early Intervention	Warren, J.
	C.J.S.C.	Project Chair:	
	A.C.J.S.C.		
		New Westminster Family Law Project	Preston, J.
		Chair:	

JOINT JUDICIAL COMPUTER COMMITTEE (formerly JUDGMENT POLICY COMMITTEE)

Supreme Court Members		Chair:	Newbury, J.
Chair:	Allan, J.	Members:	Rowan, J. (unofficial)
			Lowry, J.

JOINT COURTS' LIBRARY COMMITTEE

Members:	Brenner, J.
	Parrett, J.
	Ms. K.S. Sainty
	Henderson, J.
	Ms. Ann Rector
	Ms. Delia Moran

LAW CLERKS COMMITTEE

Chair:	Kirkpatrick, J.
Members:	Coultas, J.
	Shabbits, J.
	Saunders, J.
	Ms. K.S. Sainty

LITIGATION MANAGEMENT COMMITTEE

Chair:	Shaw, J.
Members:	C.J.S.C.
	Brenner, J.
	Koenigsberg, J.
	Hutchison, J.
	Preston, J.
	Davies, J.
	Master Brandreth-Gibbs
	Registrar Wellburn
	Ms. K.S. Sainty
	Mr. D.F. Robinson, Q.C. (CBA)
	Mr. J.M. McHale (Min of AG)
	Ms. B.A. Burns (AG of Can.)
	Mr. J.E. Murphy (TLA)
	Mr. R.S. Margetts (Law Society)

Ms. J.A. Bowers, Q.C.

Mr. W.S. Berardino, Q.C.

Mr. L.A. Pederson

Mr. J.A. Tolmie (ICBC)

Mr. C.A. Connaghan

Ms. L. Thorstad

PRACTICE COMMITTEE

Chair:	Tysoe, J.
Members:	Quijano, J.
	Lowry, J.
	Williamson, J.
	Dillon, J.
	Master Patterson
	Mr. K.S. Sainty

RULES REVISION COMMITTEE

Chair:	Allan, J.
Members:	C.J.S.C.
	Fraser, J.
	Vickers, J.
	Master Horn
	Registrar Wellburn
	Ms. K.S. Sainty (Secretary)
	Mr. R.T. Brooke, Q.C.
	Mr. K.G. Downing (Legislative Counsel)
	Ms. N. Cameron
	Mr. J.E. Gouge, Q.C.
	Mr. N. Smith

SETTLEMENT/MEDIATION/ADR COMMITTEE

Chair:	Vickers, J.
Members:	Warren, J.
	Preston, J.
	Cohen, J.
	Owen-Flood, J.

SUPREME COURT LIAISON COMMITTEE

(FORMERLY BENCH & BAR COMMITTEE)

Chair:	Edwards, E.R.A., J.
Members:	Brenner, J.
	Dorgan, J.
	Kirkpatrick, J.
	Leggatt, J.
	Mr. R.C.C. Peck, Q.C.
	Mr. C.O.D. Branson, Q.C.
	Ms. K.F. Nordlinger, Q.C.
	Mr. R.W. Gourlay, Q.C.
	Mr. K.F. Warner, Q.C.
	Mr. B.B. Trevino, Q.C.
	Mr. P. Leask, Q.C.
Ex Officio:	C.J.S.C.
	A.C.J.S.C.
	Ms. K. S. Sainty

FUTURE OF THE COURT WORKING GROUP

TRAVEL COMMITTEE

Chair:	Cohen, J.
Members:	Baker, J.
	Wilson, A.F., J.
	Pitfield, J.
	Ralph, J.
	Brenner, J.
	Josephson, J.
	Kirkpatrick, J.
	Spencer, J.

Chair:	Lowry, J.
Members:	Cohen, J.
	Collver, J.
	Dorgan, J.
	Hunter, J.
	Parrett, J.

TRIAL BUMPING COMMITTEE

Chair:	Quijano, J.

TECHNOLOGY COMMITTEE

(COMPUTER COMMITTEE)

Co-Chairs:	Allan, J.
	Henderson, J.
Members:	Brenner, J.
	Ms. K.S. Sainty
	Mr. H. Greenstein

WORKPLACE HARASSMENT COMMITTEE

Chair:	Humphries, J.
Members:	Blair, J.
	K. Smith, J.

JUDGES COMMITTEE ON REPORTING

Co-chairs:	Finch, J.
	Boyd, J.

JUDGES LAW REFORM COMMITTEE

Members:	Tysoe, J.
	Kirkpatrick, J.
	Martinson, PCJ

ADVISORY COMMITTEE

MEMBERS:

The Honourable Mr. Justice Brenner (Chair)

The Honourable Mr. Justice E.R.A. Edwards

The Honourable Mr. Justice Shabbits

The Honourable Madam Justice Humphries

The Honourable Mr. Justice Lowry

The Honourable Mr. Justice Parrett

The Honourable Mr. Justice Leggatt

The Honourable Chief Justice Williams (*ex offico*)

The Honourable Associate Chief Justice Dohm (*ex offico*)

The work of the advisory committee during the past year has for the most part been communicated to the Court in the form of minutes after each meeting.

In last year's report my predecessor, Madam Justice Boyd, noted that the role of the Advisory Committee was changing. That process has continued during the past year. The Committee has become increasingly more active in not just responding to requests for advice from the Chief Justice, but also in monitoring the changes within the justice system, communicating concerns from the judges and providing recommendations to the Chief Justice.

During the past year, the Committee has met approximately every other month. Advance notice of meetings has been provided to the Court to assist judges in having matters of concern placed on each agenda.

As I reported at last November's Court meeting, a number of judges had raised concerns about the pace, number and overall co-ordination of the changes that are being studied and/or implemented by the Court. Of particular concern to many judges is the fundamental question as to how change should be managed by the Court.

Accordingly I recommended to the Committee and to the Chief Justice and, with the support and approval of the Chief, Mr. Justice Cohen was commissioned to head up a representative working group of judges to consider these issues and to provide recommendations to the Advisory Committee and the Chief Justice with respect to governance, overall co-ordination of change and long range planning. The work of this group is well underway.

I would like to take this opportunity to express my thanks to the members of the Committee for their support and assistance during the past, rather full, year. I also appreciate the support and help I have received from the many members of the Court I had occasion to go to for advice during the year. Finally, I record my thanks to Kathy Sainty and her predecessor Shelagh Scarth for their help in keeping an accurate record of our meetings.

"D. Brenner, J."

CASE MANAGEMENT IMPLEMENTATION COMMITTEE

MEMBERS:

The Honourable Mr. Justice Macdonald (Chair)

The Honourable Mr. Justice Brenner

The Honourable Mr. Justice Cohen

The Honourable Madam Justice Humphries (now resigned)

The case management program for trials of 11 days and longer was initiated on February 1, 1997, in the format suggested by the Implementation Committee, the composition of which is set out above.

Statistics generated at the end of the first year (January 31, 1998) show a total of some 274 case assignments for Vancouver Registry actions alone, nearly 200% of the number of 11 day and longer trial dates set at Vancouver in 1996. The initial concern of the Implementation Committee that many 10 day (and even shorter) trials would "opt in" to the program seems to have been justified.

Since January 1, 1998, the weekly average number of requests for the assignment of a trial judge under the program has been six cases. Should that rate remain constant through 1998, another 275 cases will have to be assigned during the current year. While the trial dates for some 59 of the cases assigned to date will have come and gone by year-end; the majority of the 274 cases assigned to January 31, 1998 have trial dates (or trial windows) in 1999. On the other hand, only two thirds of the assigned cases have had trial dates (or windows) fixed as at March 1, 1998.

Unless the application rate slows considerably, or the rate of settlement (particularly early settlement) is greater than anticipated, there is a concern that the number of case assignments to each participating judge will exceed our respective abilities to:

(a) provide trial dates without "double-booking" or encroaching on planned non-sitting weeks in which travel or holiday plans are scheduled; and

(b) handle the demand which some cases create for the hearing of interlocutory applications.

At the end of February 1998, the average number of case assignments was 6 or 7 for each participating Vancouver and New Westminster judge. While some effort will be made to even out the load to judges in other registries during March and April of 1998, it is recognised that the management of a lower mainland case from elsewhere in the province presents additional difficulties, including the need for trial time in Vancouver if the case does not settle. For that reason, the very long trials will continue to be assigned to lower mainland judges and the number of case assignments to judges residing elsewhere will never equal those to a Vancouver or New Westminster judge.

Ten to twelve "live" case assignments at any given time, and fewer if more than one of those is a "troublesome" case (in the sense of in-person litigants or a case which involves numerous lengthy interlocutory applications) is considered by the Implementation Committee to be an optimum load.

At a meeting of the Implementation Committee attended by Sue Smolen of Trial Division, Cindy Friesen (Administrative Trial Co-ordinator) and the Chief Justice, it was decided to postpone any further changes in the program until at least the 1998 annual conference of the court in Whistler. Until then, careful track will be kept of the rate of applications for assignment and the settlement rate. A survey is being conducted of all judges participating in the program in an effort to determine:

(a) the percentage of assigned cases which are creating heavy demands on judicial time for either case management or interlocutory applications, or both; and

(b) whether there is an unfair or uneven distribution of such cases among the participating judges.

On the basis of that information, it may become necessary to modify the length of trials which qualify (e.g.: to 16 days and over) in order to reduce the volume of assignments to a manageable level, at least until we have the experience of 1999 under our belts. Of the 274 cases assigned in the first year, only 107 were estimated by counsel to involve more than 15 trial days. It may also be possible to adjust the number of assignments to judges who have received more than their fair share of "troublesome" cases.

In the meantime, we stress the importance of setting a trial date for all cases assigned at the

earliest opportunity. Whether the trial date is one year or two years in the future is not as significant as the fact that such a date has been set. The case management literature seems to be unanimous in concluding that a fixed (and certain) trial date, set early in the process, is the most important step in judicial case management.

You will recall that as a result of discussions last fall with the bar representatives to the Implementation Committee, the Trial Window concept was abandoned in favour of setting an actual trial date and directing that a Notice of Trial issue for that date. In an attempt to avoid the peaks which are developing in the profile for judge weeks committed in 1999 to 11 day and plus cases, you should now receive a list of "dates to avoid" with notice of your first case management conference in each case.

This program is imposing a "mini - ICS" (individual calendar system) onto our master calendar duties. Both the court and the bar are embarked on a learning curve in that regard. Hopefully, we can achieve a fair distribution of the workload and some degree of uniformity in case management so that counsel will know what to expect from us in the management of these cases. The computer program now in place will enable us to monitor the situation on a current basis and should signal the need to implement the changes necessary to make the system work.

A further meeting with the bar representatives was held on February 25, 1998. Several further modifications to the program were suggested by them and will be considered along with any other changes indicated as a result of the survey or necessitated by developments to that date.

"B. Macdonald, J."

CHAMBERS COMMITTEE

MEMBERS:

The Honourable Madam Justice Sinclair Prowse (Chair)

The Honourable Madam Justice Kirkpatrick

The Honourable Mr. Justice Melnick

Master Patterson

Registrar Wellburn

Mr. R.W. Gourlay, Q.C.

Mr. E. Rice, Q.C.

Mr. N.H. Smith

Ms. K.S. Sainty (Law Officer)

Ms. D. Grant

Mr. S. Mu

Mr. R. McCandless

The Honourable Chief Justice Williams (*ex officio*)

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1. Present Status of the Chambers Committee and Rule 65

As you are no doubt aware, with some minor modifications the Rule 65 Pilot Project was extended until January 1, 1999 to permit a complete evaluation of the Rule; to permit the making of any statutory amendments that result from those recommendations; and to permit sufficient time to consult with areas outside of Vancouver regarding the expansion of Rule 65 to those areas.

When this annual report was written, the responses from the Bar, Bench, Legal Assistants and Registry had been tabulated and the Chambers Committee was in the process of formulating its recommendations regarding any changes to be made to the content and implementation of Rule 65. By the time of the conference, it is anticipated that that process will have been completed and that Mr. Justice Melnick will have embarked on the process of consulting with the Bench, Bar, and Registries outside of Vancouver to ascertain if they want to have Rule 65 (as revised) extended to their area.

In the meantime, some minor amendments have been made to Rule 65, including that the time for filing the materials be extended to 2 full days before the hearing (rather than the previous 24 hour window) and that the 11:00 a.m. start time for applications of an hour or longer be deleted.

2. Summary of the Responses from the Bench, the Bar, Legal Support Staff, and the Registry

The response from the Bar and Legal Support Staff was extraordinary. Specifically, we received well over 400 responses - 275 of them being from lawyers - many of them containing lengthy, thoughtful comments.

Approximately, 2/3 of the responses from the Bar commented that they considered that Rule 65 was an improvement over the previous Chambers system. (Legal Support Staff were not specifically asked on their questionnaire whether they considered it an improvement although many of them volunteered that they thought that it was.)

In addition, the majority of the Bar responses were from sole practitioners or from small law firms. The fact that this group considered that Rule 65 was an improvement was encouraging because these are the firms that would be more affected by the higher costs (if there are higher costs) resulting from this Rule.

The support of the Bar for Rule 65 was not unqualified. That is, many of the lawyers opined that there should be some changes to the Rule and in particular that it should be simplified, if

possible. The changes recommended by the Bar pertained to refinements of the Rule rather than significant changes.

In addition, a number of lawyers commented in the responses that the Bench was not consistently enforcing time estimates or the provisions of the Rule - in particular, the prohibition of the late filing of affidavits.

With respect to the responses from the Bench and from the Registry, although there were some suggestions for some minor changes there was unanimous support for the Rule.

If anyone has any questions, I would be more than happy to answer them.

"J. Sinclair Prowse, J."

COMMUNICATIONS COMMITTEE

MEMBERS:

The Honourable Mr. Justice Maczko (Chair)

The Honourable Lloyd McKenzie

The Honourable Mr. Justice Bouck

The Honourable Mr. Justice Finch

The Honourable Madam Justice Kirkpatrick

The Honourable Mr. Justice Leggatt

The Honourable Madam Justice Morrison

The Honourable Mr. Justice Oppal

The Honourable Chief Justice Williams (*ex officio*)

The Honourable Associate Chief Justice Dohm (*ex officio*)

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1. Communications with the Media

We have now met twice with members of the media, including radio, television, and printed press.

(a) Advance notice of proposed publication bans - The press wants advance

notice of proposed publication bans. They want this so that they can have an opportunity to retain counsel and make representations. The press argued that this approach was mandated by ***Dagenais***. However, there are a number of practical problems. Nothing has been resolved.

(b) Registry of bans - This was a proposal to have a central registry of all court-ordered publication bans. This proposal was agreed to in principle and a small committee was struck to work out the logistics. Richard Rondeau informs us that the computer cannot accommodate the proposal.

(c) Access to exhibits - The press made a proposal that they should have a right to access exhibits without application to a judge. There is no known case where any application has been turned down and the press views this as an imposition. This matter was also referred to a small working committee to see if problems such as costs, registry staff time, ensuring integrity of exhibits, and ensuring that only authorised individuals have access to exhibits could be worked out. So far the working committee has not reported.

(d) Cameras in the courtroom - The press wish to discuss a proposal for having cameras in the courtroom but that has not yet been on the agenda.

(e) Commenting on cases before the court - We tried to convince the press that they should not comment on cases that are before the court, particularly urging a particular sentence or outcome. We were told that the Sun has a legal opinion to the effect that ***Dagenais*** gives the press the right to do that. We could find no discussion of the subject in ***Dagenais***. There was no resolution of the matter and it appears it will have to be resolved by an individual judge in an individual case.

(f) Personal attacks on Judges - All members of the press agreed, almost instantly, that judges should not be attacked personally. However, that does not solve the problem because this group cannot control what individual reporters do and what individual open liners do. In one instance, a judge was called a "racist" and in another a judge was accused of taking a bribe. The matter of the bribery allegation was referred to the Attorney General.

(g) Access to official court tapes - The press applied to the Chief to have access to the official court tapes so that they could check the accuracy of their stories. The Committee considered the proposal and concluded that there are a number of problems such as cost, use of court staff time, and the possibility that the machines will pick up communications of counsel at the counsel table. The Committee concluded that it would be preferable to allow the media to bring tape recorders into the courtroom to be used only to check for accuracy. The recordings

may not be used for re-broadcast. This proposal is, of course, subject to individual judge's control of his or her own courtrooms.

2. Communications with the Public

Options for communicating directly to the public:

(a) Speeches at service clubs, schools, etc. This is in progress and appears to be well received where it has been done. Unfortunately, exposure is limited.

(b) Write articles for publication in the newspaper. That has not yet been done.

(c) Appear on open line shows. This is an opportunity to communicate directly with the public. The Committee has recommended that we should try this approach on an experimental basis and see how it goes.

"F. Maczko J."

COMPUTER COMMITTEE

MEMBERS:

The Honourable Madam Justice Allan (Co-Chair)

The Honourable Mr. Justice Henderson (Co-Chair)

The Honourable Mr. Justice Brenner

The Honourable Mr. Justice Parrett

Ms. K.S. Sainty (Law Officer)

The majority of the Committee’s work was done in conjunction with the Joint Judicial Computer Committee and that Committee’s report is found elsewhere in this annual report.

The Supreme Court Computer Committee continues to consider issues dealing with the computer (software and hardware) requirements of the Supreme Court's judiciary and staff. Many of the Judges and staff continue to work with antiquated equipment incapable of running Windows ’95 and Word 6 or 7. The Committee hopes that, within the next year, a total upgrade of all equipment will take place which will increase efficiency, from the perspective of both staff and judges.

Judicial Administration is investigating the option of leasing, rather than purchasing, computers which will expedite the replacement of equipment. The fibre optic network (which necessitates rewiring the Vancouver Law Courts building) will be completed shortly. Without that wiring upgrade, the computers cannot be upgraded.

Other projects of the Committee this year included JAIN and Internet training by Professor Franson for the judiciary. All sessions of the training were "sold out" and the Committee hopes to plan additional sessions in the near future. The materials which were used are available from Madam Justice Rowles' secretary. In addition, Mr. Rondeau made available some one-to-one

computer training in basic skills available for judges in their chambers.

"M. Allan, J. (Co-Chair)"

CRIMINAL LAW COMMITTEE

MEMBERS:

The Honourable Mr. Justice Henderson (Chair)

The Honourable Madam Justice Humphries

The Honourable Madam Justice Koenigsberg

The Honourable Madam Justice Mackenzie

The Honourable Mr. Justice Oppal

The Honourable Mr. Justice Paris

The Honourable Mr. Justice Stewart

The Honourable Mr. Justice Williamson

During the past year the Criminal Law Committee has focused on the need to keep members of our Court abreast of recent developments in the criminal law.

We have arranged for bi-weekly seminars (known as "Law at Lunch") in the Judge’s lounge in Vancouver, on criminal topics. We are now looking into the possibility of linking other judges around the province, by teleconferencing, into these discussions.

Mr. Justice Stewart has been commissioned to monitor the criminal Law decisions of the Supreme Court of Canada and the B.C. Court of Appeal so that he can advise us of their import within hours of their release. The result has been both informative and entertaining.

Mr. Justice Low put together a large volume of introductory material on criminal trials which is provided to each new appointee to the Court.

A revision of the Criminal Rules of the Court came into force on December 1, 1997. For the most part, these rules amount to a consolidation of rules which were already in place. A few provisions, such as those relating to service of documents and the page length (20 pages) on arguments filed in summary conviction appeals, are new.

A number of other questions, such as the need to advise prospective jurors of the job protection provisions in the *Employment Standards Act*, have been addressed throughout the year.

"A. Henderson, J."

EDUCATION COMMITTEE

MEMBERS:

The Honourable Mr. Justice Sigurdson (Chair)

The Honourable Madam Justice Baker

The Honourable Madam Justice Levine

The Honourable Mr. Justice Mackenzie

The Honourable Mr. Justice Oppal

The Honourable Mr. Justice Williamson

The Honourable Chief Justice McEachern (*ex officio*)

The Honourable Chief Justice Williams (*ex officio*)

The Honourable Associate Chief Justice Dohm (*ex officio*)

The Committee undertook two major initiatives in 1997-1998.

Under the sponsorship of the National Judicial Institute and with the assistance of members of the local community, the Committee organised the education seminar, "Judging in a Diverse Society", held February 19-21, 1998. About 80 judges from the Supreme Court and the Court of Appeal attended the seminar. The response from those who attended was very positive. Of the evaluations submitted to the National Judicial Institute, 85% rated the overall program as either very good or excellent. There were many suggestions made for future social context education topics to be explored.

The Committee also organised "Law at Lunch", lunch-hour informal seminars at which judges

or masters present topics of interest. Justice Henderson has taken the responsibility for organising sessions on topics in criminal law, while the Education Committee has retained the responsibility to organise topics on the civil side.

The Committee welcomes any suggestions for future programs.

"J. Sigurdson, J."

FAMILY LAW COMMITTEE

MEMBERS:

The Honourable Mr. Justice Collver (Chair)

The Honourable Madam Justice Kirkpatrick

The Honourable Mr. Justice Preston

The Honourable Mr. Justice Sigurdson

Master Donaldson

Registrar Wellburn

On behalf of the Family Law Committee, I wish to report on the following matters:

1. CHILD SUPPORT GUIDELINES

Federal Guidelines

Divorce Act and *Income Tax Act* amendments, together with the proclamation of *Federal Child Support Guidelines* (all effective May 1, 1997) required extensive revision of our Family Law Practice Directions. Madam Justice Kirkpatrick and Master Donaldson joined me in drafting the necessary changes, and I thank them for their considerable efforts.

Provincial Guidelines

In conjunction with revising Rule 60 (on behalf of the Rules Committee), Master Horn adapted our guidelines forms so that they can be used for both *Divorce Act* and *Family Relations Act* support applications. Master Horn consulted with Associate Chief Judge Dennis Schmidt, of the Provincial Court to ensure that, as much as possible, our forms harmonise with Provincial Court forms.

Child Support Clerks

Child Support Clerks have commenced their duties around the province. In Vancouver and New Westminster registries they will check all child support applications, but their role elsewhere is to assist only unrepresented litigants.

Child Support Software

We now have "Childview", which the Child Support Clerks will be using. The program is available to those judges who wish to load it on either their office or personal computers.

2. DESK ORDER DIVORCES

Thirty judges volunteered to assist with the Vancouver Law Courts program. Each will be designated as the Desk Order Divorce Judge for one week this year, and two weeks next year.

I am grateful to the participants, and also to Justices Allan and Preston for updating their Desk Order Divorce materials and preparing a binder to be circulated to the weekly designees. Dawn Grant, Manager, Civil Programs, will monitor the program and ensure files are promptly checked and regularly forwarded to the designated judge.

3. EARLY INTERVENTION HEARINGS

On the basis of anecdotal reports only, we believe that this program, devised by Mr. Justice Warren, should continue indefinitely. There is no evaluation mechanism in place, and during the next year we will either design and implement one (which will impose an additional burden

on the Registry staff) or ask the Family Law Subsection to survey its members and provide us with their opinions.

4. UNIFIED FAMILY COURT

Chief Justice Williams and I have attended two meetings with the Deputy Attorney General and others, to discuss Unified Family Court issues. George Thomson, Deputy Minister of Justice, attended the second meeting, and my observations about the discussions were reported in the Court's last newsletter.

If British Columbia opts into the unification program before the second round of appointments (ostensibly in the year 2000), a timely and suitable forum will need to be provided so that every member of the Court can have input into any recommendations which the province seeks from the Chief Justice.

5. NEW WESTMINSTER FAMILY LAW PROJECT

This program, initiated last year by Mr. Justice Preston, is continuing under the guidance of Mr. Justice McKinnon. It has achieved remarkable results, not only in managing the chambers and trial lists but also in directing many litigants towards counselling and alternate resolutions.

The project is being evaluated by a team from Simon Fraser University. The assessment will be available this fall, and the project may well turn out to be the model this Court will want to adopt in the new millennium, whether or not Unified Family Courts become a reality.

6. PARENT EDUCATION PROGRAM

Since 1994, judges of this court have assisted with Parent Education workshops at the Burnaby/New Westminster Family Justice Centre, the North Shore Family Services, and the

Vancouver Law Courts. Participants are referred by counsellors, lawyers, or the Courts. However, Victoria recently announced introduction of a mandatory program at the Burnaby/New Westminster Family Justice Centre, as a joint project of Family Justice Services, Corrections Branch, and the provincial Dispute Resolution Office.

We surmise that this announcement reflects the success of "Parenting After Separation" seminars now being conducted in the Edmonton Judicial District. Those seminars are sponsored by the Alberta Court of Queen's Bench, the Department of Justice, and the Department of Family and Social Services, and are in effect throughout Alberta pursuant to a Practice Note issued by the Chief Justice of the Court of Queen's Bench. Lawyers (paid stipends), rather than judges, assist the program coordinators.

We have three concerns:

(a) Criteria for designation (we are obtaining Alberta's rules);

(b) Imposition of another obstacle for lawyers and litigants (we will meet with the Family Bar);

(c) Judicial involvement in the program (we will recommend use of lawyers as resource persons).

As this initiative proceeds we will report further.

"R. Collver, J."

JOINT COURTS' LIBRARY COMMITTEE

MEMBERS:

The Honourable Madam Justice Newbury, Chair

The Honourable Mr. Justice Henderson

The Honourable Mr. Justice Lowry

The Honourable Mr. Justice Rowan, (as New Westminster Liaison)

Ms. D. Moran, Deputy Director, Judicial Administration

Ms. A. Rector, Judges' Librarian

Work of the Committee

For another year, the budget of the Judges' Library has remained the same, despite increases in the cost of subscriptions and other information-providing services. Thus we have continued to be very sparse in our acquisitions and have tried to economize with subscriptions to report services wherever possible.

As you will also recall, at the end of 1996 we were required, for budgetary reasons, to allow the contract of Rosemary Murphy-Milne to lapse, and have therefore now gone an entire year without the "B.C.R.D." summaries she provided. We attempted to fill the gap by the circulation of the new C.L.E. case digest services, although they do not provide the selectivity that we previously enjoyed. We have also been fortunate enough to be permitted to circulate copies of Gowling and Henderson's S.C.C. case reports, although there was a "glitch" near the end of the year and we did not receive the summaries for some weeks. Fortunately, many judges are able to access S.C.C. cases immediately via computer in any event.

Renovations are underway to the Victoria courthouse which will entail replacing certain walls and doors to the Judges' Library in that location. We expect that these will be finished around the end of April 1998.

Staff Services

As always, Anne Rector and her staff continue to serve us well despite continuing financial challenges.

JOINT JUDICIAL COMPUTER COMMITTEE

MEMBERS:

The Honourable Chief Justice McEachern

The Honourable Chief Justice Williams

The Honourable Madam Justice Rowles

The Honourable Madam Justice Allan

The Honourable Mr. Justice Brenner

The Honourable Mr. Justice Henderson

The Honourable Mr. Justice Parrett

Ms. J. Jordan, Registrar, Court of Appeal

Ms. S. Scarth, Law Officer to the Supreme Court

Mr. A. Ivanoff, Systems Support Manager

The work of the former Judgment Policy Committee is now done under the auspices of a joint Judicial Computer Committee of the Superior Courts. The Committee meets as and when required. It considers technology issues common to both courts, including judicial hardware and software requirements and maintenance of the Superior Courts' web site.

The Superior Courts web site **–** www.courts.gov.bc.ca

The number of "hits" recorded by the web site is a good indication of its success. There were 70,000 hits recorded in 1997. The reasons for judgment of the Court of Appeal appear on the day of release; those of the Supreme Court, one or two days after release to allow time for the parties to be advised.

The Computer Committee acts as a filter for new material posted on the web site. Both courts have posted practice directives on the web site. The Supreme Court has included Court Order Interest Rates and the Registrar's Newsletter published by Registrar Dunn in Victoria. In addition, an overview and flowchart for Rule 65 – the Vancouver Chambers Pilot Project – appears on the Supreme Court homepage. The web site has also been used to obtain the views of its users on draft rule amendments.

The web site has its detractors. The Committee has considered a number of complaints from litigants whose names appear in reasons for judgment on the site and who consider the publication of the reasons to be an invasion of privacy. Several complainants noted that the reasons for judgment appear as a hit when their name is entered as a name search on the Internet, alongside a hit for the web site relating to their business. The Committee's position is that reasons for judgment are public documents and that the purpose behind the web site is to make them accessible to the public. It would be contrary to this purpose to remove judgments from the web site or to edit them on request.

Other Issues considered by the Committee

The Committee advises the Chief Justices on the policy issues surrounding various information technology initiatives, most recently electronic filing. The Assistant Deputy Attorney General, Malcolm McAvity, was invited to attend a meeting of the Committee to report on the electronic filing initiative and to respond to the Committee's questions on the updating of the courts' case tracking systems to accommodate electronic filing. The electronic filing initiative is being run as a joint project by the Ministry of the Attorney General, the Superior Courts and the Bar. The project committees include members of the Computer Committee, as shown on the attached project structure diagram.

Electronic Filing Project Structure

EXECUTIVE SPONSORS

Chief Justice McEachern

Chief Justice Williams

J.P. Malcolm McAvity, Assistant Deputy AG

STEERING COMMITTEE

Chief Justice McEachern

Chief Justice Williams

J.P. Malcolm McAvity, Assistant Deputy AG

Madam Justice Rowles

Madam Justice Allan

Kerry-Lynne Findlay, President, Canadian

Bar Assn., B.C. Branch

Law Society Representative

WORKING GROUP

Project Manager:

Virginia Day, Director, Business Development

& Change Management

		Court Services Management: Irene Young, Director, Financial Management, Systems & Technology Richard Rondeau, Regional Director, Vancouver Law Courts		
		Ministry ITSD: Jim Dickson, Business Manager		
		Judicial Representatives: Jennifer Jordan, Court of Appeal Registrar Shelagh Scarth, Court of Appeal Law Officer Katherine Wellburn, Supreme Court District Registrar		
Supreme Court Working **Sub-Group:** Katherine Wellburn Gary Cohen, Q.C. Adrian Chaster Cedric Hughes Tracey Cook Jim Stuart Jason Squire		Bar Representatives Gary Cohen, Q.C., Canadian Bar Association Adrian Chaster, Trial Lawyers Association Cedric Hughes, Law Society of B.C. Dan Bennett, Law Firm Representative John Tolmie, Chief Counsel, ICBC Court Services Staff: Tracey Cook Jim Stuart Jason Squire		**Court of Appeal** **Working** **Sub-Group:** Jennifer Jordan Shelagh Scarth Dan Bennett Tracey Cook Jim Stuart Jason Squire

		Technical Resources: Systems/Business Architect Systems Development Project Manager Business Process Analyst Data Architect Technical Architect Developers			

LAW CLERKS COMMITTEE

MEMBERS:

The Honourable Madam Justice Kirkpatrick (Chair)

The Honourable Mr. Justice Coultas

The Honourable Madam Justice Saunders

The Honourable Mr. Justice Shabbits

Ms. K.S. Sainty (Law Officer)

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1. The Committee

The committee is composed of Mr. Justice Coultas, Madam Justice Saunders and Mr. Justice Shabbits, with Madam Justice Kirkpatrick as Chair. We were assisted by Shelagh Scarth until December 1997, and have since been assisted by Kathryn Sainty. Jennifer Jordan also assists us during the annual interview process. We thank them for their considerable efforts during the year.

2. Principals

Our sincere thanks to each of the 17 judges who have acted as principal advisors to law clerks during the last year. Your commitment to this important role is appreciated.

3. Assignments

If any of you have a concern relating to your law clerks, please do not hesitate to approach the principal advisor of your group or, if need be, myself or a member of our committee. We will do our best to accommodate you. On the other hand, if you have been particularly well served, do not hesitate to mention that to your law clerk or his or her principal.

4. Computers

We continue to work toward the goal of a computer being available for each law clerk in his or her office. All law clerks now work with computers. Thus, their having ready access to such equipment is vital to their providing the prompt response to assignments we usually expect. I repeat the request of past years that, if you are not using your computer equipment, please make it available for the use of law clerks.

"P. Kirkpatrick J"

LITIGATION MANAGEMENT COMMITTEE

MEMBERS:

The Honourable Mr. Justice Shaw

The Honourable Chief Justice Williams

The Honourable Mr. Justice Brenner

The Honourable Madam Justice Koenigsberg

The Honourable Madam Justice Hutchison

The Honourable Mr. Justice Preston

The Honourable Mr. Justice Davies

Master Brandreth-Gibbs

Registrar Wellburn

Ms. K.S. Sainty (Law Officer)

Mr. D.F. Robinson, Q.C. (CBA)

Mr. J.M. McHale (Min of A-G – Dispute Resolution Office)

Ms. B.A. Burns (Dept. of Justice – Canada)

Mr. J.E. Murphy (Trial Lawyers Association)

Mr. R. S. Margetts (Law Society of B.C.)

Ms. J. A. Bowers, Q.C.

Mr. W.S. Berardino, Q.C.

Mr. L. A. Pederson

Mr. J. A. Tolmie (ICBC)

Mr. C. Connaghan (Lay Member)

Ms. L. Thorstad

Registry Advisors

Ms. V. Gosney

Mr. B. Messenger

Ms. S. Smolen

Consultants

Ms. K. Keating

Mr. B. Mahoney

At the November 1997 meeting of the Court, the Court approved the Fast Track proposal that was developed by the Litigation Management Committee. It was then sent to the Rules Revision Committee with a request that it consider amendments to the Rules of Court to enable Fast Track to be implemented. The two Committees worked on the drafting of Rule 66 "Fast Track" and on March 6, 1998 the Rules Revision Committee decided to send Rule 66 to the Chief Justice for approval and to Cabinet for enactment. I will report on progress of this process at the forthcoming meeting of the Court. The project is expected to run for two years

commencing September 1, 1998.

A detailed monitoring program is being developed for Fast Track. As much data as possible will be collected so that the worth of Fast Track can be properly assessed.

I have asked the Litigation Management Committee to now tackle the subject of Standard Track, i.e., those cases that lie between Fast Track and the 11-day plus case management program. The management of Standard Track cases forms part of the case management proposal I made to the Court at our November 1996 meeting and which lawyer-members of the Litigation Management Committee published to the Bar in January 1997. As with Fast Track, I will bring back for consideration by the Court any recommendations the Committee may see fit to make.

I was asked by the Litigation Management Committee to prepare an overview of the various measures taken or proposed to improve the management of civil litigation. I did so and embodied it in a memo to the Litigation Management Committee dated November 17, 1997. A copy of that memo is attached to this Report.

"D.W. Shaw, J."

attach.

M E M O R A N D U M

TO: Litigation Management Committee

FROM: Mr. Justice Shaw

DATE: November 17, 1997

RE: MANAGEMENT OF CIVIL LITIGATION: AN OVERVIEW

The purpose of this memorandum is to set out measures taken or proposed to handle the ever-growing work of the court.

THE PRESENT SCENE

The duration of civil trials has dramatically expanded over the last few decades. Case law has eliminated the immunity of counsel. Lawsuits have become more complicated with more parties and more issues. The use of experts has become a growth industry. Lengthy examinations for discovery are more common. Photostatting is producing vast volumes of documents, many of which are irrelevant. The Charter of Rights and Freedoms has increased the length of criminal trials, cutting into the time judges have available for civil cases. The cost of litigation has increased so much that litigants are representing themselves in larger numbers. Trials are getting "bumped" due to lack of available judges. Over-holding trials take judges away from scheduled cases. Budget restraints prevent the building of new courtrooms and the appointment of new judges. And judges are pushed to the limit.

These problems are being tackled by numerous measures, the principal ones of which are the following.

THE MEASURES

Summary Trials - Rule 18A

Rule 18A was added to the Rules of Court in 1983. It authorizes summary trials, generally on affidavit evidence. Most Rule 18A trials take less than a day. There is only limited scope to deal with cases involving the credibility of witnesses. A full trial must be held where it would be unjust to decide the case under Rule 18A. The advantages of Rule 18A trials are that they are shorter and are heard earlier than regularly scheduled trials.

Rule 18A has become a significant measure. Its use has grown to such an extent that in Vancouver it is estimated that the numbers of cases disposed of by Rule 18A trials and ordinary trials are roughly equal.

Management of 11 Day Plus Trials by Trial Judge

As of February, 1997, all civil actions estimated to run 11 days or longer are subject to management by a judge who is assigned to be the trial judge. The judge will hear the interlocutory applications, assign the trial date and require counsel to prepare a trial plan, setting out the issues, the witnesses, how long they will take and the time for submissions. The judge will ascertain whether a settlement is possible and will arrange for a settlement conference before another judge if that appears warranted. The judge may also suggest mediation by an accredited mediator.

The 11 day plus management program grew out of a project run by the court in Vancouver for about two years under which the management of a portion of cases 10 days and over was assigned to judges who were to be the trial judges. A comparison was made with cases that were not so managed. The results indicated that more cases were settled, there were fewer chambers applications and the trials were shorter in the cases managed by the trial judges than in the cases that were not so managed.

Fast Track

The Litigation Management Committee and the court have approved a pilot project for Fast Track Litigation in the Vancouver area and in one up-country centre, either Kamloops, Prince George or Kelowna. The project applies to all civil cases except family. It provides for early trial dates (within 4 months of the application for a trial date) and a simplified procedure, notably a two-hour limit on examinations for discovery, no interrogatories, no juries and pre-set costs.

It is hoped that counsel will be attracted to the project by the prospect of early and certain trial dates and being able to offer clients representation at lower cost; and that litigants will be attracted by the same factors, speed and less expense. It is also hoped that counsel will organize trials that now take longer than two days so as to fit them within the two day requirement. The project will be closely monitored to measure the results.

The proposal has been referred to the Rules Revision Committee for the necessary changes to the Rules of Court. The planned start-up date is July 1, 1998.

Standard Track

In my memo to the Litigation Management Committee dated January 3, 1997 entitled Management of Civil Litigation I made a number of suggestions aimed at speeding up litigation, shortening trials and achieving more settlements. In large part these suggestions are aimed at Standard Track cases. By Standard Track I have in mind cases that are neither Fast Track nor on the 11 day plus program.

Thus far the Litigation Management Committee has only in part addressed Standard Track cases. It has done so by asking the Chief Justice to delete pre-trial conferences and replace them with the requirement that counsel file trial agenda shortly before trial.

A review of Standard Track litigation may lead to changes applying to all tracks. For example, should the requirement of unsworn lists of documents be changed back to the former practice of using sworn affidavits of documents to combat the loose practice that now plagues discovery of documents? Should there be time limits on examinations for discovery? Should meetings between opposing experts be encouraged?

I suggest that the Litigation Management Committee turn its attention to Standard Track cases and related matters that may have application to all tracks.

Family Cases

There are early intervention projects underway in Vancouver and New Westminster. In both projects, as soon as a family action is contested, a judge or master is brought on the scene to meet with the parties and their counsel. The purpose is to get interim orders in place and to settle as many issues as possible. The benefit to the court and to the parties is the saving of chambers time, trial time and expense.

The two projects differ in a fundamental respect. In New Westminster one judge or master individually manages each case, whereas in Vancouver, the judge who conducts the early intervention hearing is not charged with the subsequent management of the case. Both projects are being monitored. I am advised that the results so far on each project are very encouraging.

Family cases have been left out of the Fast Track project so that the effectiveness of the early intervention projects can be measured unencumbered by the Fast Track project. This is not to say that family cases cannot be added to Fast Track in due course if that appears warranted.

Chambers - Rule 65

During the past year chambers practice has significantly changed in Vancouver. This has been accomplished by Rule 65 of the Rules of Court. Rule 65 requires counsel to exchange their positions on chambers disputes to see if they can be resolved out of court. It also requires that the relevant material be organized in binders for the chambers judge. Thus far the number of chambers applications has been noticeably reduced and motions have been better organized.

If the project proves to be a success in Vancouver, Rule 65 may be expanded to cover the whole of the Province.

Settlement Capacity - Rule 35

For several years the court has been providing settlement conferences and mini-trials under Rule 35. By these means the court has provided non-binding opinions to assist the parties to settle costs.

The court has now enhanced its settlement capacity by providing special training sessions for all the judges who are interested in this process (a large majority of the court). The Chief Justice, by way of a Practice Direction, has provided a procedure whereby the parties to an action may, by consent, arrange for a settlement conference or a mini-trial and can choose a particular judge, if available, from a rota of judges. This project is aimed at increasing the number of cases that are settled rather than tried.

In addition, the Provincial Attorney-General's Ministry and the Bar are developing an organization to accredit mediators to whom judges will be able to refer actions, by consent of the parties, where it appears that mediation will assist in settlement.

Other Measures

- As of January 1, 1998, the parties to cases that are "bumped" will be offered the option of a reference to a group of qualified arbitrators.

- The court is addressing the problem of overholding trials. A special committee has been appointed by the Chief Justice to make recommendations.

- The court has looked into its travel policy and reduced the amount of travel by the judges.

- Specialization by judges is a topic that needs further study. At present, there is a family rota in Vancouver. The judges on the family rota do a preponderance of family work for six month periods. Should this approach (or some similar approach) be applied in other areas?

- Electronic filing. This is inevitable and a committee has been struck to see this is properly implemented.

- Teleconferencing. This now exists between Vancouver and other centres.

- Videoconferencing. Posts in Vancouver and Prince George will commence operation in January, 1998. Other stations will be added as funding becomes available.

- Computer system. The development of a comprehensive system for the province

is being undertaken by the Provincial Attorney General's Ministry. Involvement of the court will be necessary. The computer system will have to be sufficiently comprehensive and flexible to accommodate the court's needs in running the civil litigation system, including all the changes that are taking place.

SUMMARY

The goals of providing timely and fair justice as economically as possible are being pursued on many fronts. It is the cumulative effect of all the measures that is aimed at achieving these objectives. Some measures will prove to be more effective than others. Some will need adjustments to operate to best effect. Constant monitoring and timely revisions will be required.

Above all, the process of soundly based change will require the collective will and wisdom of the court, the bar, government and the public.

"D.W. Shaw, J."

PRACTICE COMMITTEE

MEMBERS:

The Honourable Mr. Justice Tysoe (Chair)

The Honourable Mr. Justice Lowry

The Honourable Mr. Justice Williamson

The Honourable Madam Justice Quijano

The Honourable Madam Justice Dillon

Master Patterson

Ms. K.S. Sainty (Law Officer)

The only new member of the Committee is Kathy Sainty, who replaced Shelagh Scarth upon her elevation to the position of Law Officer for the Court of Appeal.

Following is a summary of the topics which we have discussed over the past year.

1. Infant Settlements

The efforts of the Committee on this topic came to fruition with the issuance of a Practice Direction by the Chief Justice on June 12, 1997.

2. Small Claims Appeals

The amendment to the *Small Claims Act* to implement the Committee's recommendation was made, with effect from September 1, 1997. Appeals from Small Claims Court no longer take the form of hearings *de novo* and they are now appeals on the record. The Chief Justice issued a Practice Direction on August 11, 1997 with respect to the new procedures and the Registries have an information package which is given to parties who need assistance.

3. Split Trials and Variation of Orders

The Chief Justice issued two memoranda dated April 24, 1997 in accordance with the Committee's recommendations on these two topics.

4. Registrar's Newsletter

The Committee continues to have input into the Registrar's Newsletter, which is published by Registrar Dunn in Victoria and circulated to all of the registries as well as to the profession with the Canadian Bar materials.

5. Writs of Possession under the Residential Tenancy Act

The Committee recommended to the Rules Revision Committee that the Rules be amended so that Orders of Possession issued by arbitrators under the *Residential Tenancy Act* need not be served on tenants both before and after they have been filed with our Court. We understand that the Rules Revision Committee is moving forward with our recommendation but that it is considering a more general amendment to deal with filings with our Court under other legislation.

6. Payment of Civil Jury Fees

The Chief Justice requested the Committee to consider an issue regarding the practice of the

Sheriff's Office requiring payment of jury fees at least 30 days prior to the commencement of the trial. Before the Committee had the opportunity to consider the issue, Mr. Justice Vickers decided in a case that the practice was unenforceable and that the Sheriff's Office can only require payment of the jury fees 15 days before the start of the trial. We understand that the Sheriffs have requested an amendment to the legislation.

7. Organization of Practice Directions

Kathy Sainty has been requested to organize the Practice Directions. She and Master Donaldson have completed the work on the Family Law Practice Directions in conjunction with the proposed enactment of a new Rule 60.

8. Use of CD-ROM Statutes

The Committee was requested to consider whether the Court would accept the CD-ROM version of statutes in view of the fact that the Federal Government has discontinued the loose-leaf version of its statutes. We decided that the use of the CD-ROM version of statutes is acceptable, while recognizing that they may contain errors.

9. Transfers from Small Claims Court

The Small Claims Rules have been amended to allow the transfer of small claims actions to our Court. Problems have arisen because the pleadings in Small Claims Court are different from our form of pleadings. The Committee has recommended to the Rules Revision Committee that the Rules be amended to require the parties to file new pleadings when the action is transferred to our Court. We also requested Registrar Dunn to advise the Registries of our interim policy which will allow the parties to file amendments to the pleadings after the actions have been transferred to our Court.

"D. Tysoe, J."

RULES REVISION COMMITTEE

MEMBERS:

The Honourable Madam Justice Allan (Chair)

The Honourable Chief Justice Williams

The Honourable Mr. Justice Fraser

The Honourable Mr. Justice Vickers

Master Horn

Registrar Wellburn

Mr. K. Downing, Legislative Counsel

Mr. J. E. (Ted) Gouge, Q.C.

Mr. N. Smith

Mr. R. T. Brooke, Q.C.

Ms. N. Cameron

Ms. K. Sainty (Law Officer) - Secretary

(The members of the Rules Revision Committee are appointed, after consultation with the Chief Justice, by the Attorney General.)

The Committee responds to concerns and suggestions expressed by the Judiciary, the Profession, and the Attorney General's department. The composition of the Committee, and its policy of expansive consultation, ensure that amendments to the Rules are evaluated in the broadest context.

1. *Amendments to the Rules which are expected to be effective either July 1, 1998, or September 1, 1998*

The Rules Revision Committee has submitted to the Attorney General a package of proposed amendments to the Supreme Court Rules. It is expected, as at the date of writing this report, that the package will receive Cabinet approval shortly. Some of the amendments are to be implemented on July 1, 1998; others on September 1, 1998.

The most extensive amendments are these:

(a) Rule 60

The procedural provisions from Rules 60 and 60B and most of the Practice Directions have been amalgamated to provide a simplified and comprehensive divorce procedure.

(b) Rule 66 - Fast track litigation

This is an initiative of the Litigation Management Committee chaired by Mr. Justice Shaw to provide an efficient and economical resolution of trials 2 days and under.

(c) Rule 18A

Rule 18A(14) is deleted to remove the prohibition against the same judge hearing a Rule 18A application and subsequently presiding at trial.

2. Matters presently under consideration

Some of the more interesting issues presently under consideration by the Rules Committee are as follows:

(a) the judge's charge to a civil jury regarding the upper limits and substituting the jury's verdict;

(b) amendments to Rule 40A dealing with expert evidence;

(c) development of an archive of the Committee's documents available to the public within the framework of the *Freedom of Information Act*;

(d) increasing the powers of Registrars to limit public access to proceedings;

(e) whether fresh or amended pleadings should be required for actions transferred to our Court from Small Claims Court;

(f) whether the order must be entered before an appeal from Master can be heard;

(g) amendments required to comply with the B.C. Child Support Guidelines;

(h) whether restraining orders should make provision for release after arrest where a Supreme Court Judge is not available;

(i) costs.

The Committee welcomes comments, suggestions, and even criticism from the Court. We also appreciate receiving copies of judgments which identify an ambiguity or anomaly in the Rules.

"M.J. Allan, J."

SETTLEMENT/MEDIATION/ADR COMMITTEE

MEMBERS:

The Honourable Mr. Justice Vickers (Chair)

The Honourable Mr. Justice Warren

The Honourable Mr. Justice Preston

The Honourable Mr. Justice Cohen

The Honourable Mr. Justice Owen-Flood

In May 1997 the second and final course on settlement conferences, sponsored by the National Judicial Institute, was completed.

Thereafter a number of issues were resolved relating to the Practice Direction to be issued under Rule 35. This direction was settled by the Court and, in its final form, delivered to the profession on November 17, 1997.

Under the able guidance of our Chair, The Honourable Madam Justice Saunders, the Trial Overflow Program was completed in cooperation with The International Commercial Arbitration Foundation of British Columbia. A Board of Trustees consisting of representatives from the commercial, legal and arbitration communities as well as named representatives from the British Columbia government, the UBC Faculty of Law and the Vancouver Board of Trade manage the Foundation. The British Columbia International Commercial Arbitration Centre is the name by which the ICAF does business.

When the program was initiated there was a problem of bumping in Vancouver. As soon as the program was in place, the problem of bumping appeared to vanish. Some research should now be initiated to see if there is a relationship between the existence of the program and the absence of cases to be bumped on a Monday morning. At the time of publishing this report, no

cases had been referred to the program.

1997 saw the completion of the settlement conferencing rooms on level 2 of the Vancouver Court House. Use of the rooms by judges is optional but all judges and masters should know they are available for pre trial and settlement conferences.

I want to take this opportunity to thank our retiring chair, The Honourable Madam Justice Saunders, for her years of tireless service on this committee.

"D. Vickers, J."

SUPREME COURT LIAISON COMMITTEE

(formerly Bench and Bar Committee)

MEMBERS:

The Honourable Mr. Justice E.R.A. Edwards

The Honourable Mr. Justice Brenner

The Honourable Madam Justice Dorgan

The Honourable Madam Justice Kirkpatrick

The Honourable Mr. Justice Leggatt

Mr. R.C.C. Peck, Q.C.

Mr. C.O.D. Branson, Q.C.

Ms. K.F. Nordlinger, Q.C.

Mr. R.W. Gourlay, Q.C.

Mr. K.F. Warner, Q.C.

Mr. B.B. Trevino, Q.C.

Mr. P. Leask, Q.C.

The Honourable Chief Justice Williams (*ex officio*)

The Honourable Associate Chief Justice Dohm (*ex officio*)

Ms. K.S. Sainty (Law Officer) (*ex officio*)

The Bench and Bar Committee, also known as the Liaison Committee, was formed sometime before 1988 to provide a forum for discussion of matters of mutual interest between the Law Society and the Supreme Court judiciary. The Chief Justice nominates the judicial members of the Committee. The Law Society members include the Master Treasurer and such other Benchers as the Treasurer nominates. The Secretary of the Law Society acts as secretary to the committee.

Meetings are held more or less quarterly at the call of the Chair. In 1997, Mr. Justice E.R.A. Edwards succeeded Mr. Justice Maczko, a long time member of the Committee, both as a judge and as Secretary of the Law Society, as Chair.

During 1997, the Committee discussed such matters as Law Society rules governing the return of judges to practice (a seemingly perennial topic), court reporting, gathering of statistics to assist in the evaluation of court procedural reforms and whether wearing a green rather than black gown in court by a counsel representing trees was permissible.

Judges of the Court are invited to bring any matters with respect to conduct of litigation, apart from Rules changes, which might be appropriately considered by the Law Society to the attention of the Chair for discussion by the Committee.

"E. Robert A. Edwards, J."

TRAVEL COMMITTEE

A REPORT TO THE COURT PREPARED BY JUSTICES

COHEN, COLLVER, PARRETT, LOWRY, DORGAN AND HUNTER

OCTOBER 9, 1997

At the request of the Chief Justice (see his memorandum to the court of May 9, 1997), we have undertaken a broad review of all aspects of court travel and have attempted to assess the extent to which the judges of the court should now be scheduled to travel throughout the province. We have endeavored to interview each judge and, although the task proved onerous in the time that was available, we consider the exercise to have been most valuable, if not essential, to permitting us to identify what are thought to be the objectives of travel and to formulate some recommendations for the court's consideration.

1. The Current Situation

We have a long tradition as a circuit court of generalist judges. We are, however, in a period of some transition. Since merger in 1990, this has not been the same kind of circuit court it was when virtually all of the judges resided in one location and much of the work we now do was done by the county courts on a regionalized basis. Now 25% of the full-time judges reside outside of the Lower Mainland in various centers where the court sits and it cannot be said that they participate in any "circuit" when, for the most part, they sit in only two locations. We do not, however, have sufficient judges residing outside of Vancouver to support a regionalized court. While in time the strength of our numbers in some places may be increased to the point where stand alone regions will be at least feasible and may then be considered, we would appear to be some years from that now.

The transition extends well beyond geography. We are now embarked on considering, if not implementing, various initiatives that are inherently at odds with the travel of a circuit court. The

most obvious is the Eleven-Day Plus Program. It is difficult to see how this modified form of ICS will work very well with scheduled travel. Indeed, we are concerned that the commitment of judges to dates for lengthy trials, many of which will not settle much before the court-house steps, may seriously undermine the reliability of rota-scheduled travel to which judges have become accustomed and greatly increase the incidence of short notice assignments and the inconvenience associated with the travel we do.

For 1998 the members of the court who sit full time (now 86) are scheduled to travel 8 weeks each for a total of 688 weeks. The total number of travel weeks needed to maintain the current level of service throughout the province is one half of that - 344 weeks - 200 weeks in locations where there are no resident judges and 144 weeks in locations where there are resident judges but their sitting time (assuming they were to sit all 32 weeks where they reside) will not meet the sitting time to which the court is committed. The remaining 344 weeks of travel facilitate the exchange that occurs so that the 22 full time judges who do not reside in the Lower Mainland will sit 25% of their time in Vancouver.

It is then against this background that we attempt to define what the objectives of travel should now be and offer our recommendations for the court's consideration.

2. The Objectives

We have drawn what appear to be the objectives of court travel today from what was said to us in the course of the interviews we conducted. Needless to say, they are to some extent competing objectives and there is a broad divergence of views on the importance to be attached to each in any travel scheme that might be recommended. But that said, the objectives to be achieved to the extent practicable might, in our view, be stated as follows (in no particular order of importance):

a. *Tradition*

   To preserve the tradition of a circuit court.

b. *Requirement*

   To insure that the court's obligation and commitment to properly serve the public in each of the locations where it sits are fulfilled.

c. *Access*

   To avoid any community's access to the court being restricted to only a very few of its

members.

d. *Exposure*

To facilitate judges being exposed to the variety of litigation, culture, and geography there is throughout the province.

e. *Efficiency*

To avoid down time and minimize cost.

f. *Collegiality, Fairness, and Opportunity*

To enhance collegiality amongst judges and provide for fairness in sharing the burden of travel and the distribution of the work of the court.

g. *Convenience*

To minimize judicial inconvenience and stress associated with travel having regard for the number of travel assignments each year and the duration of each, as well as the logistics of travel in the conditions prevailing.

We suggest these are objectives of travel today that the court might consider adopting.

3. Recommendations

It is not our intention to attempt any summary of the broad range of comments and many suggestions that were made in the course of the interviews we conducted. Rather, we offer for discussion recommendations that we consider to be consistent with the preponderance of the views expressed to us.

(a) Judges scheduled travel should be six or eight weeks each year

While eight weeks of travel has been largely an arbitrary determination of the amount of travel that all judges should do each year, it is thought by many to be appropriate. Others find it onerous and many would, in any event, prefer to travel less. For them, any reduction would be a welcomed relief. All judges should travel but it is not necessary that all travel eight weeks each year. We consider that those judges who express a preference for less travel should be assigned a rota

with a shorter travel schedule. The determination of how much shorter must again be largely arbitrary. Based on what we regard will serve the best balance of the objectives, we would propose that, at least for now, judges should be given the choice of a six or eight week travel rota.

Further, we consider that all scheduled travel need not necessarily be confined to two-week blocks. Some judges find two weeks on the road at a time quite difficult. While two weeks are desirable for trial coordinators much of the time, there are many instances where one week at a time would cause no disruption particularly in locations where there are resident judges. Much, if not most, of the rota should continue to schedule two-week blocks, but there is a place for some one week assignments (perhaps two weeks of a six-week travel schedule). Indeed, the 1998 rota already provides for one-week assignments to some extent.

There should then be some preference with respect to scheduled travel built into the rota, but that is not to say that the informal switching of assignments should not continue as a means of permitting judges to alter their rotas once they have been set.

(b) Judges who reside outside of the Lower Mainland should not be restricted to travelling to Vancouver

The practice that has prevailed since merger of confining the rota for judges who do not reside in the Lower Mainland to travelling only to Vancouver should be discontinued. It is important that they have the opportunity to sit in Vancouver, but it is not necessary that their doing so occupy 25% of their time. They should now be sitting in other locations, particularly in the geographic area where they reside, and we consider each of them should have a choice about the amount of their travel time they would like to sit in Vancouver subject to the court's interest in preserving some minimum in that regard.

We consider that each of these judges who sit full time should be scheduled to travel to sit at least two weeks each year in Vancouver and two weeks in another location. They should then, at their option, be scheduled to sit a further two weeks on a six-week rota, or four weeks on an eight-week rota, in either Vancouver or another location. Judges who are the only resident judges in the locations where they reside should not be scheduled to sit in locations which do not have more than one resident judge. In proposing this, we leave open for discussion the extent to which these judges should be scheduled to travel to all locations where the court sits in the province as opposed to sitting primarily in the area where they reside whether it be the Island, the Okanagan-Kootenays, or the North.

This departure from what has been the practice since merger will have the effect of reducing, perhaps significantly, the amount of travel required overall and should make a substantial number of six week travel rotas easily workable with a resulting real saving in cost.

(c) Other considerations

There are other considerations which were raised in the course of the interviews we conducted in respect of which we make no particular recommendation but leave them to be discussed at the meeting of the court in November.

i. Focussed travel

There may be value in having some Vancouver and New Westminster judges concentrate the travel they do on one area of the province for a period of time to permit the members of the local bars to become better acquainted with the bench and to provide a greater measure of continuity. The rota will in future be developed by computer using a program that would facilitate the scheduling of some judges to travel only to the Island, others to the Okanagan-Kootenay, and still others to the North in what could be a two or three year rotation.

ii. Consolidating locations

Some locations like Duncan-Nanaimo and Kelowna-Penticton, where driving distances are reasonable, might now be "consolidated" for travel purposes and the "no-judge" location serviced largely by the resident judges as non-travel time much like the time Vancouver judges sit in New Westminster.

iii. Winter travel

The possibility of not travelling to the few locations in winter months where travel at that time of the year can be particularly difficult, if not hazardous, should perhaps be explored. It would appear timely that we explore it now when we are moving to a 12-month rota.

iv. Travel Co-ordinator

There may be value in having one person, presumably in the Vancouver courthouse, to deal with all aspects of judges' travel, relieving secretaries of that task, and to assist judges in coordinating rota changes amongst

themselves.

4. Conclusion

These then are the recommendations we make and the considerations we raise for discussion. We would propose that any changes to be made to the current scheme of travel be incorporated in the 1998 rota to the extent that is both possible and practical. We would suggest that any changes be implemented on a trial basis only and that all aspects of travel be reassessed in perhaps two years time.

It is worth emphasizing that the rota schedule of travel is of course only a starting point. Rota changes will always be necessary and there will always be circumstances that require judges to travel when asked, on short notice and occasionally for long periods of time, beyond what can be planned. We respectfully suggest that this is an aspect of our judicial lives that requires a high degree of administrative awareness and sensitivity.

In our view, it is essential that the Chief Justice have the benefit of the Advisory Committee's careful consideration of any initiative on which the court may embark, or any change that may be made in the service to which it is committed, that may impact adversely on our obligation to travel and meet the demands of the workload we carry.

"P.Lowry, J."

TRIAL BUMPING COMMITTEE

MEMBERS:

The Honourable Madam Justice Quijano (Chair)

The Honourable Mr. Justice Paris

The Honourable Mr. Justice Blair

The Honourable Mr. Justice Shabbits

INTRODUCTION

The committee was formed in early November 1997 to inquire into the problems caused by civil trials taking longer than the time allotted to them and to report to the annual meeting. The report was to include proposals for changes to the way in which we administer the pre-trial and trial process which would alleviate or eliminate the problem.

As a result of our discussions with trial coordinators in Nanaimo, Kamloops, Victoria and Vancouver it appears that, with the possible exception of Victoria, since the early Fall of 1997 there has not been a discernible problem with trials not being able to go ahead as scheduled. Although no one is quite certain why this change has occurred it is speculated that it may be caused by a combination of factors, in particular: the present state of the economy and an increasing level of comfort with ADR.

In Victoria it seems that the continuing problem is not necessarily a product of trials overholding but may be more a problem of assigned judges being sent to other registries or lack of courtroom space for available judges.

In spite of the fact that the trial coordinators report no present problems, the committee felt it prudent to address the issue on the basis of the situation as it existed pre-Fall 1997 in the event that there is a move away from the increase in settlements or decisions to proceed by ADR and

the bumping problem reappears.

THE PROBLEM

It is the perception of the Kamloops and Nanaimo trial coordinators that they did not have a problem with trials being bumped. In the smaller registries it seems that the trial coordinators have been able to establish and maintain candid communication with counsel and so are able to predict with some certainty their trial scheduling needs.

It is the perception of the Vancouver and Victoria trial coordinators that prior to the Fall 1997 there was a significant number of scheduled trials which could not proceed on the date assigned because the judge who was to hear the matter was involved in hearing a trial which did not complete within the scheduled time and therefore was not available. While the volume of trials continuing beyond the time allotted has not diminished the problem, as has already been discussed, had abated as of the early Fall 1997.

In an effort to avoid re-inventing the wheel, the committee solicited information from all jurisdictions in Canada, from the UK, from Australia, New Zealand and South Africa. We asked whether those jurisdictions had experienced problems with trial scheduling as a result of trials going longer than scheduled and, if so, what, if any, efforts had they taken to deal with the problem and to what extent had those efforts been successful or unsuccessful.

We received remarkably complete and very helpful information from many of the jurisdictions canvassed. (Copies of two particularly interesting responses are found at Appendix A of this report.) Nearly all of the jurisdictions from which we heard had experienced or were experiencing trial scheduling problems as a result of trials going longer than estimated. Generally the approaches to alleviating the problem focused on more effective pre-trial procedures, some of which appeared to be quite complicated and onerous, not only for counsel and the litigants, but also for the judiciary.

RECOMMENDATIONS

Taking into account the unique circumstances of our court the committee is of the view that it would be prudent to institute some modest changes now in order to help alleviate any problems which might otherwise return to plague us in the event that there is a change in the attitude of the bar to ADR or a change in the economy which encourage a return to the courts of disputes which, for now, appear to have found some other satisfactory means of resolution.

Those modest changes are in relation to:

PRE-TRIAL

For every trial that is not in the fast track or case management programmes it is recommended that there be a mandatory pre-trial conference, to take place not later than six weeks before the date set for trial, and that the primary purpose of this pre-trial conference is to accurately assess the time required for the trial.

In order to achieve this goal it will be necessary that when counsel are notified of the date for the Pre-Trial Conference they are also advised that at the Pre-Trial they must be prepared to confirm the outstanding issues to be resolved by trial, the expected number of witnesses, the purpose for which each witness is being tendered and a realistic estimate of the time they expect each of their witnesses will take in chief. The judge or master conducting the Pre-Trial Conference will then canvass with all counsel their estimates of time for cross examination, evidentiary issues and argument to determine whether it appears that the time allotted to the trial is sufficient.

If, in the opinion of the judge or master conducting the Pre-Trial Conference, the trial will take longer than the time allotted then the judge will speak to the trial coordinator who will decide whether the trial can continue on the date assigned or whether it will have to be assigned a new date.

The committee believes that if counsel are required to identify the issues at this stage and address their minds to the time required for the evidence necessary to the resolution of the issues the parties will be much better able to accurately estimate the time required for the trial than is the case at present. Failure of counsel to adequately prepare for the Pre-Trial Conference could result in an adjournment of the trial attributable to that party with cost consequences flowing from the new Fee Schedule provisions.

Further, earlier identification of trials which are likely to take longer than the time allotted may allow the trial coordinators to accommodate the trial at the original date without disadvantaging other litigants. A side benefit of pre-trialing at least six weeks before the date set for trial, rather than a week or two, could be earlier settlements.

CONDUCT OF TRIAL

It is recommended that at the commencement of trial the trial judge advise counsel that, except

in the case of urgency (that is, that the issue is such that it requires to be completed even if the length of trial exceeds the estimate: Custody or commercial injunctive relief, for example), if the evidence and argument is not completed within the time estimate then the continuation may be re-scheduled for a later date.

The committee believes that if counsel are warned that the trial may not be allowed to continue beyond the time set many of them will find a way to use the allotted time more efficiently.

It is also recommended that when it becomes apparent that the trial will not been completed within the time estimate and the matter is not urgent counsel be directed to the trial coordinator to determine whether it will be possible for the trial to continue without interruption or whether it will be necessary for a new date to be assigned for the continuation.

The committee believes that counsel will endeavour to be more accurate in their time estimates when securing a trial date once they realize that the usual practice is that trials that do not finish within the time estimate will be split unless the judge can be made available without bumping another trial.

"G. Quijano, J."

Attachments to Trial Bumping Committee Report are not currently available.

VIDEOCONFERENCING COMMITTEE

MEMBERS:

Policy Group:

The Honourable Mr. Justice Cohen (Co-Chair)

The Honourable Mr. Justice Parrett (Co-Chair)

The Honourable Chief Justice Williams

The Honourable Madam Justice Dillon

The Honourable Mr. Justice Henderson

Operations Group:

Ms.V. Gosney

Ms. B. Lambert

Mr. R. Rondeau

Ms. D. Ginther

Mr. E. Trueman

Mr. H. Greenstein

Representatives of the Ministry of the Attorney General

The Ministry has purchased in-court videoconferencing equipment to improve access to, and efficiency within the court system. The initial locations to have videoconferencing courtrooms have been selected for the Supreme Court in Vancouver and Prince George. In addition, equipment has been installed in the Prince George Regional Correctional Facility.

The Committee will be establishing protocols and procedures for the use and application of the technology to the civil and criminal lists throughout the Province. It is felt that enabling counsel, litigants and witnesses to appear in court by videoconference will ultimately benefit all parties participating in the justice system by allowing more flexibility in the scheduling of judicial resources, and by reducing travel for the judiciary, litigants and witnesses thereby reducing the cost of civil and criminal litigation. As well, there will be improvements to public safety in cases where videolinks between courthouses and correctional facilities can be used to eliminate the need to transport prisoners for certain kinds of applications or hearings.

Since the summer of 1996 there have been several videoconferencing pilots in this province including one in the Provincial Court which involved a mock family maintenance order hearing conducted by videoconference between Vancouver and Winnipeg; a jury trial in the Supreme Court where a defence witness was heard by video from New Brunswick; a Supreme Court chambers motion heard from Prince George with counsel making submissions in Vancouver; and two sentencing hearings in the Provincial Court conducted between Vancouver and Tai Pai, Taiwan, and between Vancouver and Hong Kong. More recently, Justices Koenigsberg and Melnick have heard evidence by videoconference. Attached is a memo from Mr. Justice Melnick describing his experience with the receipt of evidence by videoconference.

The Ministry of the Attorney General has made initial funding for this project possible. Recent correspondence to the Chief Justice from Commissioner Goulard advises that he has recently established a contact within Industry Canada, the Federal Government department responsible for the Information Highway. The Director General Information Highway Application Branch has indicated that he would be willing to experiment with the application of videoconferencing as a pilot project to assess the contributions such technology could make to providing Canada's rural community with better and more affordable access to justice.

The Department of Industry Canada has introduced an initiative called CAP (Community Access Program). Its purpose is to establish a national network of community access sites, in order to provide communities with affordable public access to the Internet, as well as skills to use it effectively. The objective is to introduce new technology to remote areas. Industry

Canada is willing to invest in a pilot project that would include four provinces and a maximum of 20 sites. These sites would be provided with the basic equipment and expertise sufficient to experiment with the application of videoconferencing to the conduct of court business. The Chief Justice has advised Commissioner Goulard that our court is interested in being part of the pilot project.

With respect to the current project, the types of cases to be heard by videoconferencing may include, chambers applications; case management conferences; witnesses in criminal and civil proceedings, i.e. witnesses from out of town, bail/remand hearings; and provisional orders under the *Divorce Act*.

Though Supreme Court matters will be given priority, where convenient, the equipment may be utilised by the Provincial Court Criminal, Family and Civil Divisions for first appearances; bail/remand hearings; and family maintenance enforcement/variation applications.

Depending upon the type of application, length of hearing and availability of videoconferencing facilities, videoconference technology can be used between courthouses, between a courthouse and a correctional facility or police station and between a courthouse and a government or private sector videoconferencing facility. There are government videoconferencing facilities throughout the province which are available on a booking basis. As well, videoconferencing can take place between provinces. In addition, the technology will be sensitive to the requirement for counsel and litigant to be able to hold private conversations.

At the Law Courts in Vancouver, courtroom 71 has been equipped as a videoconferencing facility. In Prince George, courtroom 310 has been similarly equipped. The wiring in the Prince George courthouse allows the utilisation of the videoconferencing equipment from multiple locations (one at a time). A portion of the equipment is mobile including a single camera and a monitor which can be utilised in locations such as Judge's chambers or the Conference room. In addition it can be plugged into the courtroom installation to access the multiple fixed cameras installed in the courtroom. Consideration is being given to installing wiring and cameras in a Provincial Court courtroom now that a fixed link to the Correctional Centre has been provided.

The Committee will be closely monitoring the use of the facilities. There will be orientation and training sessions for staff, judiciary and lawyers, as soon as possible. As well, there will be consultation with the users seeking feedback on the application of the technology.

"G. Parrett & B. Cohen JJ."

Co-Chairs

M E M O R A N D U M

TO: The Honourable Mr. Justice Parrett

AND TO: The Honourable Mr. Justice Cohen

CC: The Honourable Chief Justice Williams

The Honourable Associate Chief Justice Dohm

The Honourable Mr. Justice Paris

The Honourable Mr. Justice Henderson

FROM: The Honourable Mr. Justice Melnick

DATE: February 9, 1998

RE: R. v. KLEIN and NIELSON - CRANBROOK FILE NO. 8274

In early January I heard the first week of a trial involving allegations of "shaken baby syndrome" in connection with an alleged assault against an infant by a mother and her common-law husband. The alleged abuse was actually discovered in Saskatchewan although alleged to have taken place in British Columbia. As a consequence, a number of doctors from Regina examined this child. In the case of two particular experts, bringing them to British Columbia to give evidence would have cost the Crown over $10,000. Consequently, Crown and defence agreed (making it easy for me) that the evidence of these two individuals could be received by

video-conference.

Although not the first time this has been done in British Columbia, I thought that I would set out my experience because it may prove useful to others. If any of you to whom this is addressed feel it should be more widely circulated, please feel free to do so.

Naturally, a courthouse the size of Cranbrook does not have a video-conferencing centre. However, our local community college does. Due to a present arrangement between the Ministry of Attorney General and the Ministry of Education, we were able to use the facilities at the college without charge. This included the helpful attendance of a technician. The doctors attended at a conference centre in Regina (on two separate days) and we set up the video-conferencing room at the College of the Rockies in a reasonable adaptation of a courtroom. For pragmatic reasons, the tables set up for counsel were placed in the front row facing the television screen with my "bench" behind them. That way the witness being examined could see counsel and me although, being in the background, my presence did not detract from witnesses and counsel having a "direct line of vision" with each other. The accused sat on one side of the courtroom, the court clerk on the other. She swore in the witnesses who had bibles with them in Regina.

Certain documents and graphs were discussed. Both conference centres had the availability of enlarging projectors that enabled any document to be enlarged so that it could be read over the screen. Thus, the witness in Regina was able to place any particular document that he was using to illustrate his point on the enlarging screen and we were able to easily read it on the television monitor. As an aid, Crown counsel had provided us all with hard copies of the documents and it was agreed that one of these hard copies would be entered as the exhibit in each instance.

The video camera has a number of "presets" which apparently enable the witness to easily see everyone involved at our end.

I had only one or two minor complaints which were that if one moved too quickly, the image of that person distorted slightly and, secondly, it was difficult to understand what was being said if

one party attempted to talk over the other. Thus, we worked out a protocol so that counsel sat as they asked questions and if the witness in Regina saw counsel opposite stand, he was to quit talking immediately. This worked very well. I occasionally had to remind defence counsel not to interrupt, but then again I have to do that during many normal trials as well. For the most part, counsel were very careful to avoid causing problems because of the small technological limitations.

All in all, it was a very successful experiment and both Crown and defence thought that it had caused no prejudice whatever. The accused, of course, were able to view all proceedings both in our temporary courtroom and on the monitor.

For those of you who may be doing trials in communities where video-conferencing does not exist at the courthouse (which includes all of us except for, soon, Vancouver and Prince George), you will find that most communities, either through colleges or high schools, have such video-conferencing facilities that they will probably be delighted to make available to you.

I add a clipping from our local newspaper.

T.J. Melnick

TJM::cro

/attachment

Newspaper clipping not currently available.

WORKPLACE HARASSMENT COMMITTEE

MEMBERS:

The Honourable Madam Justice Humphries (Chair)

The Honourable Mr. Justice Blair

The Honourable Mr. Justice Smith

We are required to investigate and resolve complaints in confidence, and we cannot report on specific matters. There have been few complaints since the committee was instituted and it appears that workplace harassment is not a pervasive problem in the Court.

"M. Humphries J"