**THE COURT OF QUEEN’S BENCH OF ALBERTA**

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**A PROPOSAL FOR AN INCREASE TO THE JUDICIAL COMPLEMENT  
OF THE COURT OF QUEEN’S BENCH OF ALBERTA**

**January 2016**

**1. EXECUTIVE SUMMARY**

The Province of Alberta has seen the most rapid population growth of any province in Canada in recent years, and with this growth, the Court of Queen’s Bench of Alberta has experienced an enormous increase in the demand for judicial services, including those above and beyond traditional court functions. A request by the Court for an additional four judicial positions – the first expansion to the Court’s complement since 1996 – was submitted to the Governments of Alberta and Canada in June, 2008. It was not until January 2013 that the Government of Alberta increased the number of full time judges at the Court of Queen’s Bench from 63 (61 puisne, plus a Chief Justice and one Associate Chief Justice) to 67 (65 puisne, plus two Associate Chief Justices). With the grant of Royal Assent to the Budget Implementation Bill C-31 on June 19, 2014, the Government of Canada amended the *Judges Act*to allow for salaries for only two of the four new puisne positions at the Court of Queen’s Bench of Alberta, leaving the actual number of full time judges (including the Chief Justice and Associate Chief Justice) at 65.

The four new judicial positions sought by the Court in 2008 were the minimum required to sustain an acceptable level of service to Albertans and a satisfactory judicial workload at that time. By the time the Province of Alberta acted to increase the Court’s complement, five years later, an increase of four positions was already insufficient to meet the demands placed upon the Court by another five years of extraordinary population and economic growth. The Province of Alberta has had the highest population to superior court judge ratio in Canada since 2008, and retains this distinction even after the addition of two new positions to its complement. It would retain this distinction, by a considerable margin, even if the Government of Canada had legislated salaries for all four of the new positions. In order to attain a ratio of population to superior court judge equivalent to that of the Province of British Columbia, an additional 13 new judicial positions would be required.

The Court of Queen’s Bench is now facing a crisis and has been forced to take a number of steps to reduce the services it provides. In February 2013, the Court suspended the enforcement of Rules 8.4(3)(a) and 8.5(1)(a) of the Alberta Rules of Court, which required parties to litigation to engage in some form of alternative dispute resolution before the matter would be scheduled for trial, because of the increasing demand for the Court’s Judicial Dispute Resolution (JDR) services. Effective September 2014, the Court has reduced the number of Justices hearing JDRs, in Calgary and Edmonton, from 3 to 2 per week.

Despite this reduction in the number of Judges assigned to hear JDRs, and the number of initiatives undertaken by the Court in recent years to improve efficiency (including JDR and Case Management), the Court’s lead times and case inventories continue to grow. There is now a real risk that extended lead times in criminal cases will result in judicial stays of criminal prosecutions. The Justices of the Court of Queen’s Bench are working well beyond capacity.

The Government of Alberta has been forced to address the realities of population growth and the consequences for the administration of justice and, in accordance with its constitutional responsibilities, has significantly increased the number of police officers, Crown Prosecutors and Provincial Court Judges. The Judiciary is an independent and separate branch of Government with constitutional responsibilities of its own. To effectively support the rule of law and to fulfill its obligations to the people of Alberta, the Court must be in a position to process cases within a reasonable period of time. The Court cannot provide timely access in the absence of an adequate judicial complement.

The administration of justice in the Province of Alberta will improve significantly with the appointment of additional justices. In order to meet the demands placed on the justice system in Alberta, the provincial and federal governments must commit the resources required to increase the judicial complement in the Court of Queen’s Bench of Alberta (including the Chief Justice, and two Associate Chief Justicies) to 77.

**2. BACKGROUND**

**2.1 CURRENT SITUATION**

Presently, the Court of Queen’s Bench works with a complement of 65 full time justice positions (63 puisne; one Chief Justice and one Associate Chief Justice), three of which are currently vacant, plus 15 supernumerary justices. The most recent increases to the complement of the Court were in 1991 (3 positions); 1994 (2 positions); 1996 (1 position) and 2014 (2 positions).

**2.2 POPULATION GROWTH IN ALBERTA**

The rapid growth in the population of the Province of Alberta has necessarily affected the need for judicial services. Statistics Canada figures indicate that the population of Alberta increased by 48% between the 1996, the year of the last addition to the judicial complement of the Court of Queen’s Bench, and the most recent addition of 2 positions in 2014. Yet those 2 positions represent an increase of only 3% to the complement of the Court.

**POPULATION: PROVINCE OF ALBERTA[[1]](#footnote-1)**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 1991 | 1996 | 2008 | 2011 | 2013 | 2014 |
| 2,592,306 | 2,775,133 | 3,595,755 | 3,790,191 | 4,025,074 | 4,111,509 |

The population of Alberta has been especially pronounced in a number of urban centres

**POPULATION: SELECT MUNICIPALITIES[[2]](#footnote-2)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Municipality | 1996 | 2008 | 2011 | 2013 |
| Calgary | 767,059 | 1,042,892 | 1,090,936 | 1,149,552 |
| Edmonton | 626,999 | 752,412 | 782,439 | 817,498 |
| Wood Buffalo (Fort McMurray) | 37,222 | 88,131 | 101,238 | 116,407 |
| Red Deer | 59,834 | 87,816 | 91,877 | 97,109 |
| Lethbridge | 64,938 | 83,960 | 87,882 | 90,417 |
| Airdrie | 14,506 | 34,116 | 43,155 | 49,560 |
| Grande Prairie | 29,242 | 50,227 | 50,227 | 55,032 |
| Medicine Hat | 45,892 | 60,426 | 61,097 | 61,180 |
| Spruce Grove | 14,123 | 19,496 | 24,646 | 27,875 |
| St. Albert | 45,895 | 58,501 | 60,138 | 61,466 |
| Cold Lake | 4,250 | 12,860 | 13,924 | 14,400 |

The last time the Court of Queen’s Bench of Alberta proposed an increase to its complement to the Province of Alberta, a period of eight years elapsed between the submission and when the Government of Canada finally legislated salaries for only two of the four positions sought. In view of this, it seems proper to take not only population growth to date into account, but future population projections. The Province of Alberta is expected to continue to grow at a rate that exceeds all other Canadian provinces for the near future. According to demographic projections prepared by Alberta Treasury Board and Finance, Alberta’s population is expected to grow by more than 100,000 people between 2014 and 2015, with an average rate of growth in the range of 100,000 per year every year thereafter. The population of Alberta is expected to exceed 5 million by 2025.

**ALBERTA POPULATION (PROJECTED) 2015 – 2025[[3]](#footnote-3)**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 |
| 4244235 | 4335150 | 4423815 | 4508870 | 4589640 | 4669135 | 4747015 | 4824230 | 4900625 | 4977275 | 5053015 |

**2.3 RATIO OF SUPERIOR COURT JUDGES TO POPULATION**

As a result of this growth, Alberta continues to have by far the highest ratio of population to superior court justice in the country, even if the number of supernumerary judges are taken into account:

**NUMBER OF SUPERIOR COURT JUSTICES PER POPULATION BY JURISDICTION (2014)[[4]](#footnote-4)**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Province or Territory | Population | Full Time Superior Court Justices | Supernumerary Justices | Population/Full Time Justice | Population/Justice (Full Time and Supernumerary) |
| ALBERTA | 4,111,509 | 65 | 18 | 63,253 | 49,536 |
| ONTARIO | 13,620,646 | 242 | 88 | 56,283 | 41,274 |
| QUEBEC | 8,191,946 | 149 | 45 | 54,979 | 42,226 |
| BRITISH COLUMBIA | 4,624,321 | 89 | 20 | 51,958 | 42,424 |
| MANITOBA | 1,257,212 | 35 | 10 | 35,920 | 27,938 |
| SASKATCHEWAN | 1,222,588 | 33 | 9 | 37,048 | 29,109 |
| NEW BRUNSWICK | 754,524 | 25 | 8 | 30,180 | 26,864 |
| NOVA SCOTIA | 939,396 | 35 | 12 | 26,839 | 19,987 |
| NEWFOUNDLAND | 525,378 | 21 | 9 | 25,018 | 17,512 |
| PRINCE EDWARD ISLAND | 145,472 | 5 | 0 | 29,094 | 29,094 |
| YUKON TERRITORY | 36,665 | 2 | 0 | 18,332 | 18,332 |
| NORTHWEST TERRITORIES | 43,459 | 4 | 0 | 10,864 | 10,864 |
| NUNAVUT | 36,408 | 6 | 0 | 6,068 | 6,068 |

The national average population to superior court justice ratio is 34,925. To bring Alberta’s population to full-time justice ratio in line with those of Ontario, Quebec and British Columbia would currently require no fewer than 9, 10 or 13 additions to the complement of the Court of Queen’s Bench of Alberta, respectively.

**2.4 THE *ASKOV* DECISION**

Section 11(b) of the Canadian Charter of Rights and Freedoms provides that any person charged with an offence has the right to be tried within a reasonable time. In *R v Askov* [1990] 2 SCR 1199, the Supreme Court of Canada described the factors that should be taken into account in determining whether the length of delay before trial has been unreasonable. These factors are: the length of the delay; the explanation for the delay; waiver of delay and prejudice to the accused. Crucially, in the present context, systemic or institutional delays occasioned by inadequate resources weigh against the Crown. Institutional delay was described by Sopinka J. in *R v Morin* [1992] 1 SCR 771 as the period that starts to run when the parties are ready for trial but the system cannot accommodate them. He further held:

The Court cannot simply accede to the government’s allocation of resources and tailor the period of permissible delay accordingly. The weight to be given to resource limitations must be assessed in light of the fact that the government has a constitutional obligation to commit sufficient resources to prevent unreasonable delay which distinguishes this obligation from many others that compete for funds with the administration of justice. There is a point in time at which the Court will no longer tolerate delay based on the plea of inadequate resources.

The Court’s lead times for Criminal Trials must be viewed in this context, mindful of the constitutional responsibility of the Province of Alberta to provide sufficient resources for the proper administration of justice in the Province, and the responsibility of the Government of Canada to make appointments to the Court, consistent with the proper administration of justice. Prolonged institutional delay occasioned by an inadequate judicial complement represents a failure to fulfill fundamental constitutional obligations.

Moreover, while institutional delay in criminal proceedings may attract the most attention from the public and media, delay in other matters can be no less pernicious. The expansive jurisdiction of Canada’s superior courts means that individuals in need of emergency protection, families in distress, creditors and debtors, mortgagees, accident victims, civil litigants, and businesses small and large all suffer, in various ways, from the inefficiencies occasioned by extreme delay in the judicial system.

**2.5 ECONOMIC CONSIDERATIONS**

The effective and efficient resolution of commercial disputes has many benefits. An efficient judicial system is essential for entrepreneurs because Courts interpret the rules of the market andprotect economic rights. The timely and efficient resolution of commercial disputes is particularly important for small businesses that do not always have the resources to sustain extended litigation. Studies have shown that companies in countries with slower courts tend to have less access to financing for new investments, and that foreign direct investment tends to be greater where the cost of contract enforcement in debt collection is lower.[[5]](#footnote-5) Nobel laureate Mancur Olson has identified, among the conditions necessary for economic success, the “secure and well-defined right for all to private property and impartial enforcement of contracts”.[[6]](#footnote-6) There is an abundance of academic research to support the proposition that strong legal institutions to enforce property and contract rights are correlated with economic growth, encouraging competition, fostering specialization, and contributing to the development of financial and credit markets.

Alberta’s economy has grown disproportionate to the national economy since 1996, its share of national gross domestic product expanding from 15.3% to 17.4% over that period. Alberta’s share of national GDP is third only to Ontario and Quebec.[[7]](#footnote-7) Until the recent economic downturn, Alberta’s per capita net contribution to confederation consistently exceeded that of every other province. The most recent Statistics Canada data available for provincial net contributions and federal expenditures per province, from 2009, indicate that on a per capita basis, Albertans contributed $4,356 more per person to the federal government than they received in the form of federal spending. As of 2011, The Government of Alberta estimated that figure has increased, and that, in that year, Albertans paid $18.9 billion more to the federal government than they got back in the form of federal spending, for a per capita difference of $5,012.[[8]](#footnote-8) The effects of Alberta’s economic boom are felt not only in Calgary and Edmonton, but in other municipalities where the Court of Queen’s Bench circuits, most particularly in the regional municipality of Wood Buffalo (Fort McMurray), where the populations has grown by 212% since 1996. The effects of low oil prices and the recent and dramatic economic downturn will also be felt across the Province, and this period of profound economic stress can be expected to yield increases in the number of insolvencies, and potentially family and criminal proceedings.

Alberta’s rapid economic growth and business-friendly culture could be at risk if the judicial system is so under-resourced that it is not sufficiently responsive to the demands of business. Investors and entrepreneurs must be confident that the legal system will be there when they need it. As lead times for civil actions grow, confidence in the ability of the justice system to resolve private disputes wanes.

In a 2007 speech to the Empire Club of Canada, Chief Justice Beverly McLachlin said, of delay:

On the civil side…. Whether the litigation has to do with a business dispute or a family matter, people need prompt resolution so they can get on with their lives. Often, they cannot wait for years for an answer. When delay becomes too great, the courts are no longer an option. People look for other alternatives. Or they simply give up on justice.

**3. COURT VOLUMES**

It has not been without significant stress and effort that the Court has been able to maintain lead times in the face of Alberta’s rapid population growth. The Court has initiated a number of programs, including Case Management and Judicial Dispute Resolution, in an effort to sustain reasonable lead times and offer timely access to justice. Judicial resources are now stretched to the point where these services must be reduced in order to allow the Court to focus on its very core constitutional responsibilities. The reduction in these services will have an impact on the people of Alberta and will almost certainly increase lead times and volumes.

By nearly every measure, the Court’s volumes have increased markedly since 2006. As the following charts indicate, the increased demands on the Court are most pronounced in the areas of family law (an 11.6% increase in actions commenced since 2006, and an 11.8% increase in divorce judgments); criminal proceedings (a 34.6% increase in the number of charges commenced in this Court since 2006, a 32.3% increase in charges concluded, and a 35.2% increase in criminal trials); and in surrogate proceedings (a 24.1% increase since 1996 in applications for probate, and a 21.1% increase in grants of probate issued).

**CIVIL AND FAMILY PROCEEDINGS**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Incoming Volumes | 2006/07 | 2007/08 | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 | Change  (2006-2014) |
| Excluding Divorce and Family | 36,821 | 37,695 | 43,750 | 47,694 | 46,304 | 43,131 | 39,734 | 38,645 | 4.9% |
| Divorce Actions Commenced | 10,252 | 10,022 | 10,701 | 10,165 | 9,926 | 10,369 | 10,664 | 10,901 | 6.3% |
| Family Actions Commenced | 6,871 | 7,849 | 8,227 | 8,506 | 8,421 | 7,895 | 7,629 | 7,674 | 11.6% |
| All Civil Actions Commenced | 53,944 | 55,566 | 62,678 | 66,365 | 64,651 | 61,395 | 58,027 | 57,220 | 6% |

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Outgoing Volumes | 2006/07 | 2007/08 | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 | Change  (2006-2014) |
| Civil Trials Heard | 432 | 398 | 402 | 424 | 417 | 296 | 264 | 283 | -34% |
| Divorce Judgments Granted | 8782 | 8230 | 9404 | 8629 | 9129 | 9202 | 9964 | 9819 | 11.8% |
| **Justice Motions Heard** | **31607** | **29445** | **31373** | **36600** | **38933** | **42826** | **42,874** | **43,563** | **37.8%** |
| Civil Appeals Heard | 80 | 60 | 106 | 128 | 105 | 71 | 88 | 58 | -27.5% |
| **Judicial Dispute Resolutions Heard** | **621** | **667** | **649** | **737** | **790** | **975** | **1018** | **726** | **16.9%** |

**CRIMINAL PROCEEDINGS**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Incoming Volumes | 2006/07 | 2007/08 | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 | Change  (2006-2014) |
| **Charges Commenced** | **5867** | **5205** | **4963** | **5169** | **5653** | **6408** | **5892** | **7901** | **34.6%** |
| Summary Conviction Appeals Filed | 544 | 488 | 560 | 590 | 475 | 503 | 521 | 450 | -17.2% |

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Outgoing Volumes | 2006/07 | 2007/08 | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 | Change  (2006-2014) |
| Charges Concluded | 4698 | 5205 | 4856 | 4912 | 5621 | 5436 | 5477 | 6209 | 32.2% |
| **Trials Heard** | **346** | **377** | **331** | **369** | **397** | **428** | **393** | **468** | **35.2%** |
| Summary Conviction Appeals Heard | 412 | 385 | 457 | 390 | 394 | 359 | 422 | 354 | -14.1% |
| Pre-Trial Conferences Heard | 478 | 434 | 452 | 506 | 503 | 605 | 524 | 743 | 55% |

**SURROGATE PROCEEDINGS**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Incoming Volumes | 2006/07 | 2007/08 | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 | Change  (2006-2014) |
| Applications For Probate/Letters of Administration | 5487 | 5816 | 6287 | 6355 | 6336 | 6615 | 6132 | 6812 | 24.1% |
| Dependent Adult Applications Filed | 1169 | 1175 | 1285 | 1095 | 730 | 1025 | 1137 | 1287 | 10% |

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Outgoing Volumes | 2006/07 | 2007/08 | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2013/13 | 2013/14 | Change  (2006-2014) |
| Grants of Probate Issued | 5130 | 5321 | 5942 | 5847 | 6489 | 6185 | 6503 | 6215 | 21.1% |

**3.1 SELF-REPRESENTED LITIGANTS**

The number of litigants representing themselves in court increases every year, at a significant cost to judicial resources. Self-represented litigants consume significantly more time presenting their cases than represented parties and require judges to spend more time ensuring procedural fairness. The increase in the number of civil matters involving self-represented litigants since 2006, the first year for which we have reliable figures, has been profound:

**SELF-REPRESENTED LITIGANTS BY PROCEEDING**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Type of File | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | Change  (2006-2013) |
| Adoption | 24 | 32 | 38 | 27 | 27 | 32 | 31 | 45 | 87.5% |
| Bankruptcy | 337 | 250 | 259 | 268 | 438 | 389 | 559 | 386 | 14.5% |
| Divorce | 2,324 | 2,434 | 2,629 | 3,304 | 3,755 | 4,469 | 4,582 | 5,047 | 117.2% |
| Family | 2,571 | 3,153 | 3,165 | 4,247 | 4,688 | 4,727 | 4,933 | 5,644 | 119.5% |
| Dependent Adult | 82 | 105 | 95 | 119 | 70 | 92 | 156 | 156 | 90.2% |
| Civil | 3,074 | 2,727 | 2,657 | 3,486 | 4,164 | 4,937 | 5,367 | 5,216 | 69.7% |
| Probate | 51 | 47 | 53 | 56 | 54 | 89 | 112 | 138 | 170.5% |
| TOTAL | 8,463 | 8,748 | 8,896 | 11,507 | 13,196 | 14,735 | 15,740 | 16,632 | 96.5% |

The number of civil matters before the Court in which one or more party is self-represented has increased by 96% since 2006 alone. The Court does not have reliable figures regarding the rate of self-representation in criminal matters, but anecdotal evidence indicates that there too the number of individuals representing themselves has increased markedly in recent years, particularly as access to legal aid becomes more restricted.

**3.2 JUDICIAL DISPUTE RESOLUTION**

Judicial Dispute Resolution (JDR) is not a recent innovation in the Province of Alberta, and has been a significant part of the Court’s work since as early as 1996. As the following figures illustrate, the Court’s JDR program has proved to be enormously popular. Rule 4.16 of the *Alberta Rules of Court* now mandates that parties to litigation participate in a dispute resolution process before a matter will be permitted to go to trial, and with this requirement to mediate has come additional pressure on the Court’s JDR program. Consequently, in view of the pressures the Court is facing across all facets of its expansive jurisdiction, the decision has been made to suspend the enforcement of Rule 4.16 and reduce the number of judges hearing JDRs. The likely consequence, however, will be an increase in civil and family case volumes, as fewer litigants are streamed into the Court’s highly successful JDR program and an early resolution of their action.

Between 2003 and 2012, before the Court began to reduce its JDR services, the number of JDRs heard by the Court has increased by 93%, from 503 to 975. Demand for a JDR significantly exceeded the Court’s ability to supply judicial resources. JDRs produce a settlement in an average of over 80% of the time. The Court’s internal research establishes that for every day of JDR, 7 days of trial time are saved, a significant leverage statistic.

**JDRs Heard**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Judicial Centre | 2008 | | | 2009 | | | 2010 | | | 2011 | | | 2012 | | | 2013 | | |
|  | Fam. | Civ. | Total | Fam. | Civ. | Total | Fam. | Civ. | Total | Fam. | Civ. | Total | Fam. | Civi. | Total | Fam. | Civ. | Total |
| Calgary | 94 | 294 | 388 | 91 | 319 | 410 | 76 | 317 | 393 | 99 | 365 | 464 | 84 | 493 | 577 | 71 | 297 | 368 |
| Drumheller | 1 | 2 | 3 | 1 | 2 | 3 | 3 | 1 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Edmonton | 49 | 261 | 310 | 35 | 229 | 264 | 56 | 227 | 283 | 54 | 262 | 316 | 70 | 334 | 404 | 47 | 210 | 257 |
| Gr.Prairie | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 3 | 5 | 8 | 5 | 12 | 17 | 1 | 5 | 6 |
| Lethbridge | 3 | 6 | 9 | 8 | 12 | 20 | 11 | 11 | 22 | 18 | 29 | 47 | 17 | 38 | 55 | 10 | 42 | 52 |
| Med.Hat | 4 | 6 | 10 | 12 | 9 | 21 | 12 | 12 | 24 | 15 | 20 | 35 | 23 | 29 | 52 | 34 | 23 | 57 |
| Peace River | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 1 | 3 | 2 | 0 | 2 |
| Red Deer | 4 | 3 | 7 | 12 | 7 | 19 | 18 | 18 | 36 | 12 | 13 | 25 | 15 | 20 | 35 | 11 | 16 | 27 |
| Wetaskiwin | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 7 | 5 | 12 | 3 | 8 | 11 | 7 | 6 | 13 |
| Ft McMurray | 0 | 0 | 0 | 2 | 0 | 2 | 0 | 0 | 0 | 7 | 4 | 11 | 13 | 4 | 17 | 4 | 3 | 7 |
| St. Paul | 0 | 1 | 1 | 6 | 1 | 7 | 4 | 0 | 4 | 4 | 2 | 6 | 5 | 7 | 12 | 2 | 7 | 9 |
| TOTAL | 155 | 573 | 728 | 169 | 579 | 748 | 181 | 586 | 767 | 219 | 705 | 924 | 237 | 946 | 1183 | 189 | 609 | 798 |

**4. LEAD TIMES AND INVENTORIES**

The inevitable result of an extreme shortfall in judicial resources will be extended lead times and case inventories. The Court has managed to keep its inventory of civil cases relatively stable, at least since these statistics began to be collected in 2008, with the considerable assistance of its JDR and case management programs, which have been extremely successful at bringing parties to settlement and moving cases through the system in a timely way. With the reduction in JDR services, the Court expects inventories and delays in civil proceedings to increase. Moreover, it should be noted that the absence of statistics in the period prior to 2008 represents a serious problem for the assessment of the Court’s inventories of cases over the longer term.

As of September 1, 2014, a long (in excess of 5 days) family or civil trial in Calgary could not be accommodated in the Court’s schedule until June 1, 2015, for a lead time of 39 weeks, and the lead time for a short (under 5 days) trial is 27 weeks. A long family or civil trial in Edmonton could not be accommodated until mid-January 2015 for a lead time of 20 weeks, and the lead time for a short trial is 50 weeks.

With respect to criminal proceedings, the Court is struggling to deal with its enormous caseload, and the profound shortage of judicial resources has begun to manifest in long lead times. There is now a serious risk that the Court’s inadequate resources will result in an unreasonable delay in a serious criminal case.

As of September 1, 2014, the earliest date the Court could provide for a long (in excess of 5 day) criminal trial in Calgary is November 30, 2015, a lead time of 62 weeks, and in Edmonton the earliest date available is June 1, 2015, for a lead time of 39 weeks. Lead times for short (under 5 day) criminal trials in Calgary and Edmonton are 37 and 34 weeks, respectively. The Court does not have statistics for average lead times prior to 2008, but even over this relatively short period, the increase in average lead times per year is pronounced, rising from 22.7 weeks in 2008 to 43.6 weeks in 2014, an increase of 92%.

**Inventory of Active General Civil Cases by Type of Action:**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Year | Bankruptcy | Collection | Other Contract | Motor Vehicle | Other tort | Probate | Other Civil | Unknown | Total |
| 2008/09 | 6018 | 21948 | 19185 | 18242 | 11271 | 4516 | 9304 | 9258 | 99742 |
| 2009/10 | 11852 | 22882 | 26168 | 19052 | 11946 | 8723 | 11425 | 276 | 112324 |
| 2010/11 | 11438 | 19723 | 27848 | 18119 | 11445 | 9522 | 10527 | 354 | 108976 |
| 2011/12 | 10991 | 20010 | 27779 | 15550 | 10723 | 8525 | 10642 | 917 | 105137 |
| 2012/13 | 9828 | 18681 | 24962 | 14422 | 10404 | 8416 | 10819 | 1289 | 98821 |

**Inventory of Pending Caseload: Criminal Cases**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | 2007/08 | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 |
| Commenced | 1246 | 1205 | 1179 | 1331 | 1485 | 1135 | 1733 |
| Concluded | 1243 | 1282 | 1146 | 1278 | 1302 | 1331 | 1449 |
| End Inventory | 1035 | 958 | 991 | 1050 | 1233 | 1231 | 1515 |
| Inventory Change Over Prior Year |  | -7.4% | 3.5% | 5% | 17% | 0.4% | 23% |

**Average Lead times – Civil Cases – Short Trials**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Location | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 |
| Calgary | 14 weeks | 16 weeks | 14 weeks | 13 weeks | 21 weeks | 25 weeks |
| Edmonton | 12 weeks | 15 weeks | 14 weeks | 22 weeks | 22 weeks | 29 weeks |

**Average Lead times – Civil Cases – Long Trials**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Location | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 |
| Calgary | 16 weeks | 18 weeks | 19 weeks | 15 weeks | 22 weeks | 25 weeks |
| Edmonton | 15 weeks | 15 weeks | 13 weeks | 15 weeks | 11 weeks | 21 weeks |

**Average Lead times – Criminal Cases**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 |
| 22.7 weeks | 33.4 weeks | 32.4 weeks | 36.2 weeks | 36.1 weeks | 43.6 weeks |

**5. OTHER MEASURES**

**5.1 Homicide Rates**

Though the homicide rate in Canada showed both a significant decrease over the prior year in 2012, and an even more pronounced general decrease since 1999, the homicide rates for Alberta between 1999 and 2012 show a significant general increase and, in general, only Saskatchewan, Manitoba and the Territories have higher homicide rates than Alberta:

**Homicides per 100,000 Population**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Jurisdiction | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
| Canada | 1.77 | 1.78 | 1.78 | 1.86 | 1.74 | 1.95 | 2.06 | 1.86 | 1.80 | 1.83 | 1.81 | 1.62 | 1.73 | 1.56 |
| Nfld & Ldr | 0.37 | 1.14 | 0.19 | 0.38 | 0.96 | 0.39 | 2.14 | 1.37 | 0.59 | 0.99 | 0.20 | 0.78 | 0.78 | 0.59 |
| PEI | 0.73 | 2.20 | 1.46 | 0.73 | 0.73 | 0.00 | 0.00 | 0.73 | 0.00 | 1.43 | 0.00 | 0.00 | 0.69 | 0.00 |
| Nova Scotia | 1.39 | 1.61 | 0.97 | 0.96 | 0.85 | 1.49 | 2.13 | 1.71 | 1.39 | 1.28 | 1.59 | 2.22 | 2.32 | 1.79 |
| NB | 1.20 | 1.33 | 1.07 | 1.20 | 1.07 | 0.93 | 1.20 | 0.94 | 1.07 | 0.40 | 1.60 | 1.20 | 1.06 | 0.79 |
| Quebec | 1.87 | 2.04 | 1.89 | 1.59 | 1.32 | 1.47 | 1.32 | 1.22 | 1.17 | 1.19 | 1.12 | 1.06 | 1.32 | 1.34 |
| Ontario | 1.41 | 1.34 | 1.43 | 1.47 | 1.45 | 1.51 | 1.75 | 1.55 | 1.58 | 1.36 | 1.36 | 1.43 | 1.20 | 1.20 |
| Manitoba | 2.28 | 2.61 | 2.95 | 3.11 | 3.69 | 4.26 | 4.16 | 3.29 | 5.11 | 4.48 | 4.67 | 3.64 | 4.23 | 4.10 |
| Sask | 1.28 | 2.58 | 2.70 | 2.71 | 4.11 | 3.91 | 4.33 | 4.23 | 3.00 | 2.96 | 3.50 | 3.26 | 3.59 | 2.69 |
| Alberta | 2.07 | 1.96 | 2.29 | 2.24 | 2.01 | 2.65 | 3.25 | 2.78 | 2.51 | 3.06 | 2.59 | 2.07 | 2.59 | 2.19 |
| BC | 2.74 | 2.10 | 2.06 | 3.07 | 2.28 | 2.72 | 2.41 | 2.55 | 2.04 | 2.67 | 2.65 | 1.83 | 1.90 | 1.54 |
| Yukon | 3.25 | 6.57 | 3.32 | 0.00 | 3.23 | 22.24 | 3.13 | 0.00 | 6.14 | 9.06 | 5.93 | 2.89 | 0.00 | 0.00 |
| NWT | 2.46 | 2.47 | 9.79 | 9.60 | 9.40 | 9.24 | 0.00 | 0.00 | 4.59 | 6.87 | 4.58 | 2.28 | 6.79 | 11.53 |
| Nunavut | 7.46 | 10.91 | 10.66 | 6.94 | 10.23 | 13.40 | 6.59 | 6.49 | 22.39 | 12.65 | 18.64 | 18.28 | 20.86 | 14.84 |

Source: Statistics Canada, CANSIM, table 253-0001 and Homicide Survey, Canadian Centre for Justice Statistics.

It is important to note that the Court of Queen’s Bench has exclusive jurisdiction over accused persons facing murder charges in adult court and the majority of these accused elect trial by judge and jury. Most often, people charged with murder elect to proceed to trial. An increase in the number of justices is necessary for the Court to continue to hear these trials in a timely manner and without risk of delay.

**5.2 Written Reasons**

The Supreme Court of Canada has mandated that judges give fulsome reasons for their decisions. As a result, rather than providing oral reasons from the bench immediately after a trial or hearing, justices reserve more of their decisions to take the time to more fully research, prepare, and draft their written reasons. It is not uncommon in a duty week to reserve judgment on two to three complex matters. Researching and writing reserved judgments is a particularly time consuming task, which often must be carried out on weekends and evenings as there is insufficient time in judgment weeks to complete all reserved decisions. There are approximately 800 written decisions issued each year by the Court in relation to civil and family law actions, in addition to numerous written decisions on criminal law matters. The average length of the Court’s written reasons has grown from 11 pages in 2005 to 15 pages in 2014 reflecting, albeit imperfectly, the ongoing increase in the complexity of matters before the Court.

**5.3 Other Justice System Resources**

The Government of Alberta has recognized the need to respond to the challenges posed to the administration of justice by rapid population and economic growth. The simple reality of a larger, less stable population is that it requires a larger justice system to serve it. To this end, the Government of Alberta has increased the number of police officers in the province by 55% between 1996 and 2013, from 4,443 to 6,899. Between 1996 and 2012, the number of Provincial Court Judges in the Province of Alberta increased by 27%, from 119 to 152, and the number of Crown Prosecutors increased by 89%, from 164 to 310. The addition of 2 positions to the complement of the Court of Queen’s Bench of Alberta between 1996 and 2014 reflects an increase of less than 5%.

**6. RECOMMENDATION**

The Court of Queen’s Bench requires a significant increase to its judicial complement in order to adequately fulfill its responsibilities to the people of Alberta. To bring the Court’s judicial complement in the range of those of the 3 other large Canadian provinces would require an addition to the complement in the range of 9 to 13 new positions. Recognizing the current need, and anticipating the time it will take for implementation and appointments, the Court therefore proposes that additional positions now be added to the complement of the Court of Queen’s Bench of Alberta that would bring the total full time judicial complement (including the Chief Justice and Associate Chief Justice positions) to 77.

The additions to the complement the Court proposes will require:

1. An Order in Council by the Government of Alberta increasing the number of puisne judges of the Court of Queen’s Bench of Alberta from 65 to 74; and

2. An amendment to s.20(d) of the *Judges Act* by the Parliament of Canada, increasing the number of puisne superior court judges in Alberta to 74 and an amendment to s.20(c) of the *Judges Act* to allow for a second Associate Chief Justice position;

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Neil C. Wittmann

Chief Justice

Court of Queen’s Bench of Alberta

1. Statistics Canada: http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo31a-eng.htm [↑](#footnote-ref-1)
2. Government of Alberta: http://www.municipalaffairs.gov.ab.ca/mc\_official\_populations.cfm [↑](#footnote-ref-2)
3. http://finance.alberta.ca/aboutalberta/population-projections/index.html [↑](#footnote-ref-3)
4. Office of the Commissioner for Federal Judicial Affairs Canada: http:// fja-cmf.gc.ca/appointments-nominations/judges-juges-eng.html

   Statistics Canada CANSIM Table 051-00005. [↑](#footnote-ref-4)
5. See, eg. Safavian and Sharma, “When Do Creditor Rights Work?” Journal of Comparative Economics 35(3). [↑](#footnote-ref-5)
6. Charles Cadwell, Foreword, in Mancur Olson, POWER AND PROSPERITY viii (2000). [↑](#footnote-ref-6)
7. Statistics Canada, CANSIM Table 384-0038 [↑](#footnote-ref-7)
8. http://finance.alberta.ca/publications/fiscal/spotlights/2012-0223-alberta-net-contribution-to-confederation.pdf [↑](#footnote-ref-8)