



NOVA SCOTIA COURT *of* APPEAL

Annual Report

2023



The Law Courts, 5th Floor, 1815 Upper Water St., Halifax, NS, B3J 1S7

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

One year ago, the Nova Scotia Court of Appeal released its first Annual Report for the calendar year 2022. Since then, we have been encouraged by the positive comments and feedback we received in support of our commitment to increased public accountability with respect to our work.

In 2023, we saw an increase in civil appeals as well as motions heard in chambers. The number of sitting days per judge is at the highest level since 2019. This is due to the increase of hearings and a reduction in our judicial complement through retirements. Despite the increase in workload, the Court has been successful in maintaining its high standard for timely hearings and release of judgments.

Our judges continue to perform important work in addition to their responsibilities for hearing and deciding appeals. Much of this is done on a voluntary basis. We support and encourage students at the Dalhousie University Schulich School of Law through lectures and participating on panels for moot courts, including the prestigious Smith Shield. Two third-year law students serve as clerks to the Court as part of their courseload. In addition, the Cowan Internship is awarded to a second-year student to conduct research in an area related to access to justice under the supervision of Justice David Farrar and Justice Carole Beaton.

Judges frequently volunteer to speak at continuing legal education programs and judicial education offerings through the National Judicial Institute. I recently had the privilege of speaking to representatives of the judiciary and journalists from Mongolia on the importance of open courts and maintaining a positive working relationship with the media.

Justice Ted Scanlan is a supernumerary judge of our Court who has for many years also sat as a Justice of the Court Martial Appeal Court of Canada and a Deputy Judge of the Nunavut Court of Justice. The Chief Justices of those Courts have spoken of the value of his contribution to the administration of justice in their jurisdictions.

2023 represented a significant milestone in the recent history of the Court with the retirement of The Honourable Justice Duncan R. Beveridge in April. I want to acknowledge his valuable contribution to the work of the Court. Although we miss him on a personal and professional level, we are looking forward to welcoming Justice Robin Gogan who was appointed to replace him on February 20, 2024. The last appointment of a new judge was in 2019 and so it is a significant event for us.

In the 2022 Annual Report, I spoke of the work of the Digital Task Force and the Court's preliminary discussions about the possibility of sitting outside of Halifax. Work continued on both these fronts throughout 2023. The Court has scheduled a sitting in Sydney, Nova Scotia. In September 2024, in addition to appeal hearings, there will be education sessions offered to the Bar in conjunction with local judges, as well as a Bench and Bar dinner. Further activities and community engagement are under consideration.

With respect to the digitization of the Court, it is anticipated that a project will be undertaken in early 2024 with the goal of establishing an electronic filing and document management system.

Overall, I am happy to report that all is well with the Court, and we continue to hear and decide our appeals efficiently and in keeping with the highest judicial standards. This is only possible because of the excellent support from our administrative team. They are small in number but essential to our success. Without them we could not have accomplished everything we did in 2023.



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

Cover image: *Photo of the nautilus mural displayed in the public lobby on the 5th Floor of the Law Courts. This mural, entitled Truth, was unveiled outside the Court of Appeal courtroom in Halifax, Nova Scotia, on June 27, 2012. Funded by a Lighthouse Grant for “Youth on the Radar” and created in collaboration with the Court Services Division of the Nova Scotia Department of Justice, the chambers of this nautilus design were individually created by students from J. L. Ilsley High School and Rockingstone Heights School, and young adults living with Down Syndrome.*



Message from the Registrar

This past year wrapped up my twelfth as the Registrar of the Nova Scotia Court of Appeal, and I continue to enjoy the work of this office and the collegiality of its staff and judges.

Much has changed in the Court since I started in this role in 2011. In particular, the Court has modernized many of its processes, including moving from scheduling court appearances on paper to scheduling using an internal electronic database; outfitting Courtroom 502 at the Law Courts to facilitate the presentation of electronic evidence and videoconferencing; our staff transitioning to provide legal information and forms to clients in an increasingly online format; and adapting court processes during the COVID-19 pandemic. Of course, there are also the changing faces that come with the many retirements and appointments of new judges and court staff.

What has remained constant throughout these changes is the dedication of the Court of Appeal judges and staff to ensuring proper administration of the Court and improving access to justice for court users.

The Registrar's Office consists of Deputy Registrars, including a Chambers Clerk, a Court Clerk, the Chief Justice's Executive Assistant, and three Judicial Assistants who support the judges of the Court of Appeal.

We help lawyers and self-represented litigants navigate the appeal process, including providing legal information on the role of the Court, how to file an appeal, and navigating the many steps a litigant may take in advancing their appeal. Court staff also file documents received from litigants, schedule court appearances, run in-person and virtual courtrooms, assist judges in preparing decisions and orders, and communicate these outcomes to the parties.

Court users, including lawyers and self-represented litigants, may access the Registrar's Office in person on the 2nd Floor of the Law Courts. Court users can also access services by contacting the staff in the Registrar's Office by telephone or email.

As we embark on a new year in 2024, I am looking forward to many new challenges. The year ahead holds many opportunities — continuing to improve our legal resources for self-represented litigants, working with the Digital Task Force to consider the move to electronic filing, and taking the Court of Appeal on the road to hear matters in Sydney. All of this and more will make for another interesting year!

Caroline McInnes
Registrar, Nova Scotia Court of Appeal

Annual Court Statistics

Number of Appeals Filed

There were 137 appeals filed in 2023 (89 civil and 48 criminal). Looking at the previous five years, the total number of criminal appeals filed per year remains consistent (see *Chart 1*). Although the number of civil appeals filed increased slightly in 2023 (see *Chart 2*), these totals are still generally on a downward trend when compared to 2014 and prior.

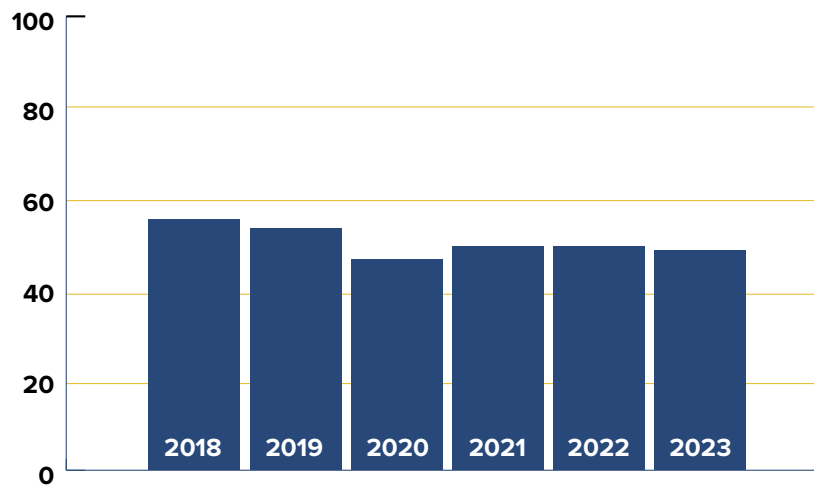


Chart 1: Criminal Appeals Filed in Nova Scotia 2018-2023

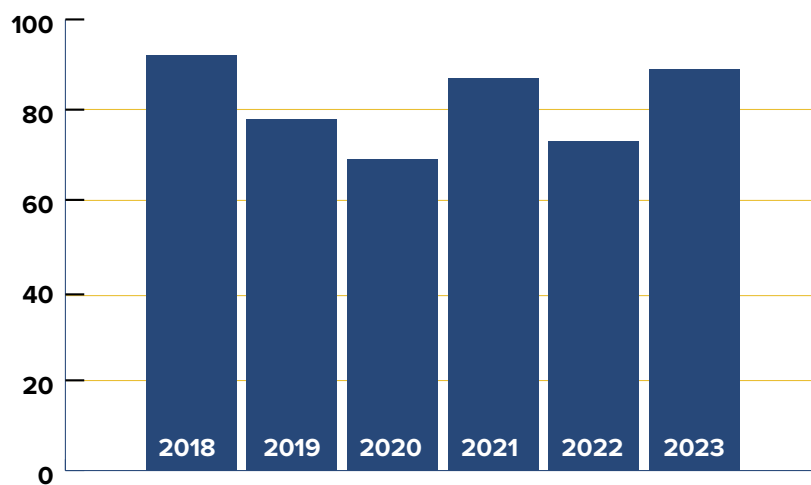


Chart 2: Civil Appeals Filed in Nova Scotia 2018-2023

Number of Appeals Disposed of by Judgment

Appeals disposed of by judgment are those in which a panel of judges ruled orally or in writing to dispose of a matter. There were 78 appeals disposed of by judgment in 2023. This is an increase over the historic low of 66 appeals disposed of by judgment that the Court saw in 2022.

Timeline for Judgment

As is shown in the tables below, the timeline from when the Notice of Appeal is filed to when it is disposed by judgment remains consistent with previous years. Any delays in these timelines typically happen earlier in the process, during the period of filing the notice of appeal and what is referred to as “perfection” of the appeal (meeting all the requirements for filing).

NOTICE OF APPEAL TO JUDGMENT (CIVIL APPEALS)						
Year	0-6 mos	6-9 mos	9-12 mos	1-2 yrs	2 yrs +	Total
2018	12	13	11	14	0	50
2019	11	7	15	16	2	51
2020	5	7	12	12	0	36
2021	4	12	4	17	1	38
2022	6	5	18	10	0	39
2023	8	10	11	20	0	49

NOTICE OF APPEAL TO JUDGMENT (CRIMINAL APPEALS)						
Year	0-6 mos	6-9 mos	9-12 mos	1-2 yrs	2 yrs +	Total
2018	1	6	10	12	3	32
2019	1	3	3	10	3	20
2020	2	7	6	21	3	39
2021	5	9	7	11	3	35
2022	0	3	5	14	5	27
2023	0	1	10	12	6	29

Number of Appeals and Motions Heard

In 2023, panels of judges presided over 105 half-day appeal hearings* and 10 motions, including eight Workers' Compensation Appeal Tribunal (WCAT) leave to appeal hearings and two motions in criminal proceedings.

During the same period, the total number of motions heard by single Chambers judges was 670. This includes motions that were heard but adjourned to another day instead of being disposed of. This is the highest number of Chambers motions recorded since the current Registrar started tracking these statistics in 2011.

Of those motions, there was no real change in the number of criminal motions with oral argument. However, criminal motions without oral argument and civil motions both with and without oral argument all hit record highs. As a result, in 2023, substantially more court time was spent dealing with civil matters than in 2022. Approximately 66 per cent of court time was dedicated to civil, including family law, appeals and motions (see *Chart 3*) and roughly 33 per cent to criminal appeals and motions (see *Chart 4*).

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

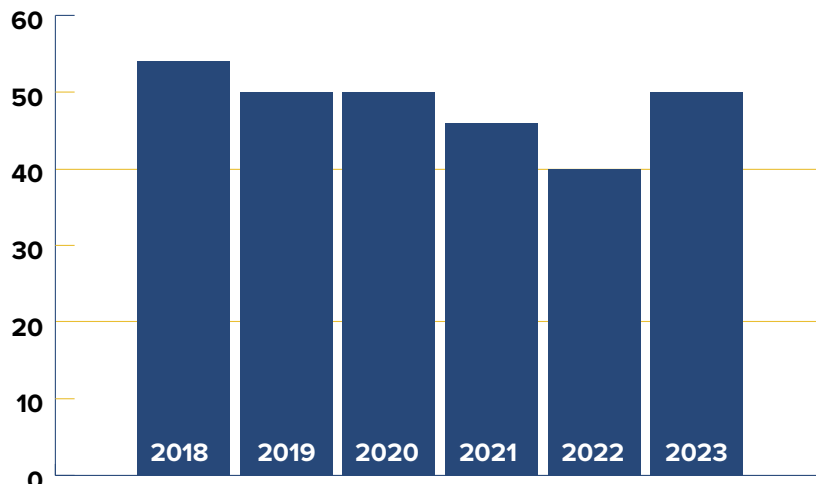


Chart 3: Percentage of Court Time Dedicated to Civil Appeals and Motions

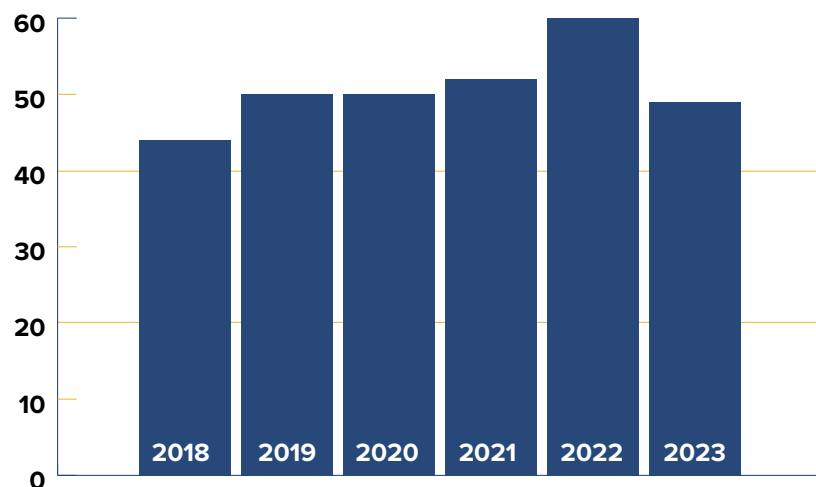


Chart 4: Percentage of Court Time Dedicated to Criminal Appeals and Motions

Did you know?

The Court of Appeal hears appeals in civil, criminal and family matters from the Nova Scotia Supreme Court, and in criminal matters from the Provincial Court and the Youth Justice Court. It also hears appeals of decisions by provincial tribunals.

Self-Represented Litigants

In the 78 appeal hearings held in 2023, 26 parties (or approximately a third) had no lawyer and represented themselves in court. Nineteen of those parties were appellants and seven were respondents.

HALIFAX FREE LEGAL CLINIC

The Nova Scotia Courts run free legal clinics in Halifax, Truro, Sydney, and Yarmouth. These clinics provide services for people representing themselves in court who need assistance with their civil law matters and family law appeals, excluding child protection. Eligible clients can receive an hour of free legal advice from a volunteer lawyer, either in person or by telephone. More information about the clinics, including eligibility criteria, is available on the [Courts of Nova Scotia website](#).

Contact Information to Schedule an Appointment

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

Webcasting

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

In 2023, the Court of Appeal livestreamed two criminal and two civil appeals:

- ▶ **Jan. 19: CAC-514477** – His Majesty the King v. Colin Hugh Tweedie
- ▶ **March 7: CAC-516448** – Tracy Kitch v. His Majesty the King
- ▶ **March 29: CA-517639** – Nova Scotia Human Rights Commission v. The Attorney General of Nova Scotia, Halifax Regional Municipality, Deborah Carleton, J. Walter Thompson and Peter Nathanson (Respondents) et al
- ▶ **Sept. 14: CA-516998** – Nova Scotia Teachers Union v. Attorney General of Nova Scotia Representing His Majesty the King in Right of the Province of Nova Scotia

Did you know?

At full complement, the Nova Scotia Court of Appeal has a Chief Justice and seven other full-time judges. In 2023, there was one vacancy on the Court.

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

Judging in Canada's North

For more than 20 years, Justice Edward (Ted) Scanlan of the Nova Scotia Court of Appeal has also sat as a Deputy Judge of the Nunavut Court of Justice. Deputy Judges serve on a volunteer basis and must find time outside their regular court assignments in their home provinces to hear matters in Canada's northern region. What follows are some of Justice Scanlan's experiences serving in this unique role.



It was June of 2002 when I was first appointed a Deputy Judge of the Nunavut Court of Justice. At the time, the territory was only two years old, a vast space covering about a third of Canada's entire land mass. There were a mere two full-time Judges hearing court matters in approximately 26 communities. Now, there are six permanent Judges in Nunavut, but the Court still relies extensively on Deputy Judges from outside the territory.

Some Deputy Judges are fully retired from their Court. Others, like me, who still sit part-time, must give up vacation and other personal leave to sit in the North. Other than when the COVID-19 pandemic restricted out-of-province travel, I have managed to sit between two and five weeks every year in Nunavut.

Deputy Judges travel with staff to each community. These travelling groups, often referred to as the Court Party,

usually consist of eight to 14 people, depending on the number of matters scheduled and whether there is a jury trial. As you can imagine, travel to these remote communities can be harsh — the distance, climate, and accommodations take a toll on everyone. The Court relies on planes of various sizes flying into remote areas with small airports. Visitors can expect anything from a modern jet to a 10- or 12-seat chartered, propeller-driven plane to shuttle them from one community to the next.

Outside of the capital of Iqaluit, the Courts most often sit in local community halls. That said, circumstances sometimes require quick thinking to find alternative locations.

I can recall one occasion when the heat at the community hall failed — at 40 degrees below, sitting in that building was no longer an option. We had to act fast. Within an hour, staff had moved all the hamlet's snow removal equipment out of the storage shed, tables were set up and court resumed with allowances for participants to wear their coats, hats, and gloves. It was an unconventional scene, to say the least.

Community halls in Nunavut are the centre of hamlet activities, perhaps even more so than in the South. Once, in the Hamlet of Pangnirtung, I remember the community members arriving at the lunch break with an array of seal,



fish, walrus and muktuk, a traditional Arctic food consisting of whale skin and blubber. It turned out the court schedule had us using the hall just after the ice had started to form, but before it had frozen enough to allow skidoos to travel through. That meant it was difficult to hunt or fish.

Northern communities depend on the sharing of food to make it through the seasons. That day, those who could brought food, and those in need took what they needed. It was a sharing at the community level, without the help of government — an example of how dependent the citizens are on one another.

We saw examples of this every day. Hunters and fishers regularly shared their catch. In fact, their status in the community was measured by how successful they were at providing food for the Elders and those in need.

Like in the Indigenous Mi'kmaq communities across Nova Scotia, Elders are held in high regard in the North. The Court often looks to these Elders to provide Judges with information about an offender before they are sentenced. Often the Elders will comment on how out of character it was for an offender to have committed an offence. They go on to explain how often the offender provides “country food” to seniors and others in need. The ability and willingness to share food goes a long way in the measure of forgiveness in those remote communities.

The availability of food and resources affected the Court in other ways. When we came to town, the number of court participants was sometimes very low. I recall flying into one community and seeing a large blood-stained area about 25 kilometers out on the sea ice. Very few people attended court the next day. They had a valid excuse — they needed to harvest the whale meat before it was lost to polar bears. On another occasion, only a few people showed up because a caribou herd was spotted nearby — hunting took precedence because it meant survival.

So much has changed over the years that I have sat in Nunavut. Recently, I presided over a jury trial in a remote community where every juror told the Court they were fluent in English and Inuktitut. Traditionally, that would not have been the case. Interpreters were essential for many years.



Modern communications means that children learn English as a first language from television and pop culture. It also means that access to the Internet and the outside world is better than it's ever been.

When I first started, most Elders who sat with me in court had been born on the land. They travelled with the seasons from the winter ice, hunting seals, to fur tents on land following the summer caribou herds, picking berries or catching fish. They spoke of dog sleds with runners made of frozen char, as there was no wood for sled runners. Nowadays, few of the Elders have lived that life.

Perhaps the highlight of my career was when a group of Elders presented me with a gift after a week of sitting as a Judge in their community. It was a bundle of many fish — the staff told me it was a sign of respect and they wanted me to know those Elders accepted me as an Elder in their community. I was humbled and touched by the gesture of kindness and gratitude.

Like many areas of our country, ease of access and substantial migration of people has brought significant change. This includes access to drugs and alcohol, which have had a profound impact on all parts of Nunavut.

That said, there are other changes that speak well of the future. Twenty years ago, for example, court staff included very few Indigenous persons. Now the staff is largely made up of local people.

I was in Pond Inlet many years ago when the Elders asked if I would cancel court for the afternoon. They wanted to attend their community's first ever high school graduation ceremony. It was an historic day, and a day of celebration. Now, that same school graduates many students every year. These graduates are better equipped to participate in what cash economy there is in the North.

Pre-pandemic, I would often visit the high schools across the territory to speak with the students. Sometimes we talked about the Court and sometimes we discussed their world — hunting, fishing in the south, or social issues affecting students everywhere. No matter the topic, I always felt I benefitted from these visits more than the students.

I have often been asked why I continue to go back. My answer is always the same — the people. Never have I seen such hard-working, generous members of society. These people toil under such difficult circumstances. Most Indigenous hunters expect to face the perils of winter travel, to hunt from ice flows under conditions few of us could even imagine. They do this as long as their bodies will allow, and sometimes well past that point. While they take advantage of modern tools like rifles, skidoos, and boats, it is done in the context of one of the harshest environments in the world.

When these people get together, it is truly a joy to listen as they laugh and share their stories. So long as I am able, I will continue to travel north to experience this part of our great country that most Canadians will never have the chance to see. I will not take that privilege for granted.

I have often been asked why I continue to go back. My answer is always the same — the people.





Farewell to The Hon. Justice Duncan Beveridge

On Jan. 30, 2023, The Hon. Justice Duncan Beveridge sat on his last appeal hearing, officially retiring from the Bench on April 1.

Justice Beveridge was appointed to the Nova Scotia Court of Appeal in 2009, after serving just over a year on the Supreme Court of Nova Scotia. He is a graduate of Acadia University and Dalhousie Law School and was called to the Nova Scotia Bar in April of 1979.

As a lawyer, Justice Beveridge lectured for Bar Admission Courses, Continuing Legal Education programs, both provincially and nationally, and taught part-time at Dalhousie Law School. He was also very involved with the work of the Nova Scotia Barristers' Society and participated in numerous law-related conferences as a presenter and panel member.

He is a past president of the Nova Scotia Criminal Lawyers' Association, former chair of the Canadian Bar Association's Nova Scotia Criminal Justice Section and was a member of the American Trial Lawyers Association, the National Association of Criminal Defence Lawyers, and the Board of Governors of Acadia University.

His busy schedule did not change when he became a judge. In addition to presiding over appeal hearings, appellate judges have many other responsibilities. Justice Beveridge is a trained judicial mediator and helped establish the Court of Appeal's mediation program. For years he co-chaired the Court of Appeal's law clerk program and was also a member of the Bench – Bar Liaison Committee.

As the senior judge of the Court of Appeal, Justice Beveridge also served as the Acting Chief Justice of Nova Scotia when that position was vacant for several months in 2019.



Did you know?

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

Staff of the Nova Scotia Court of Appeal

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

Clerkship Program

The Court of Appeal employs three law clerks and an articulated clerk who is selected from the Indigenous Blacks & Mi'kmaq Initiative at the Schulich School of Law.

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

In 2022-23, the clerks at the Court of Appeal included Arthur Ferguson, Kali Robertson, Nolan Little and Molly Campbell. The clerks who took over their duties in the spring and summer of 2023 are Andrew Paul, Jessica Simm, Sadie Rae Werner, and Noah Benson.

Did you know?

The Court of Appeal does not re-try cases. It reviews the record of the trial or hearing to ensure the lower court or tribunal made no errors of law. It is generally the court of last resort, except in the very few cases that further appeal to the Supreme Court of Canada.

Cowan Internship

Every year, the Nova Scotia Court of Appeal supports a summer internship project with a focus on access to justice issues. The topic for the annual Cowan Internship is chosen by the judges of the Court and the work of the successful law student is supervised by the Court and its law clerks.

In 2023, law student Hogan Ingram explored whether sections of the Civil Procedure Rules governing the awarding of costs should be adjusted to better reflect the current expenses of litigation. Hogan's research included a multi-jurisdictional survey and recommended changes for consideration by the Court.



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