



CHAPTER F-7

CHAPITRE F-7

An Act respecting the Federal Court of Canada

Loi concernant la Cour fédérale du Canada

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *Federal Court Act*. R.S., c. 10(2nd Supp.), s. 1.

1. *Loi sur la Cour fédérale*. S.R., ch. 10(2<sup>e</sup> suppl.), art. 1.

Titre abrégé

INTERPRETATION

DÉFINITIONS

Definitions

Définitions

"action for collision"  
«action...»

2. In this Act, "action for collision" includes an action for damage caused by one or more ships to another ship or ships or to property or persons on board another ship or ships as a result of carrying out or omitting to carry out a manoeuvre, or as a result of non-compliance with law, even though there has been no actual collision;

2. Les définitions qui suivent s'appliquent à la présente loi.

«action pour collision»  
«action...»

"Associate Chief Justice"  
«juge en chef adjoint»  
"Canadian maritime law"  
«droit maritime...»

"Associate Chief Justice" means the Associate Chief Justice of the Court;

«action pour collision» S'entend notamment d'une action pour dommages causés par un ou plusieurs navires à un ou plusieurs autres navires ou à des biens ou personnes à bord d'un ou plusieurs autres navires par suite de l'exécution ou de l'inexécution d'une manoeuvre, ou par suite de l'inobservation du droit, même s'il n'y a pas eu effectivement collision.

«biens»  
«property»

"Chief Justice"  
«juge en chef»

"Canadian maritime law" means the law that was administered by the Exchequer Court of Canada on its Admiralty side by virtue of the *Admiralty Act*, chapter A-1 of the Revised Statutes of Canada, 1970, or any other statute, or that would have been so administered if that Court had had, on its Admiralty side, unlimited jurisdiction in relation to maritime and admiralty matters, as that law has been altered by this Act or any other Act of Parliament;

«biens» Biens de toute nature, meubles ou immeubles, corporels ou incorporels, notamment les droits et les parts ou actions.

«Cour»  
«Court»

"Court"  
«Cour»

"Chief Justice" means the Chief Justice of the Court;

«Cour» La Cour fédérale du Canada maintenue aux termes de l'article 3.

«Cour d'appel»  
ou «Cour d'appel fédérale»  
«Cour of...»

"Court of Appeal"  
«Cour d'appel...»

"Court" means the Federal Court of Canada continued by section 3;

«Cour d'appel» ou «Cour d'appel fédérale» La Section d'appel de la Cour mentionnée à l'article 4.

«Couronne»  
«Crown»

"Court of Appeal" means that division of the Court referred to in section 4 as the Federal Court—Appeal Division;

«Couronne» Sa Majesté du chef du Canada.

«Cour suprême»  
«Supreme...»

«Cour suprême» La Cour suprême du Canada.

«droit canadien» S'entend au sens de l'expression «lois du Canada» à l'article 101 de la *Loi constitutionnelle de 1867*.

«droit canadien»  
«laws...»

«droit maritime canadien» Droit — compte tenu des modifications y apportées par la présente loi ou par toute autre loi fédérale — dont l'application relevait de la Cour de

«droit maritime canadien»  
«Canadian...»

"Crown" « <i>Couronne</i> »	"Crown" means Her Majesty in right of Canada;	l'Échiquier du Canada, en sa qualité de juridiction de l'Amirauté, aux termes de la <i>Loi sur l'Amirauté</i> , chapitre A-1 des Statuts révisés du Canada de 1970, ou de toute autre loi, ou qui en aurait relevé si ce tribunal avait eu, en cette qualité, compétence illimitée en matière maritime et d'amirauté.	
"federal board, commission or other tribunal" « <i>office...</i> »	"federal board, commission or other tribunal" means any body or any person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament, other than any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the <i>Constitution Act, 1867</i> ;	« <i>judge</i> » Juge de la Cour, y compris le juge en chef et le juge en chef adjoint.	« <i>judge</i> » "judge"
"Federal Court of Appeal" « <i>Cour d'appel...</i> "final judgment" « <i>jugement...</i> »	"Federal Court of Appeal" has the meaning given in this section to "Court of Appeal";	« <i>judge en chef</i> » Le juge en chef de la Cour.	« <i>judge en chef</i> » "Chief..."
"judge" « <i>judge</i> »	"final judgment" means any judgment or other decision that determines in whole or in part any substantive right of any of the parties in controversy in any judicial proceeding;	« <i>judge en chef adjoint</i> » Le juge en chef adjoint de la Cour.	« <i>judge en chef adjoint</i> » "Associate..."
"laws of Canada" « <i>droit canadien</i> »	"judge" means a judge of the Court and includes the Chief Justice and Associate Chief Justice;	« <i>jugement définitif</i> » Jugement ou autre décision qui statue au fond, en tout ou en partie, sur un droit d'une ou plusieurs des parties à une instance.	« <i>jugement définitif</i> » "final..."
"practice and procedure" « <i>pratique...</i> "property" « <i>biens</i> »	"laws of Canada" has the same meaning as those words have in section 101 of the <i>Constitution Act, 1867</i> ;	« <i>navire</i> » Toute construction flottante conçue ou utilisée pour la navigation, qu'elle soit pourvue ou non d'un moyen propre de propulsion.	« <i>navire</i> » "ship"
"relief" « <i>réparation</i> »	"practice and procedure" includes evidence relating to matters of practice and procedure;	« <i>office fédéral</i> » Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale, à l'exclusion d'un organisme constitué sous le régime d'une loi provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la <i>Loi constitutionnelle de 1867</i> .	« <i>office fédéral</i> » "federal..."
"Rules" « <i>règles</i> »	"property" means property of any kind, whether real or personal or corporeal or incorporeal, and, without restricting the generality of the foregoing, includes a right of any kind, a share or a chose in action;	« <i>pratique et procédure</i> » Pratique et procédure, y compris en matière de preuve.	« <i>pratique et procédure</i> » "practice..."
"ship" « <i>navire</i> »	"relief" includes every species of relief, whether by way of damages, payment of money, injunction, declaration, restitution of an incorporeal right, return of land or chattels or otherwise;	« <i>règles</i> » Dispositions de droit, règles et ordonnances établies en vertu de l'article 46.	« <i>règles</i> » "Rules"
"Supreme Court" « <i>Cour suprême</i> »	"Rules" means provisions of law and rules and orders made under section 46;	« <i>réparation</i> » Toute forme de réparation en justice, notamment par voie de dommages-intérêts, de compensation pécuniaire, d'injonction, de déclaration, de restitution de droit incorporel, de bien meuble ou immeuble.	« <i>réparation</i> » "relief"
"Trial Division" « <i>Section...</i> »	"ship" includes any description of vessel or boat used or designed for use in navigation without regard to method or lack of propulsion;	« <i>Section de première instance</i> » La Section de première instance de la Cour mentionnée à l'article 4. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 2 et 43.	« <i>Section de première instance</i> » "Trial..."
"Supreme Court" « <i>Cour suprême</i> »	"Supreme Court" means the Supreme Court of Canada;		
"Trial Division" « <i>Section...</i> »	"Trial Division" means that division of the Court referred to in section 4 as the Federal Court—Trial Division. R.S., c. 10(2 <sup>nd</sup> Supp.), ss. 2, 43.		

THE COURT

LA COUR

Original Court continued

3. The court of law, equity and admiralty in and for Canada now existing under the name of the Federal Court of Canada is hereby continued as an additional court for the better administration of the laws of Canada and shall continue to be a superior court of record having civil and criminal jurisdiction. R.S., c. 10(2nd Supp.), s. 3.

3. Tribunal de droit, d'équité et d'amirauté du Canada, la Cour fédérale du Canada est maintenue à titre de tribunal additionnel propre à améliorer l'application du droit canadien. Elle continue d'être une cour supérieure d'archives ayant compétence en matière civile et pénale. S.R., ch. 10(2<sup>e</sup> suppl.), art. 3.

Maintien

Court to consist of two divisions

4. The Court shall consist of two divisions, called the Federal Court—Appeal Division (which may be referred to as the Court of Appeal or Federal Court of Appeal) and the Federal Court—Trial Division. R.S., c. 10(2nd Supp.), s. 4.

4. La Cour est formée de la Section d'appel, aussi dénommée la Cour d'appel ou la Cour d'appel fédérale, et de la Section de première instance. S.R., ch. 10(2<sup>e</sup> suppl.), art. 4.

Subdivision

THE JUDGES

LES JUGES

Constitution of Court

5. (1) The Court shall consist of the following judges:

5. (1) La Cour se compose des juges suivants :

Composition de la Cour

(a) a chief justice called the Chief Justice of the Federal Court of Canada, who shall be the president of the Court, shall be the president of and a member of the Court of Appeal and shall be *ex officio* a member of the Trial Division;

a) le juge en chef, appelé juge en chef de la Cour fédérale du Canada, qui est président de la Cour, président et membre de la Cour d'appel et membre de droit de la Section de première instance;

(b) an associate chief justice called the Associate Chief Justice of the Federal Court of Canada, who shall be the president of and a member of the Trial Division and shall be *ex officio* a member of the Court of Appeal; and

b) le juge en chef adjoint, appelé juge en chef adjoint de la Cour fédérale du Canada, qui est président et membre de la Section de première instance et membre de droit de la Cour d'appel;

(c) not more than twenty other judges, nine of whom shall be appointed to the Court of Appeal and shall be *ex officio* members of the Trial Division, and the remainder of whom shall be appointed to the Trial Division and shall be *ex officio* members of the Court of Appeal.

c) vingt autres juges, au plus, dont neuf sont nommés à la Cour d'appel et sont membres de droit de la Section de première instance, les autres étant nommés à la Section de première instance et membres de droit de la Cour d'appel.

Supernumerary judges

(2) For each office of judge of the Court of Appeal and of the Trial Division, there shall be the additional office of supernumerary judge that a judge of that Division may elect under the *Judges Act* to hold.

(2) La charge de juge de la Cour d'appel ou de la Section de première instance comporte un poste de juge surnuméraire, qui peut être occupé, conformément à la *Loi sur les juges*, par un juge de la section en cause.

Juges surnuméraires

Additional office of judge

(3) For each of the offices of Chief Justice and Associate Chief Justice, there shall be the additional office of judge that the Chief Justice or Associate Chief Justice, as the case may be, may elect under the *Judges Act* to hold.

(3) Les charges de juge en chef et de juge en chef adjoint comportent chacune un poste de simple juge que les titulaires de ces charges peuvent décider, conformément à la *Loi sur les juges*, d'occuper.

Postes supplémentaires

Appointment of judges

(4) The judges shall be appointed by the Governor in Council by letters patent under the Great Seal.

(4) La nomination des juges se fait par lettres patentes du gouverneur en conseil revêtues du grand sceau.

Nomination des juges

Who may be appointed judge	(5) Any person may be appointed a judge of the Court who is or has been a judge of a superior, county or district court in Canada, or a barrister or advocate of at least ten years standing at the bar of a province.	(5) Les juges sont choisis parmi les juges, actuels ou anciens, d'une cour supérieure, de comté ou de district et parmi les avocats inscrits pendant ou depuis au moins dix ans au barreau d'une province.	Conditions de nomination
Four judges from Province of Quebec	(6) At least four of the judges shall be persons who have been judges of the Court of Appeal or of the Superior Court of the Province of Quebec, or have been members of the bar of that Province. R.S., c. 10(2nd Supp.), s. 5; 1973-74, c. 17, s. 8; 1974-75-76, c. 19, s. 2; 1980-81-82-83, c. 157, s. 18, c. 158, s. 31.	(6) Au moins quatre juges doivent avoir été juges de la Cour d'appel ou de la Cour supérieure du Québec ou membres du barreau de cette province. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 5; 1973-74, ch. 17, art. 8; 1974-75-76, ch. 19, art. 2; 1980-81-82-83, ch. 157, art. 18, ch. 158, art. 31.	Représentation du Québec
Chief Justice and Associate Chief Justice, rank and precedence	6. (1) The Chief Justice has rank and precedence over all the other judges, and the Associate Chief Justice has rank and precedence after the Chief Justice over all the other judges.	6. (1) Le juge en chef et, après lui, le juge en chef adjoint ont rang avant les autres juges et préséance sur eux.	Rang et préséance des juge en chef et juge en chef adjoint
Rank and precedence among other judges	(2) The other judges have rank and precedence after the Chief Justice and the Associate Chief Justice and among themselves according to seniority determined by reference to the respective times when they became judges of the Exchequer Court of Canada or of the Court.	(2) Le rang et la préséance des autres juges sont déterminés d'après leur ancienneté cumulative à l'ancienne Cour de l'Échiquier du Canada et à la Cour fédérale.	Rang et préséance des autres juges
Absence or incapacity of Chief Justice or Associate Chief Justice	(3) Where the office of Chief Justice or of Associate Chief Justice is vacant, or the Chief Justice or the Associate Chief Justice is absent from Canada or is for any reason unable or unwilling to act, the powers and duties of the Chief Justice or the Associate Chief Justice shall be exercised and performed by the senior judge who is in Canada and is able and willing to act. R.S., c. 10(2nd Supp.), s. 6.	(3) En cas d'absence du Canada ou d'empêchement du juge en chef ou du juge en chef adjoint ou de vacance de leur poste, l'intérim est assuré par le juge le plus ancien en poste en mesure d'exercer ces fonctions et y consentant. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 6.	Absence ou empêchement du juge en chef ou du juge en chef adjoint
Residence of judges	7. (1) The judges shall reside in the National Capital Region described in the schedule to the <i>National Capital Act</i> or within forty kilometres thereof.	7. (1) Les juges doivent résider dans la région de la capitale nationale définie à l'annexe de la <i>Loi sur la capitale nationale</i> ou dans une zone périphérique de quarante kilomètres.	Lieu de résidence des juges
Rota of judges	(2) Notwithstanding subsection (1), the Rules may provide for a rota of judges in order to insure a continuity of judicial availability in any centre where the volume of work or other circumstances make such an arrangement expedient.	(2) Malgré le paragraphe (1), les règles peuvent prévoir l'établissement d'une liste de roulement des juges visant à assurer, dans toute agglomération, la continuité et la disponibilité des services judiciaires en fonction de la charge de travail ou d'autres circonstances.	Liste de roulement des juges
No judge to be away for more than one month	(3) No judge shall be required under rules made under subsection (2) to remain in any centre other than the National Capital Region for a period longer than one month, unless it becomes necessary to do so to complete the hearing of a cause or matter. R.S., c. 10(2nd Supp.), s. 7; 1976-77, c. 25, s. 21.	(3) Les règles adoptées aux termes du paragraphe (2) ne peuvent obliger un juge à demeurer plus d'un mois sans interruption dans une agglomération située en dehors de la région de la capitale nationale, sauf en cas de nécessité pour lui permettre de terminer l'audition d'une affaire. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 7; 1976-77, ch. 25, art. 21.	Sessions à l'extérieur

Tenure of office	8. (1) Subject to subsection (2), the judges hold office during good behaviour, but are removable by the Governor General on address of the Senate and House of Commons.	8. (1) Sous réserve du paragraphe (2), les juges occupent leur poste à titre inamovible, sous réserve de révocation par le gouverneur général sur adresse du Sénat et de la Chambre des communes.	Durée du mandat
Cessation of office	(2) A judge shall cease to hold office on attaining the age of seventy years. R.S., c. 10(2nd Supp.), s. 8.	(2) La limite d'âge pour l'exercice de la charge de juge est de soixante-dix ans. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 8.	Limite d'âge
Oath of office	9. (1) Every judge shall, before entering on the duties of the office of judge, take an oath that he will duly and faithfully, and to the best of his skill and knowledge, execute the powers and trusts reposed in him as a judge of the Court.	9. (1) Préalablement à leur entrée en fonctions, les juges jurent d'exercer les attributions qui leur sont dévolues, consciencieusement, fidèlement et le mieux possible.	Serment professionnel
How administered	(2) The oath referred to in subsection (1) shall be administered to the Chief Justice before the Governor General, and to the other judges by the Chief Justice or, in the case of absence or incapacity of the Chief Justice, by any other judge. R.S., c. 10(2nd Supp.), s. 9.	(2) Le juge en chef prête le serment visé au paragraphe (1) devant le gouverneur général; lui-même ou, s'il est absent ou empêché, l'un de ses collègues, reçoit le serment des autres juges. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 9.	Prestation du serment
Deputy judges of the Court	10. (1) Subject to subsection (3), any judge of a superior, county or district court in Canada, and any person who has held office as a judge of a superior, county or district court in Canada, may, at the request of the Chief Justice made with the approval of the Governor in Council, act as a judge of the Federal Court and while so acting has all the powers of a judge of the Court and shall be referred to as a deputy judge of the Court.	10. (1) Sous réserve du paragraphe (3), le gouverneur en conseil peut autoriser le juge en chef à demander l'affectation à la Cour de juges choisis parmi les juges, actuels ou anciens, d'une cour supérieure, de comté ou de district. Les juges ainsi affectés ont qualité de juges suppléants et sont investis des pouvoirs des juges de la Cour.	Juges suppléants
Consent required	(2) No request may be made under subsection (1) to a judge of a superior, county or district court in a province without the consent of the chief justice or chief judge of the court of which he is a member, or of the attorney general of the province.	(2) La demande prévue au paragraphe (1) nécessite le consentement du juge en chef du tribunal dont l'intéressé est membre ou du procureur général de sa province.	Consentement
Approval of Governor in Council	(3) The Governor in Council may approve the making of requests pursuant to subsection (1) in general terms or for particular periods or purposes, and may limit the number of persons who may act under this section.	(3) L'autorisation donnée par le gouverneur en conseil en application du paragraphe (1) peut être générale ou particulière et limiter le nombre de juges suppléants.	Portée de l'autorisation du gouverneur en conseil
Salary	(4) A person who acts as a judge pursuant to subsection (1) shall be paid a salary for the period he acts at the rate fixed by the <i>Judges Act</i> for a judge of the Court, other than the Chief Justice or the Associate Chief Justice, less any amount otherwise payable to him under that Act in respect of that period, and shall also be paid the travel allowances that a judge is entitled to be paid under the <i>Judges</i>	(4) Les juges suppléants reçoivent le traitement fixé par la <i>Loi sur les juges</i> pour les juges de la Cour, autres que le juge en chef ou le juge en chef adjoint, diminué des montants qui leur sont par ailleurs payables aux termes de cette loi pendant leur suppléance. Ils ont également droit aux indemnités de déplacement prévues par cette même loi. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 10; 1977-78, ch. 22, art. 13.	Traitement

Act. R.S., c. 10(2nd Supp.), s. 10; 1977-78, c. 22, s. 13.

BARRISTERS, ADVOCATES, ATTORNEYS AND SOLICITORS

Barrister or advocate	11. (1) Every person who is a barrister or advocate in a province may practise as a barrister or advocate in the Court.
Attorney or solicitor	(2) Every person who is an attorney or solicitor in a superior court of a province may practise as an attorney or solicitor in the Court.
To be officers of the Court	(3) Every person who may practise as a barrister, advocate, attorney or solicitor in the Court is an officer of the Court. R.S., c. 10(2nd Supp.), s. 11.

AVOCATS ET PROCUREURS

Avocats	11. (1) Les avocats qui exercent dans une province peuvent agir à titre d'avocats à la Cour.
Procureurs	(2) Les procureurs auprès d'une cour supérieure provinciale peuvent agir à ce titre à la Cour.
Qualité de fonctionnaire judiciaire	(3) Quiconque peut exercer à titre d'avocat ou de procureur à la Cour en est fonctionnaire judiciaire. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 11.

PROTHONOTARIES

Prothonotaries	12. (1) The Governor in Council may appoint as prothonotaries of the Court such fit and proper persons who are barristers or advocates in a province as are, in his opinion, necessary for the efficient performance of the work of the Court that, under the Rules, is to be performed by them.
Senior Prothonotary and Associate Senior Prothonotary	(2) The Governor in Council shall designate one of the prothonotaries to be Senior Prothonotary and one of the prothonotaries to be Associate Senior Prothonotary.
Powers and duties	(3) The powers, duties and functions of the prothonotaries shall be determined by the Rules.
Salary	(4) Each prothonotary shall be paid a salary to be fixed by the Governor in Council.
Superannuation	(5) For the purposes of the <i>Public Service Superannuation Act</i> , a prothonotary shall be deemed to be employed in the Public Service. R.S., c. 10(2nd Supp.), s. 12.

PROTONOTAIRES

Protonotaires	12. (1) Le gouverneur en conseil peut nommer protonotaires de la Cour tous avocats remplissant, à son avis, les conditions voulues pour l'exécution des travaux de la Cour qui, aux termes des règles, incombent à cette catégorie de personnel.
Protonotaire en chef et protonotaire adjoint	(2) Le gouverneur en conseil désigne le protonotaire en chef et le protonotaire adjoint.
Pouvoirs et fonctions	(3) Les pouvoirs et fonctions des protonotaires sont fixés par les règles.
Traitement	(4) Les protonotaires reçoivent le traitement fixé par le gouverneur en conseil.
Pension de retraite	(5) Pour l'application de la <i>Loi sur la pension de la fonction publique</i> , les protonotaires sont réputés appartenir à la fonction publique. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 12.

SHERIFFS AND MARSHALS

Sheriff	13. (1) The Governor in Council may appoint a sheriff of the Court for any geographical area.
Ex officio sheriffs	(2) Where no sheriff is appointed under subsection (1) for a geographical area, the sheriff and deputy sheriffs of the county or other judicial division or part thereof within that geographical area who are appointed under provincial law are <i>ex officio</i> sheriff and deputy sheriffs of the Court.

SHÉRIFS ET PRÉVÔTS

Shérif	13. (1) Le gouverneur en conseil peut nommer un shérif de la Cour pour un secteur géographique donné.
Shérifs de droit	(2) À défaut de nomination d'un shérif de la Cour sous le régime du paragraphe (1) pour un secteur géographique donné, les titulaires, nommés sous le régime de lois provinciales, des charges de shérif et shérifs adjoints pour le comté ou tout ou partie d'une autre circonscription judiciaire de ce même secteur sont de droit

		respectivement shérif et shérifs adjoints de la Cour.	
Deputy sheriff	(3) The Rules may provide for the appointment of deputy sheriffs.	(3) Les règles peuvent prévoir la nomination de shérifs adjoints.	Shérif adjoint
Marshal	(4) Every sheriff of the Court is <i>ex officio</i> a marshal of the Court and every deputy sheriff of the Court is <i>ex officio</i> a deputy marshal of the Court. R.S., c. 10(2nd Supp.), s. 13.	(4) Tout shérif ou shérif adjoint de la Cour est de droit prévôt ou prévôt adjoint de la Cour, selon le cas. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 13.	Prévôt

## ADMINISTRATION OF COURT

## ADMINISTRATION DE LA COUR

Registry of Court	14. (1) There is hereby established a Registry of the Court consisting of a principal office of the Court in Ottawa and such other offices of the Court as may be established by the Rules.	14. (1) Le greffe de la Cour se compose du bureau principal, situé à Ottawa, et des autres bureaux prévus par les règles.	Greffe
Staff of Court	(2) Such officers, clerks and employees as are required for the purposes of the Court shall be appointed under the <i>Public Service Employment Act</i> .	(2) La nomination du personnel de la Cour se fait conformément à la <i>Loi sur l'emploi dans la fonction publique</i> .	Personnel
Organization	(3) The employees of the Court shall be organized and the offices shall be operated in such manner as may be provided by the Rules. R.S., c. 10(2nd Supp.), s. 14.	(3) Les règles fixent les modalités relatives à l'organisation du personnel et au fonctionnement des bureaux. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 14.	Organisation

## ORGANIZATION OF WORK

## ORGANISATION DES TRAVAUX

Sittings of Trial Division	15. (1) Subject to the Rules, any judge of the Trial Division may sit and act at any time and at any place in Canada for the transaction of the business of the Court or any part thereof and, when he so sits or acts, he constitutes the Court.	15. (1) Sous réserve des règles, tout juge de la Section de première instance peut exercer ses fonctions en tout temps et partout au Canada pour les travaux de la Cour; il constitue alors la Cour.	Séances de la Section de première instance
Arrangements to be made by Associate Chief Justice	(2) Subject to the Rules, all such arrangements as may be necessary or proper for the holding of courts, or otherwise for the transaction of business of the Trial Division, and the arrangements from time to time of judges to hold such courts or to transact such business, shall be made by the Associate Chief Justice.	(2) Sous réserve des règles, les dispositions à prendre pour les audiences ou, à quelque autre titre, les travaux de la Section de première instance, de même que pour l'affectation des juges en conséquence, sont du ressort du juge en chef adjoint.	Dispositions du ressort du juge en chef adjoint
Hearings in different places	(3) The trial of any matter in the Trial Division may, by order of the Court, take place partly at one place and partly at another. R.S., c. 10(2nd Supp.), s. 15.	(3) L'instruction de toute affaire devant la Section de première instance peut, sur l'ordre de la Cour, se dérouler en plus d'un lieu. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 15.	Lieu des audiences
Sittings of Court of Appeal	16. (1) Every appeal and every application for leave to appeal to the Court of Appeal, and every application or reference to the Court of Appeal under section 28, shall be heard in the Court of Appeal before not fewer than three judges sitting together and always before an uneven number of judges, and, otherwise, the business of that Court shall be dealt with by	16. (1) Les appels et demandes d'autorisation d'appel à la Cour d'appel ainsi que les demandes ou renvois faits à celle-ci au titre de l'article 28 sont entendus par au moins trois juges de la Cour d'appel, siégeant ensemble en nombre impair; les autres travaux de la Cour d'appel sont assignés à un ou plusieurs juges par le juge en chef.	Séances de la Cour d'appel

such judge or judges as the Chief Justice may arrange.

Arrangements to be made by Chief Justice

(2) The Chief Justice shall designate the judges to sit from time to time and the appeals or matters to be heard by them.

(2) Le juge en chef répartit en tant que de besoin les appels et autres affaires entre les juges.

Dispositions du ressort du juge en chef

Place of sittings

(3) The place of each sitting of the Court of Appeal shall be arranged by the Chief Justice to suit, as nearly as may be, the convenience of the parties.

(3) Dans la mesure du possible, le juge en chef fixe le lieu des séances de la Cour d'appel à la convenance des parties.

Lieu des séances

No judge to hear appeal from own judgment

(4) A judge shall not sit on the hearing of an appeal from a judgment he has pronounced.

(4) Un juge ne peut entendre en appel une affaire qu'il a déjà jugée.

Inhabilité à siéger en appel

Chief Justice to preside

(5) The Chief Justice when present at any sittings of the Court of Appeal shall preside and, in the absence of the Chief Justice, the senior judge who is present shall preside. R.S., c. 10(2nd Supp.), s. 16.

(5) Les séances de la Cour d'appel sont présidées par le juge en chef ou, en son absence, par celui des juges présents qui est le plus ancien en poste. S.R., ch. 10(2<sup>e</sup> suppl.), art. 16.

Présidence

#### JURISDICTION OF TRIAL DIVISION

#### COMPÉTENCE DE LA SECTION DE PREMIÈRE INSTANCE

Relief against Crown

17. (1) The Trial Division has original jurisdiction in all cases where relief is claimed against the Crown and, except where otherwise provided, the Trial Division has exclusive original jurisdiction in all of those cases.

17. (1) La Section de première instance connaît, en première instance, de tous les cas de demande de réparation contre la Couronne et, sauf disposition contraire, cette compétence est exclusive.

Réparation contre la Couronne

Crown and subject: property and contract

(2) Without restricting the generality of subsection (1), the Trial Division has exclusive original jurisdiction, except where otherwise provided, in all cases in which

(2) La Section de première instance a notamment compétence exclusive en première instance, sauf disposition contraire, dans les cas de demande motivés par :

Biens et contrats

- (a) the land, goods or money of any person is in the possession of the Crown;
- (b) the claim arises out of a contract entered into by or on behalf of the Crown; or
- (c) there is a claim against the Crown for injurious affection.

- a) la possession par la Couronne de terres, biens ou sommes d'argent appartenant à autrui;
- b) un contrat conclu par ou pour la Couronne;
- c) un trouble de jouissance dont la Couronne se rend coupable.

Crown and subject: consent to jurisdiction

(3) The Trial Division has exclusive original jurisdiction to hear and determine the following matters:

(3) La Section de première instance a compétence exclusive, en première instance, pour les questions suivantes :

Conventions écrites attributives de compétence

- (a) the amount to be paid where the Crown and any person have agreed in writing that the Crown or that person shall pay an amount to be determined by the Federal Court, the Trial Division or the Exchequer Court of Canada; and
- (b) any question of law, fact or mixed law and fact that the Crown and any person have agreed in writing shall be determined by the Federal Court, the Trial Division or the Exchequer Court of Canada.

- a) le paiement d'une somme dont le montant est à déterminer, aux termes d'une convention écrite à laquelle la Couronne est partie, par la Cour fédérale — ou l'ancienne Cour de l'Échiquier du Canada — ou par sa Section de première instance;
- b) toute question de droit, de fait ou mixte à trancher, aux termes d'une convention écrite à laquelle la Couronne est partie, par la Cour fédérale — ou l'ancienne Cour de l'Échiquier du Canada — ou par sa Section de première instance.



Conflicting claims against Crown

(4) The Trial Division has exclusive original jurisdiction to hear and determine proceedings to determine disputes where the Crown is or may be under an obligation, in respect of which there are or may be conflicting claims.

(4) La Section de première instance a compétence exclusive, en première instance, dans les procédures visant à régler les différends mettant en cause la Couronne à propos d'une obligation réelle ou éventuelle pouvant faire l'objet de demandes contradictoires.

Demandes contradictoires contre la Couronne

Relief in favour of Crown or against officer

(5) The Trial Division has concurrent original jurisdiction

(a) in proceedings of a civil nature in which the Crown or the Attorney General of Canada claims relief; and

(b) in proceedings in which relief is sought against any person for anything done or omitted to be done in the performance of his duties as an officer or servant of the Crown.

(5) La Section de première instance a compétence concurrente, en première instance, dans les actions en réparation intentées :

a) au civil par la Couronne ou le procureur général du Canada;

b) contre un fonctionnaire ou préposé de la Couronne pour des faits — actes ou omissions — survenus dans le cadre de ses fonctions.

Actions en réparation

Extraordinary remedies, members of Canadian Forces

(6) The Trial Division has exclusive original jurisdiction to hear and determine every application for a writ of *habeas corpus ad subjiciendum*, writ of *certiorari*, writ of prohibition or writ of *mandamus* in relation to any member of the Canadian Forces serving outside Canada. R.S., c. 10(2nd Supp.), s. 17.

(6) La Section de première instance a compétence exclusive, en première instance, dans le cas des demandes suivantes visant un membre des Forces canadiennes en poste à l'étranger : bref d'*habeas corpus ad subjiciendum*, de *certiorari*, de prohibition ou de *mandamus*. S.R., ch. 10(2<sup>e</sup> suppl.), art. 17.

Recours extraordinaires : Forces canadiennes

Extraordinary remedies, tribunals

18. The Trial Division has exclusive original jurisdiction

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal. R.S., c. 10(2nd Supp.), s. 18.

18. La Section de première instance a compétence exclusive, en première instance, pour :

a) décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral. S.R., ch. 10(2<sup>e</sup> suppl.), art. 18.

Recours extraordinaires : offices fédéraux

Inter-governmental disputes

19. Where the legislature of a province has passed an Act agreeing that the Court, whether referred to in that Act by its present name or by its former name of the Exchequer Court of Canada, has jurisdiction in cases of controversies

(a) between Canada and that province, or

(b) between that province and any other province or provinces that have passed a like Act,

the Court has jurisdiction to determine the controversies and the Trial Division shall deal with any such matter in the first instance. R.S., c. 10(2nd Supp.), s. 19.

19. Lorsque l'assemblée législative d'une province a adopté une loi reconnaissant sa compétence en l'espèce, qu'elle y soit désignée sous son nouveau nom ou celui de Cour de l'Échiquier du Canada, la Cour fédérale est saisie des cas de litige :

a) entre le Canada et cette province;

b) entre cette province et une ou plusieurs autres provinces ayant adopté une loi semblable.

C'est la Section de première instance qui connaît de ces affaires. S.R., ch. 10(2<sup>e</sup> suppl.), art. 19.

Différends entre gouvernements

Industrial  
property,  
exclusive  
jurisdiction

20. (1) The Trial Division has exclusive original jurisdiction, between subject and subject as well as otherwise,

(a) in all cases of conflicting applications for any patent of invention, or for the registration of any copyright, trade-mark or industrial design, and

(b) in all cases in which it is sought to impeach or annul any patent of invention, or to have any entry in any register of copyrights, trade-marks or industrial designs made, expunged, varied or rectified.

20. (1) La Section de première instance a compétence exclusive, en première instance, dans les cas suivants opposant notamment des administrés :

a) conflit des demandes de brevet d'invention ou d'enregistrement d'un droit d'auteur, d'une marque de commerce ou d'un dessin industriel;

b) tentative d'invalidation ou d'annulation d'un brevet d'invention, ou d'inscription, de radiation ou de modification dans un registre de droits d'auteur, de marques de commerce ou de dessins industriels.

Propriété  
industrielle :  
compétence  
exclusive

Idem,  
concurrent  
jurisdiction

(2) The Trial Division has concurrent jurisdiction in all cases, other than those mentioned in subsection (1), in which a remedy is sought under the authority of any Act of Parliament or at law or in equity respecting any patent of invention, copyright, trade-mark or industrial design. R.S., c. 10(2nd Supp.), s. 20.

(2) La Section de première instance a compétence concurrente dans tous les autres cas de recours sous le régime d'une loi fédérale ou de toute autre règle de droit non visés par le paragraphe (1) relativement à un brevet d'invention, un droit d'auteur, une marque de commerce ou un dessin industriel. S.R., ch. 10(2<sup>e</sup> suppl.), art. 20.

Propriété  
industrielle :  
compétence  
concurrente

Citizenship  
appeals

21. The Trial Division has exclusive jurisdiction to hear and determine all appeals that may be brought pursuant to subsection 14(5) of the *Citizenship Act*. R.S., c. 10(2nd Supp.), s. 21; 1974-75-76, c. 108, s. 38.

21. La Section de première instance a compétence exclusive en matière d'appels interjetés au titre du paragraphe 14(5) de la *Loi sur la citoyenneté*. S.R., ch. 10(2<sup>e</sup> suppl.), art. 21; 1974-75-76, ch. 108, art. 38.

Appels en  
matière de  
citoyenneté

Navigation and  
shipping

22. (1) The Trial Division has concurrent original jurisdiction, between subject and subject as well as otherwise, in all cases in which a claim for relief is made or a remedy is sought under or by virtue of Canadian maritime law or any other law of Canada relating to any matter coming within the class of subject of navigation and shipping, except to the extent that jurisdiction has been otherwise specially assigned.

22. (1) La Section de première instance a compétence concurrente, en première instance, dans les cas — opposant notamment des administrés — où une demande de réparation ou un recours est présenté en vertu du droit maritime canadien ou d'une loi fédérale concernant la navigation ou la marine marchande, sauf attribution expresse contraire de cette compétence.

Navigation et  
marine  
marchande

Maritime  
jurisdiction

(2) Without limiting the generality of subsection (1), it is hereby declared for greater certainty that the Trial Division has jurisdiction with respect to any one or more of the following:

(a) any claim with respect to title, possession or ownership of a ship or any part interest therein or with respect to the proceeds of sale of a ship or any part interest therein;

(b) any question arising between co-owners of a ship with respect to possession, employment or earnings of a ship;

(c) any claim in respect of a mortgage or hypothecation of, or charge on, a ship or any part interest therein or any charge in the nature of bottomry or respondentia for which

(2) Il demeure entendu que, sans préjudice de la portée générale du paragraphe (1), la Section de première instance a compétence dans les cas suivants :

a) une demande portant sur les titres de propriété ou la possession, en tout ou en partie, d'un navire ou sur le produit, en tout ou en partie, de la vente d'un navire;

b) un litige entre les co-propriétaires d'un navire quant à la possession ou à l'affectation d'un navire ou aux recettes en provenant;

c) une demande relative à un prêt à la grosse ou à une hypothèque, un privilège ou une sûreté maritimes grevant tout ou partie d'un navire ou sa cargaison;

Compétence  
maritime

a ship or part interest therein or cargo was made security;

(d) any claim for damage or for loss of life or personal injury caused by a ship either in collision or otherwise;

(e) any claim for damage sustained by, or for loss of, a ship including, without restricting the generality of the foregoing, damage to or loss of the cargo or equipment of, or any property in or on or being loaded on or off, a ship;

(f) any claim arising out of an agreement relating to the carriage of goods on a ship under a through bill of lading, or in respect of which a through bill of lading is intended to be issued, for loss or damage to goods occurring at any time or place during transit;

(g) any claim for loss of life or personal injury occurring in connection with the operation of a ship including, without restricting the generality of the foregoing, any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of the ship are responsible, being an act, neglect or default in the management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

(h) any claim for loss of or damage to goods carried in or on a ship including, without restricting the generality of the foregoing, loss of or damage to passengers' baggage or personal effects;

(i) any claim arising out of any agreement relating to the carriage of goods in or on a ship or to the use or hire of a ship whether by charter party or otherwise;

(j) any claim for salvage including, without restricting the generality of the foregoing, claims for salvage of life, cargo, equipment or other property of, from or by an aircraft to the same extent and in the same manner as if the aircraft were a ship;

d) une demande d'indemnisation pour décès, dommages corporels ou matériels causés par un navire, notamment par collision;

e) une demande d'indemnisation pour l'avarie ou la perte d'un navire, notamment de sa cargaison ou de son équipement ou de tout bien à son bord ou en cours de transbordement;

f) une demande d'indemnisation, fondée sur une convention relative au transport par navire de marchandises couvertes par un connaissement direct ou devant en faire l'objet, pour la perte ou l'avarie de marchandises en cours de route;

g) une demande d'indemnisation pour décès ou lésions corporelles survenus dans le cadre de l'exploitation d'un navire, notamment par suite d'un vice de construction dans celui-ci ou son équipement ou par la faute ou la négligence des propriétaires ou des affrèteurs du navire ou des personnes qui en disposent, ou de son capitaine ou de son équipage, ou de quiconque engageant la responsabilité d'une de ces personnes par une faute ou négligence commise dans la manœuvre du navire, le transport et le transbordement de personnes ou de marchandises;

h) une demande d'indemnisation pour la perte ou l'avarie de marchandises transportées à bord d'un navire, notamment dans le cas des bagages ou effets personnels des passagers;

i) une demande fondée sur une convention relative au transport de marchandises à bord d'un navire, à l'usage ou au louage d'un navire, notamment par charte-partie;

j) une demande d'indemnisation pour sauvetage, notamment pour le sauvetage des personnes, de la cargaison, de l'équipement ou des autres biens d'un aéronef, ou au moyen d'un aéronef, assimilé en l'occurrence à un navire;

k) une demande d'indemnisation pour remorquage d'un navire, ou d'un aéronef à flot;

l) une demande d'indemnisation pour pilotage d'un navire, ou d'un aéronef à flot;

m) une demande relative à des marchandises, matériels ou services fournis à un navire pour son fonctionnement ou son entretien, notamment en ce qui concerne l'acconage et le gabarage;

(k) any claim for towage in respect of a ship or of an aircraft while the aircraft is water-borne;

(l) any claim for pilotage in respect of a ship or of an aircraft while the aircraft is water-borne;

(m) any claim in respect of goods, materials or services wherever supplied to a ship for the operation or maintenance of the ship, including, without restricting the generality of the foregoing, claims in respect of stevedoring and lighterage;

(n) any claim arising out of a contract relating to the construction, repair or equipping of a ship;

(o) any claim by a master, officer or member of the crew of a ship for wages, money, property or other remuneration or benefits arising out of his employment;

(p) any claim by a master, charterer or agent of a ship or shipowner in respect of disbursements, or by a shipper in respect of advances, made on account of a ship;

(q) any claim in respect of general average contribution;

(r) any claim arising out of or in connection with a contract of marine insurance; and

(s) any claim for dock charges, harbour dues or canal tolls including, without restricting the generality of the foregoing, charges for the use of facilities supplied in connection therewith.

Jurisdiction  
applicable

(3) For greater certainty, it is hereby declared that the jurisdiction conferred on the Court by this section is applicable

(a) in relation to all ships, whether Canadian or not and wherever the residence or domicile of the owners may be;

(b) in relation to all aircraft where the cause of action arises out of paragraphs (2)(j) to (l), whether those aircraft are Canadian or not and wherever the residence or domicile of the owners may be;

(c) in relation to all claims, whether arising on the high seas or within the limits of the territorial, internal or other waters of Canada or elsewhere and whether those waters are naturally navigable or artificially made so, including, without restricting the generality of the foregoing, in the case of salvage, claims in respect of cargo or wreck found on the shore of those waters; and

n) une demande fondée sur un contrat de construction, de réparation ou d'équipement d'un navire;

o) une demande formulée par un capitaine, un officier ou un autre membre de l'équipage d'un navire relativement au salaire, à l'argent, aux biens ou à toute autre forme de rémunération ou de prestations découlant de son engagement;

p) une demande d'un capitaine, affréteur, mandataire ou propriétaire de navire relative aux débours faits pour un navire, et d'un expéditeur concernant des avances faites pour un navire;

q) une demande relative à la contribution à l'avarie commune;

r) une demande fondée sur un contrat d'assurance maritime ou y afférente;

s) une demande de remboursement des droits de bassin, de port ou de canaux, notamment des droits perçus pour l'utilisation des installations fournies à cet égard.

(3) Il est entendu que la compétence conférée à la Cour par le présent article s'étend :

Étendue de la  
compétence

a) à tous les navires, canadiens ou non, quel que soit le lieu de résidence ou le domicile des propriétaires;

b) à tous les aéronefs, canadiens ou non, quel que soit le lieu de résidence ou le domicile des propriétaires, lorsque le droit d'action découle des alinéas (2)j) à l);

c) à toutes les demandes, que les faits y donnant lieu se soient produits en haute mer ou dans les limites des eaux territoriales, intérieures ou autres du Canada ou ailleurs et que ces eaux soient naturellement ou artificiellement navigables, et notamment, dans le cas de sauvetage, aux demandes relatives aux cargaisons ou épaves trouvées sur les rives de ces eaux;

d) à toutes les hypothèques ou tous les privilèges donnés en garantie sur un navire —

(d) in relation to all mortgages or hypothecations of, or charges by way of security on, a ship, whether registered or not, or whether legal or equitable, and whether created under foreign law or not. R.S., c. 10(2nd Supp.), s. 22.

enregistrés ou non et reconnus en droit ou en équité —, qu'ils relèvent du droit canadien ou du droit étranger. S.R., ch. 10(2<sup>e</sup> suppl.), art. 22.

Bills of exchange and promissory notes, aeronautics and interprovincial works and undertakings

23. Except to the extent that jurisdiction has been otherwise specially assigned, the Trial Division has concurrent original jurisdiction, between subject and subject as well as otherwise, in all cases in which a claim for relief is made or a remedy is sought under an Act of Parliament or otherwise in relation to any matter coming within any of the following classes of subjects, namely,

23. Sauf attribution spéciale de cette compétence par ailleurs, la Section de première instance a compétence concurrente, en première instance, dans tous les cas — opposant notamment des administrés — de demande de réparation ou d'autre recours exercé sous le régime d'une loi fédérale ou d'une autre règle de droit en matière :

Lettres de change et billets à ordre — Aéronautique et ouvrages interprovinciaux

- (a) bills of exchange and promissory notes, where the Crown is a party to the proceedings;
- (b) aeronautics; and
- (c) works and undertakings connecting a province with any other province or extending beyond the limits of a province. R.S., c. 10(2nd Supp.), s. 23.

- a) de lettres de change et billets à ordre lorsque la Couronne est partie aux procédures;
- b) d'aéronautique;
- c) d'ouvrages reliant une province à une autre ou s'étendant au-delà des limites d'une province. S.R., ch. 10(2<sup>e</sup> suppl.), art. 23.

Income and estate tax appeals

24. Except as otherwise provided by the Rules, the Trial Division has original jurisdiction to hear and determine all appeals that, under the *Income Tax Act* or the *Estate Tax Act*, chapter E-9 of the Revised Statutes of Canada, 1970, may be taken to the Court. R.S., c. 10(2nd Supp.), s. 24.

24. Sauf disposition contraire des règles, la Section de première instance connaît, en première instance, des appels interjetés devant la Cour aux termes de la *Loi de l'impôt sur le revenu* ou de la *Loi de l'impôt sur les biens transmis par décès*, chapitre E-9 des Statuts révisés du Canada de 1970. S.R., ch. 10(2<sup>e</sup> suppl.), art. 24.

Appels — Impôt sur le revenu et sur les biens transmis par décès

Extraprovincial jurisdiction

25. The Trial Division has original jurisdiction, between subject and subject as well as otherwise, in any case in which a claim for relief is made or a remedy is sought under or by virtue of the laws of Canada if no other court constituted, established or continued under any of the *Constitution Acts, 1867 to 1982* has jurisdiction in respect of that claim or remedy. R.S., c. 10(2nd Supp.), s. 25.

25. La Section de première instance a compétence, en première instance, dans tous les cas — opposant notamment des administrés — de demande de réparation ou de recours exercé en vertu du droit canadien ne ressortissant pas à un tribunal constitué ou maintenu sous le régime d'une des *Lois constitutionnelles de 1867 à 1982*. S.R., ch. 10(2<sup>e</sup> suppl.), art. 25.

Compétence extra-provinciale

General original jurisdiction

26. (1) The Trial Division has original jurisdiction in respect of any matter, not allocated specifically to the Court of Appeal, in respect of which jurisdiction has been conferred by any Act of Parliament on the Federal Court, whether referred to as such or as the Exchequer Court of Canada.

26. (1) La Section de première instance a compétence, en première instance, pour toute question ressortissant aux termes d'une loi fédérale à la Cour fédérale — ou à l'ancienne Cour de l'Échiquier du Canada —, à l'exception des questions expressément réservées à la Cour d'appel.

Tribunal de droit commun

Transfer of original jurisdiction to Court of Appeal

(2) Notwithstanding subsection (1), the Rules may transfer to the Court of Appeal original jurisdiction to hear and determine a

(2) Par dérogation au paragraphe (1), les règles peuvent transférer à la Cour d'appel la compétence pour connaître, en première ins-

Transfert de compétence à la Cour d'appel

specified class of matter to which that subsection applies. R.S., c. 10(2nd Supp.), s. 26.

tance, de certaines questions ressortissant normalement à la Section de première instance. S.R., ch. 10(2<sup>e</sup> suppl.), art. 26.

JURISDICTION OF FEDERAL COURT OF APPEAL

COMPÉTENCE DE LA COUR D'APPEL FÉDÉRALE

Appeals from  
Trial Division

27. (1) An appeal lies to the Federal Court of Appeal from any

- (a) final judgment,
- (b) judgment on a question of law determined before trial, or
- (c) interlocutory judgment,

of the Trial Division.

27. (1) Il peut être interjeté appel, devant la Cour d'appel fédérale, des décisions suivantes de la Section de première instance :

Appels des  
jugements de la  
Section de  
première  
instance

- a) jugement définitif;
- b) jugement sur une question de droit rendu avant l'instruction;
- c) jugement interlocutoire.

Notice of  
appeal

(2) An appeal under this section shall be brought by filing a notice of appeal in the Registry of the Court,

- (a) in the case of an interlocutory judgment, within ten days, and
- (b) in the case of any other judgment, within thirty days, in the calculation of which July and August shall be excluded,

from the pronouncement of the judgment appealed from or within such further time as the Trial Division may, either before or after the expiration of those ten or thirty days, as the case may be, fix or allow.

(2) L'appel interjeté dans le cadre du présent article est formé par le dépôt d'un avis au greffe de la Cour, dans le délai imparti à compter du prononcé du jugement en cause ou dans le délai supplémentaire que la Section de première instance peut, soit avant soit après l'expiration de celui-ci, fixer ou accorder. Le délai imparti est de :

Avis d'appel

- a) dix jours, dans le cas d'un jugement interlocutoire;
- b) trente jours, compte non tenu de juillet et août, dans le cas des autres jugements.

Service

(3) All parties directly affected by an appeal under this section shall be served forthwith with a true copy of the notice of appeal and evidence of service thereof shall be filed in the Registry of the Court.

(3) L'appel est signifié sans délai à toutes les parties directement concernées par une copie certifiée conforme de l'avis. La preuve de la signification doit être déposée au greffe de la Cour.

Signification

Final judgment

(4) For the purposes of this section, a final judgment includes a judgment that determines a substantive right except as to any question to be determined by a referee pursuant to the judgment. R.S., c. 10(2nd Supp.), s. 27.

(4) Pour l'application du présent article, est assimilé au jugement définitif le jugement qui statue au fond sur un droit, à l'exception des questions renvoyées à l'arbitrage par le jugement. S.R., ch. 10(2<sup>e</sup> suppl.), art. 27.

Jugement  
définitif

Review of  
decisions of  
federal board,  
commission or  
other tribunal

28. (1) Notwithstanding section 18 or the provisions of any other Act, the Court of Appeal has jurisdiction to hear and determine an application to review and set aside a decision or order, other than a decision or order of an administrative nature not required by law to be made on a judicial or quasi-judicial basis, made by or in the course of proceedings before a federal board, commission or other tribunal, on the ground that the board, commission or tribunal

28. (1) Malgré l'article 18 ou les dispositions de toute autre loi, la Cour d'appel est compétente pour les demandes de révision et d'annulation d'une décision ou ordonnance — exception faite de celles de nature administrative résultant d'un processus n'ayant légalement aucun caractère judiciaire ou quasi judiciaire — rendue par un office fédéral ou à l'occasion de procédures en cours devant cet office au motif que celui-ci, selon le cas :

Révision des  
décisions d'un  
office fédéral

- (a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

- a) n'a pas observé un principe de justice naturelle ou a de quelque autre manière outrepassé sa compétence ou refusé de l'exercer;

(b) erred in law in making its decision or order, whether or not the error appears on the face of the record; or

(c) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

b) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;

c) a fondé sa décision ou son ordonnance sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose.

When application may be made

(2) Any application under subsection (1) may be made by the Attorney General of Canada or any party directly affected by the decision or order by filing a notice of the application in the Court within ten days from the time the decision or order was first communicated to the office of the Deputy Attorney General of Canada or to that party by the board, commission or other tribunal, or within such further time as the Court of Appeal or a judge thereof may, either before or after the expiration of those ten days, fix or allow.

(2) Le procureur général du Canada ou toute partie directement intéressée par la décision ou l'ordonnance peut présenter la demande visée au paragraphe (1) en déposant à la Cour un avis en ce sens dans les dix jours qui suivent la première communication, par l'office fédéral, de la décision ou ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire que la Cour d'appel ou un de ses juges peut, avant ou après l'expiration de ces dix jours, fixer ou accorder.

Délai de présentation

Trial Division deprived of jurisdiction

(3) Where the Court of Appeal has jurisdiction under this section to hear and determine an application to review and set aside a decision or order, the Trial Division has no jurisdiction to entertain any proceeding in respect of that decision or order.

(3) La Section de première instance ne peut connaître des demandes de révision et d'annulation de décisions ou d'ordonnances qui, aux termes du présent article, ressortissent à la Cour d'appel.

Cas d'incompétence de la Section de première instance

Reference to Court of Appeal

(4) A federal board, commission or other tribunal to which subsection (1) applies may at any stage of its proceedings refer any question or issue of law, of jurisdiction or of practice and procedure to the Court of Appeal for hearing and determination.

(4) L'office visé par le paragraphe (1) peut, à tout stade de ses procédures, renvoyer devant la Cour d'appel pour audition et jugement toute question de droit, de compétence ou de pratique et procédure.

Renvoi à la Cour d'appel

Hearing in summary way

(5) An application or reference to the Court of Appeal made under this section shall be heard and determined without delay and in a summary way.

(5) La Cour d'appel statue à bref délai et selon une procédure sommaire sur les demandes et renvois qui lui sont faits dans le cadre du présent article.

Procédure sommaire d'audition

Limitation on proceedings against certain decisions or orders

(6) Notwithstanding subsection (1), no proceeding shall be taken thereunder in respect of a decision or order of the Governor in Council, the Treasury Board, a superior court or the Pension Appeals Board or in respect of a proceeding for a service offence under the *National Defence Act*, R.S., c. 10(2nd Supp.), s. 28.

(6) Le paragraphe (1) ne s'applique pas aux décisions ou ordonnances du gouverneur en conseil, du Conseil du Trésor, d'une cour supérieure ou de la Commission d'appel des pensions ni aux procédures intentées pour une infraction d'ordre militaire en vertu de la *Loi sur la défense nationale*, S.R., ch. 10(2<sup>e</sup> suppl.), art. 28.

Restriction relative aux procédures d'opposition

Where decision not to be restrained

29. Notwithstanding sections 18 and 28, where provision is expressly made by an Act of Parliament for an appeal as such to the Federal Court, to the Supreme Court, to the Governor in Council or to the Treasury Board from a decision or order of a federal board, commission or other tribunal made by or in the course of proceedings before that board, commission

29. Par dérogation aux articles 18 et 28, lorsqu'une loi fédérale prévoit expressément qu'il peut être interjeté appel, devant la Cour fédérale, la Cour suprême, le gouverneur en conseil ou le Conseil du Trésor, d'une décision ou ordonnance d'un office fédéral rendue à tout stade des procédures, cette décision ou ordonnance ne peut, dans la mesure où elle est

Dérogation aux art. 18 et 28

or tribunal, that decision or order is not, to the extent that it may be so appealed, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except to the extent and in the manner provided for in that Act. R.S., c. 10(2nd Supp.), s. 29.

Appeals under other Acts

30. (1) The Court of Appeal has exclusive original jurisdiction to hear and determine all appeals that, under any Act of Parliament except the *Income Tax Act*, the *Estate Tax Act*, chapter E-9 of the Revised Statutes of Canada, 1970, and the *Citizenship Act*, may be taken to the Federal Court.

Transfer of jurisdiction to Trial Division

(2) Notwithstanding subsection (1), the Rules may transfer original jurisdiction to hear and determine a particular class of appeal from the Court of Appeal to the Trial Division. R.S., c. 10(2nd Supp.), s. 30; 1974-75-76, c. 108, s. 41.

#### APPEALS TO SUPREME COURT

Appeal with leave of Court of Appeal

31. (1) An appeal to the Supreme Court lies with leave of the Federal Court of Appeal from a final or other judgment or determination of that Court where, in the opinion of the Court of Appeal, the question involved in the appeal is one that ought to be submitted to the Supreme Court for decision.

Appeal with leave of Supreme Court

(2) An appeal lies to the Supreme Court from a final or other judgment or determination of the Federal Court of Appeal, whether or not leave to appeal to the Supreme Court has been refused by the Court of Appeal, where, with respect to the particular case sought to be appealed, the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it, and leave to appeal from that judgment or determination is accordingly granted by the Supreme Court. R.S., c. 10(2nd Supp.), s. 31; 1974-75-76, c. 18, s. 9.

Inter-governmental disputes

32. An appeal to the Supreme Court lies from any decision of the Court of Appeal in the case of a controversy between Canada and a province or between two or more provinces. R.S., c. 10(2nd Supp.), s. 32.

susceptible d'un tel appel, faire l'objet de révision, de restriction, de prohibition, d'évocation, d'annulation ni d'aucune autre intervention, sauf dans la mesure et de la manière prévues dans cette loi. S.R., ch. 10(2<sup>e</sup> suppl.), art. 29.

Appels faits en vertu d'autres lois

30. (1) La Cour d'appel a compétence exclusive pour tous les appels qui peuvent être interjetés devant la Cour fédérale en vertu d'une loi fédérale, à l'exception de la *Loi de l'impôt sur le revenu*, de la *Loi de l'impôt sur les biens transmis par décès*, chapitre E-9 des Statuts révisés du Canada de 1970, et de la *Loi sur la citoyenneté*.

Transfert de compétence à la Section de première instance

(2) Par dérogation au paragraphe (1), les règles peuvent transférer à la Section de première instance certains appels ressortissant normalement à la Cour d'appel. S.R., ch. 10(2<sup>e</sup> suppl.), art. 30; 1974-75-76, ch. 108, art. 41.

#### APPELS À LA COUR SUPRÊME

Appels avec l'autorisation de la Cour d'appel

31. (1) Sont susceptibles d'appel devant la Cour suprême, avec l'autorisation de la Cour d'appel, tous les jugements ou décisions rendus par cette dernière lorsqu'elle estime que la question en jeu devrait être soumise au jugement de la Cour suprême.

Appels avec l'autorisation de la Cour suprême

(2) Même si la Cour d'appel ne donne pas son autorisation, tous ses jugements et autres décisions sont susceptibles d'appel devant la Cour suprême lorsque cette dernière estime, compte tenu de l'importance de l'affaire pour le public ou de l'importance des questions de droit ou des questions mixtes qu'elle comporte, ou de sa nature ou importance à tout autre égard, qu'elle devrait en être saisie, et lorsqu'elle accorde en conséquence l'autorisation d'en appeler. S.R., ch. 10(2<sup>e</sup> suppl.), art. 31; 1974-75-76, ch. 18, art. 9.

Différends entre gouvernements

32. Les décisions rendues par la Cour d'appel en matière de litige entre le Canada et une province, ou entre deux ou plusieurs provinces, sont susceptibles d'appel devant la Cour suprême. S.R., ch. 10(2<sup>e</sup> suppl.), art. 32.



Notice of appeal	33. (1) An appeal to the Supreme Court under this Act shall be brought within sixty days from the pronouncement of the judgment or the determination appealed from, in the calculation of which July and August shall be excluded, or within such further time as a judge of the Court of Appeal may, either before or after the expiration of those sixty days, fix or allow, by depositing a notice of appeal with the Registrar of the Supreme Court.	33. (1) L'appel interjeté devant la Cour suprême dans le cadre de la présente loi est formé par le dépôt d'un avis au greffe de la Cour suprême, dans les soixante jours à dater du prononcé du jugement dont il est fait appel — compte non tenu de juillet et août — ou dans le délai supplémentaire que le juge de la Cour d'appel peut, soit avant soit après l'expiration de ces soixante jours, fixer ou accorder.	Avis d'appel
Service	(2) All parties directly affected by the appeal shall be served forthwith with a copy of the notice of appeal and evidence of service thereof shall be filed with the Registrar of the Supreme Court.	(2) L'appel est signifié sans délai à toutes les parties directement concernées par une copie de l'avis. La preuve de la signification doit être déposée au greffe de la Cour suprême.	Signification
Filing of notice	(3) A copy of the notice of appeal as deposited with the Registrar of the Supreme Court pursuant to subsection (1) shall be filed in the Registry of the Federal Court. R.S., c. 10(2nd Supp.), s. 33.	(3) Copie de l'avis d'appel déposé au greffe de la Cour suprême doit être déposée au greffe de la Cour fédérale. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 33.	Dépôt de l'avis
Scope of appeal	34. The notice of appeal referred to in section 33 may limit the subject of the appeal to a part of the judgment or determination complained of. R.S., c. 10(2nd Supp.), s. 33.	34. L'avis d'appel peut restreindre l'objet de l'appel à une partie du jugement. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 33.	Champ de l'appel
Appeal to be entered on list	35. Every appeal from the Court of Appeal set down for hearing before the Supreme Court shall be entered by the Registrar of the Supreme Court on the list for the province in which the action, matter or proceeding that is the subject of the appeal was tried or heard by the Court, or if the action, matter or proceeding was partly heard or tried in one province and partly in another, then on the list that the Registrar thinks most convenient for the parties to the appeal. R.S., c. 10(2nd Supp.), s. 34.	35. Le registraire de la Cour suprême inscrit tout appel mis au rôle d'audition de celle-ci sur la liste établie pour la province dans laquelle la Cour a instruit ou entendu l'action, la procédure ou la question qui fait l'objet de l'appel ou, si l'affaire s'est déroulée dans deux provinces, sur la liste que le registraire juge la plus commode pour les parties à l'appel. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 34.	Mise au rôle
SUBSTANTIVE PROVISIONS		DISPOSITIONS DE FOND	
Interest	36. In adjudicating on any claim against the Crown, the Court shall not allow interest on any sum of money that the Court considers to be due to the claimant, in the absence of any contract stipulating for payment of that interest or of a statute providing in such a case for the payment of interest by the Crown. R.S., c. 10(2nd Supp.), s. 35.	36. Dans le jugement d'une plainte contre la Couronne, la Cour ne peut accorder d'intérêt sur aucune des sommes qu'elle estime être dues au demandeur, sauf si une clause d'un contrat y pourvoit expressément ou si une disposition législative en prévoit le paiement par la Couronne. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 35.	Intérêt
Claims not to be considered penal	37. No clause in any contract with the Crown in which a drawback or penalty is stipulated for on account of the non-performance of any condition thereof, or on account of any neglect to complete any public work or fulfil any covenant in the contract, shall be con-	37. Les clauses d'un contrat passé avec la Couronne et stipulant une retenue ou une pénalité pour l'inexécution d'une obligation de ce contrat, ou pour toute négligence à achever un ouvrage public ou à remplir un engagement aux termes du contrat, sont censées ne pas être	Demandes n'ayant pas de caractère pénal

sidered as comminatory, but shall be construed as importing an assessment by mutual consent of the damages caused by that non-performance or neglect. R.S., c. 10(2nd Supp.), s. 36.

comminatoires et doivent être interprétées comme emportant l'évaluation, par consentement mutuel, des dommages résultant de cette inexécution ou de cette négligence. S.R., ch. 10(2<sup>e</sup> suppl.), art. 36.

Status of  
Canadian  
Forces and  
R.C.M.P.

38. For the purpose of determining liability in any action or other proceeding by or against the Crown, a person who was at any time a member of the Canadian Forces or of the Royal Canadian Mounted Police shall be deemed to have been at that time a servant of the Crown. R.S., c. 10(2nd Supp.), s. 37.

38. Pour la détermination des questions de responsabilité dans toute action ou autre procédure engagée par ou contre la Couronne, quiconque était lors des faits en cause membre des Forces canadiennes ou de la Gendarmerie royale du Canada est assimilé à un préposé de la Couronne. S.R., ch. 10(2<sup>e</sup> suppl.), art. 37.

G.R.C. et  
Forces  
canadiennes

Prescription  
and limitation  
on proceedings  
in the Court

39. (1) Except as expressly provided by any other Act, the laws relating to prescription and the limitation of actions in force in any province between subject and subject apply to any proceedings in the Court in respect of any cause of action arising in that province.

39. (1) Sauf disposition contraire d'une autre loi, les règles de droit en matière de prescription qui, dans une province, régissent les rapports entre particuliers s'appliquent à toute instance devant la Cour dont le fait générateur est survenu dans cette province.

Prescription —  
Fait survenu  
dans une  
province

Idem, not in  
province

(2) A proceeding in the Court in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.

(2) Le délai de prescription est de six ans à compter du fait générateur lorsque celui-ci n'est pas survenu dans une province.

Prescription —  
Fait non  
survenu dans la  
province

Idem,  
proceedings by  
or against  
Crown

(3) Except as expressly provided by any other Act, the laws relating to prescription and the limitation of actions referred to in subsections (1) and (2) apply to any proceedings brought by or against the Crown. R.S., c. 10(2nd Supp.), s. 38.

(3) Sauf disposition contraire d'une autre loi, les règles de droit en matière de prescription visées aux paragraphes (1) et (2) s'appliquent à toutes les procédures engagées par ou contre la Couronne. S.R., ch. 10(2<sup>e</sup> suppl.), art. 38.

Prescription —  
Mise en cause  
de la Couronne

Tenders

40. (1) The Crown may, in any proceeding, plead a tender without paying the money tendered into court.

40. (1) La Couronne peut, dans toute instance, faire une offre de paiement sans consigner au tribunal la somme d'argent ainsi offerte.

Offre de  
paiement

Written offer

(2) Every tender of a sum of money on behalf of the Crown shall be deemed to be legally made if made by a written offer to pay the sum, given under the hand of a minister, or a person acting for that minister in that behalf, and notified to the person having such claim. R.S., c. 10(2nd Supp.), s. 39.

(2) Toute offre d'une somme d'argent faite au nom de la Couronne est censée constituer une offre légale si elle est signée par un ministre ou son délégué à cet effet et notifiée au créancier. S.R., ch. 10(2<sup>e</sup> suppl.), art. 39.

Offre écrite

Judgment  
interest

41. Unless otherwise ordered by the Court, a judgment, including a judgment against the Crown, bears interest from the time of giving the judgment at the rate prescribed by section 3 of the *Interest Act*. R.S., c. 10(2nd Supp.), s. 40.

41. Sauf décision contraire de la Cour, les jugements, y compris ceux contre la Couronne, portent intérêt, à compter de leur prononcé, au taux fixé par l'article 3 de la *Loi sur l'intérêt*. S.R., ch. 10(2<sup>e</sup> suppl.), art. 40.

Intérêt sur les  
jugements

Maritime law  
continued

42. Canadian maritime law as it was immediately before June 1, 1971 continues subject to such changes therein as may be made by this Act or any other Act of Parliament. R.S., c. 10(2nd Supp.), s. 42.

42. Le droit maritime canadien en vigueur au 31 mai 1971 continue à s'appliquer, sous réserve des modifications éventuelles par la présente loi ou toute autre loi. S.R., ch. 10(2<sup>e</sup> suppl.), art. 42.

Maintien du  
droit maritime

Jurisdiction <i>in personam</i>	43. (1) Subject to subsection (4), the jurisdiction conferred on the Court by section 22 may in all cases be exercised <i>in personam</i> .	43. (1) Sous réserve du paragraphe (4), la Cour peut, aux termes de l'article 22, avoir compétence en matière personnelle dans tous les cas.	Compétence en matière personnelle
Jurisdiction <i>in rem</i>	(2) Subject to subsection (3), the jurisdiction conferred on the Court by section 22 may be exercised <i>in rem</i> against the ship, aircraft or other property that is the subject of the action, or against any proceeds of sale thereof that have been paid into court.	(2) Sous réserve du paragraphe (3), la Cour peut, aux termes de l'article 22, avoir compétence en matière réelle dans toute action portant sur un navire, un aéronef ou d'autres biens, ou sur le produit de leur vente consigné au tribunal.	Compétence en matière réelle
Exception	(3) Notwithstanding subsection (2), the jurisdiction conferred on the Court by section 22 shall not be exercised <i>in rem</i> with respect to a claim mentioned in paragraph 22(2)(e), (f), (g), (h), (i), (k), (m), (n), (p) or (r) unless, at the time of the commencement of the action, the ship, aircraft or other property that is the subject of the action is beneficially owned by the person who was the beneficial owner at the time when the cause of action arose.	(3) Malgré le paragraphe (2), la Cour ne peut exercer la compétence en matière réelle prévue à l'article 22, dans le cas des demandes visées aux alinéas 22(2)e), f), g), h), i), k), m), n), p) ou r), que si, au moment où l'action est intentée, le véritable propriétaire du navire, de l'aéronef ou des autres biens en cause est le même qu'au moment du fait générateur.	Exception
Where action <i>in personam</i> may be commenced	(4) No action <i>in personam</i> may be commenced in Canada for a collision between ships unless (a) the defendant is a person who has a residence or place of business in Canada; (b) the cause of action arose within the territorial, internal or other waters of Canada; or (c) the parties have agreed that the Court is to have jurisdiction.	(4) Pour qu'une action personnelle puisse être intentée au Canada relativement à une collision entre navires, il faut : (a) soit que le défendeur ait une résidence ou un établissement commercial au Canada; (b) soit que le fait générateur soit survenu dans les eaux territoriales, intérieures ou autres du Canada; (c) soit que les parties aient convenu de la compétence de la Cour.	Action personnelle
Exception	(5) Subsection (4) does not apply to a counter-claim or an action for a collision, in respect of which another action has already been commenced in the Court.	(5) Le paragraphe (4) ne s'applique ni à une demande reconventionnelle ni à une action pour une collision faisant déjà l'objet d'une autre action devant la Cour.	Exception
Where suit pending outside Canada	(6) Where an action for a collision between ships has been commenced outside Canada, an action shall not be commenced in Canada by the same person against the same defendant on the same facts unless the action in the other jurisdiction has been discontinued.	(6) Le demandeur dans une action pour collision intentée à l'étranger ne peut entamer au Canada, contre le même défendeur, une seconde action fondée sur les mêmes faits, sauf désistement dans la première.	Affaire pendante à l'étranger
Ship owned by sovereign power	(7) No action <i>in rem</i> may be commenced in Canada against (a) any warship, coast-guard ship or police vessel; (b) any ship owned or operated by Canada or a province, or any cargo laden thereon, where the ship is engaged on government service; or (c) any ship owned or operated by a sovereign power other than Canada, or any cargo	(7) Il ne peut être intenté au Canada d'action réelle portant, selon le cas, sur : (a) un navire de guerre, un garde-côte ou un bateau de police; (b) un navire possédé ou exploité par le Canada ou une province, ou sa cargaison, lorsque ce navire est en service commandé pour le compte de l'État; (c) un navire possédé ou exploité par un État souverain étranger — ou sa cargaison — et	Navire appartenant à un État souverain

laden thereon, with respect to any claim where, at the time the claim arises or the action is commenced, the ship is being used exclusively for non-commercial governmental purposes. R.S., c. 10(2nd Supp.), s. 43.

*Mandamus*,  
injunction,  
specific  
performance or  
appointment of  
receiver.

44. In addition to any other relief that the Court may grant or award, a *mandamus*, injunction or order for specific performance may be granted or a receiver appointed by the Court in all cases in which it appears to the Court to be just or convenient to do so, and any such order may be made either unconditionally or on such terms and conditions as the Court deems just. R.S., c. 10(2nd Supp.), s. 44.

accomplissant exclusivement une mission non commerciale au moment où a été formulée la demande ou intentée l'action les concernant. S.R., ch. 10(2<sup>e</sup> suppl.), art. 43.

44. Indépendamment de toute autre forme de réparation qu'elle peut accorder, la Cour peut, dans tous les cas où il lui paraît juste ou opportun de le faire, décerner un *mandamus*, une injonction ou une ordonnance d'exécution intégrale, ou nommer un séquestre, soit sans condition soit selon les modalités qu'elle juge équitables. S.R., ch. 10(2<sup>e</sup> suppl.), art. 44.

*Mandamus*,  
injonction,  
exécution  
intégrale ou  
nomination de  
d'un séquestre

## PROCEDURE

Giving of  
judgment after  
judge ceases to  
hold office

45. (1) Where a judge resigns his office or is appointed to any other court or otherwise ceases to hold office, he may, at the request of the Chief Justice, at any time within eight weeks after that event give judgment in any cause, action or matter previously tried by or heard before him as if he had continued in office.

Taking part in  
giving of  
judgment after  
judge ceases to  
hold office

(2) Where a person to whom subsection (1) applies has heard a cause, action or matter in the Federal Court of Appeal jointly with other judges of the Court of Appeal, he may, at the request of the Chief Justice, at any time within the period mentioned in subsection (1) take part in the giving of judgment by that Court as if he were still a judge.

Where judge  
unable to take  
part in giving of  
judgment

(3) Where a person to whom subsection (1) applies or any other judge by whom a matter in the Court of Appeal has been heard is unable to take part in the giving of judgment or has died, the remaining judges may give judgment and, for that purpose, shall be deemed to constitute the Court. R.S., c. 10(2nd Supp.), s. 45.

Rules

46. (1) Subject to the approval of the Governor in Council and subject also to subsection (4), the judges of the Court may make general rules and orders

(a) for regulating the practice and procedure in the Trial Division and in the Court of Appeal, including, without restricting the generality of the foregoing,

(i) rules providing, in a proceeding to which the Crown is a party, for examination for discovery of a departmental or other officer of the Crown,

## PROCÉDURE

45. (1) À la demande du juge en chef, le juge qui a cessé d'occuper sa charge, notamment par suite de démission ou de nomination à un autre poste, peut, dans les huit semaines qui suivent, rendre son jugement dans toute affaire instruite par lui.

(2) À la demande du juge en chef, le juge qui se trouve dans la situation visée au paragraphe (1) après avoir instruit une affaire quelconque à la Cour d'appel conjointement avec d'autres juges de ce tribunal peut, dans le délai fixé à ce même paragraphe, concourir au prononcé du jugement par la Cour d'appel.

(3) En cas de décès ou d'empêchement d'un juge — qu'il soit ou non dans la situation visée au paragraphe (1) — ayant instruit une affaire à la Cour d'appel, les autres juges peuvent rendre le jugement et, à cette fin, sont censés constituer la Cour d'appel. S.R., ch. 10(2<sup>e</sup> suppl.), art. 45.

46. (1) Sous réserve de l'approbation du gouverneur en conseil et, en outre, du paragraphe (4), les juges de la Cour peuvent, par règles ou ordonnances générales :

a) régler la pratique et la procédure à la Section de première instance et à la Cour d'appel, et notamment :

(i) prévoir, dans une instance à laquelle la Couronne est partie, l'interrogatoire préalable d'un fonctionnaire d'un ministère ou de tout autre fonctionnaire de la Couronne,

Jugement rendu  
après cessation  
de fonctions

Participation au  
jugement après  
cessation de  
fonctions

Empêchement  
ou décès

Règles

- (ii) rules providing for discovery and production, and supplying of copies, of documents by the Crown in a proceeding to which the Crown is a party,
  - (iii) rules providing for production of documents by the Crown in a proceeding to which the Crown is not a party,
  - (iv) rules providing for the medical examination of a person in respect of whose injury a claim is made,
  - (v) rules governing the taking of evidence before a judge or any other qualified person, within or outside Canada, before or during trial and on commission or otherwise, of any person at a time either before or after the commencement of proceedings in the Court to enforce the claim or possible claim in respect of which the evidence is required,
  - (vi) rules providing for the reference of any question of fact for inquiry and report by a judge or other person as referee,
  - (vii) rules respecting the service of documents within Canada and rules authorizing and governing the service of documents outside Canada,
  - (viii) rules governing the recording of proceedings in the course of a hearing and the transcription of that recording,
  - (ix) rules governing the appointment of assessors and the trying or hearing of a cause or other matter wholly or partly with the assistance of assessors, and
  - (x) rules governing the material to be furnished to the Court of Appeal by any federal board, commission or other tribunal for the purposes of any application or reference under section 28;
- (b) for the effectual execution and working of this Act and the attainment of its intention and objects;
- (c) for the effectual execution and working of any Act by or under which any jurisdiction is conferred on the Court or any division of it or on any judge of the Court in respect of proceedings in the Court and the attainment of the intention and objects of that Act including, without restricting the generality of the foregoing, a rule deeming any jurisdiction conferred on the Court or a judge to have been conferred on a specified division of the Court;
- (ii) prévoir la production de documents, la communication de leur teneur ainsi que la fourniture de copies de documents, par la Couronne, dans une instance à laquelle celle-ci est partie,
  - (iii) prévoir la production de documents par la Couronne dans une instance à laquelle celle-ci n'est pas partie,
  - (iv) prévoir l'examen médical d'une personne dont la blessure fait l'objet d'une demande d'indemnisation,
  - (v) régir les dépositions faites devant un juge ou toute autre personne qualifiée — au Canada ou à l'étranger, avant ou pendant l'instruction et, sur commission ou autrement, avant ou après le début de l'instance devant la Cour —, à l'appui d'une demande effective ou éventuelle,
  - (vi) prévoir le renvoi de toute question de fait pour enquête et rapport devant un juge ou une autre personne agissant en qualité d'arbitre,
  - (vii) régir la signification de documents au Canada et autoriser et régir la signification de documents à l'étranger,
  - (viii) régir l'enregistrement des débats lors de l'audience, ainsi que leur transcription,
  - (ix) régir la nomination d'assesseurs et l'instruction de tout ou partie d'une affaire avec l'aide d'assesseurs,
  - (x) déterminer la documentation à fournir à la Cour d'appel par un office fédéral pour les besoins des demandes ou renvois visés par l'article 28;
- b) prendre les mesures nécessaires à l'application de la présente loi;
- c) prendre les mesures nécessaires à l'application de toute loi donnant compétence à la Cour ou à une section ou à un juge de cette dernière en ce qui touche les instances devant elle, et notamment décider de l'attribution de cette compétence à l'une ou l'autre de ses sections;
- d) fixer les droits payables au greffe par une partie, relativement aux procédures devant la Cour, pour versement au Trésor;
- e) réglementer les attributions des fonctionnaires judiciaires;
- f) fixer la rétribution des shérifs, prévôts ou autres personnes par l'intermédiaire desquelles les moyens de contrainte peuvent être signifiés et réglementer leur obligation, le cas

(d) for fixing the fees to be paid by a party to the Registry for payment into the Consolidated Revenue Fund in respect of proceedings in the Court;

(e) for regulating the duties of officers of the Court;

(f) for fixing the fees that sheriffs, marshals or other persons to whom process may be issued may receive and take, and for regulating their obligation, if any, to account for those fees to the persons or departments by whom they are employed, or their right to retain them for their own use;

(g) for awarding and regulating costs in the Court in favour of or against the Crown, as well as the subject;

(h) empowering a prothonotary to exercise any authority or jurisdiction, subject to supervision by the Court, even though the authority or jurisdiction may be of a judicial nature; and

(i) dealing with any other matter that any provision of this Act contemplates being the subject of a rule or the Rules.

échéant, de rendre compte de cette rétribution à leurs employeurs ou leur droit de la conserver pour eux-mêmes;

g) régler les dépens et leur adjudication tant en ce qui concerne la Couronne que les administrés;

h) donner pouvoir aux protonotaires d'exercer une autorité ou une compétence — même d'ordre judiciaire — sous la surveillance de la Cour;

i) trancher toute autre question ressortissant implicitement, selon la présente loi, aux règles.

## Extent of rules

(2) Rules and orders made under this section may extend to matters arising out of or in the course of proceedings under any Act involving practice and procedure or otherwise, for which no provision is made by that Act or any other Act but for which it is found necessary to provide in order to ensure the proper working of that Act and the better attainment of its objects.

(2) Au titre du présent article, la Cour peut étendre la portée des règles et ordonnances à des questions, notamment de pratique et de procédure, qui surviennent à l'occasion d'affaires engagées sous le régime d'une loi quelconque mais qui ne sont pas prévues par celle-ci ou toute autre loi et qu'il est jugé nécessaire de régir en vue de l'application de ces lois.

Portée des règles

## Uniformity

(3) Rules and orders made under this section may provide for a procedure that is uniform in whole or in part in respect of all or any class or classes of matters and for a uniform nomenclature in any such matters.

(3) Ces règles et ordonnances peuvent prévoir une procédure uniformément applicable, en tout ou partie, à une ou plusieurs catégories d'affaires, ainsi qu'une nomenclature qui leur soit uniformément applicable.

Uniformité

## Advance publication of rules and amendments

(4) Where the judges of the Court propose to amend, vary or revoke any rule or order made under this section or to make any rule or order additional to the general rules and orders first made under this section and published together, the judges

(4) Lorsqu'ils proposent la modification ou l'annulation de l'une des règles ou ordonnances visées par le présent article ou l'augmentation du corps de règles et ordonnances générales publié sous le régime de ce même article, les juges :

Publication préalable des règles et modifications

(a) shall give notice of the proposal by publishing it in the *Canada Gazette* and shall, in the notice, invite any interested person to make representations to them in writing with respect thereto within sixty days after the day of that publication; and

(b) may, after the expiration of the sixty days referred to in paragraph (a) and subject

a) doivent donner avis de la proposition en la faisant publier dans la *Gazette du Canada* et, dans cet avis, inviter les intéressés à leur faire parvenir leurs observations écrites à ce sujet dans les soixante jours de la date de la publication;

b) peuvent, à l'expiration du délai de soixante jours et sous réserve de l'approba-

to the approval of the Governor in Council, implement the proposal either as originally published or as revised in such manner as they deem advisable having regard to any representations so made to them.

tion du gouverneur en conseil, mettre en œuvre la proposition soit dans sa forme originale soit en la forme modifiée qu'ils jugent indiquée compte tenu des observations qui leur ont été faites.

Rules and amendments to be laid before Parliament

(5) A copy of each rule or order and of each amendment, variation or revocation of a rule or order made under this section shall be laid before both Houses of Parliament within ten days after the opening of the session next after the approval by the Governor in Council of the making thereof. R.S., c. 10(2nd Supp.), s. 46.

(5) Le texte des règles ou ordonnances et des modifications ou annulations y afférentes faites aux termes du présent article est déposé devant les deux chambres du Parlement dans les dix jours de l'ouverture de la session qui suit leur approbation par le gouverneur en conseil. S.R., ch. 10(2<sup>e</sup> suppl.), art. 46.

Dépôt des règles et modifications devant le Parlement

Costs awarded to Crown

47. In any proceeding to which the Crown is a party either as represented by the Attorney General of Canada or otherwise, costs awarded to the Crown shall not be disallowed or reduced on taxation by reason only that the solicitor or counsel who earned the costs, or in respect of whose services the costs are charged, was a salaried officer of the Crown performing those services in the discharge of his duty and remunerated therefor by his salary, or for that or any other reason was not entitled to recover any costs from the Crown in respect of the services so rendered. R.S., c. 10(2nd Supp.), s. 47.

47. Dans toute procédure impliquant la Couronne, représentée ou non par le procureur général du Canada, les dépens qui lui sont adjugés ne peuvent être refusés ni réduits lors de la taxation au seul motif que l'avocat pour les services duquel les dépens sont justifiés ou réclamés était un fonctionnaire salarié de la Couronne, et à ce titre rémunéré pour les services qu'il fournissait dans le cadre de ses fonctions, ou bien n'était pas, de par son statut ou pour toute autre raison, admis à prélever les dépens sur la Couronne pour les services ainsi rendus. S.R., ch. 10(2<sup>e</sup> suppl.), art. 47.

Dépens adjugés à la Couronne

How proceeding against Crown instituted

48. (1) A proceeding against the Crown shall be instituted by filing in the Registry of the Court the original and two copies of a document that may be in the form set out in the schedule and by payment of the sum of two dollars as a filing fee.

48. (1) Pour entamer une procédure contre la Couronne, il faut déposer au greffe de la Cour l'original et deux copies de l'acte introductif d'instance, qui peut suivre le modèle établi à l'annexe, et acquitter la somme de deux dollars comme droit correspondant.

Acte introductif d'instance contre la Couronne

Procedure for filing originating document

(2) The original and two copies of the originating document may be filed as required by subsection (1) by being forwarded, together with a remittance for the filing fee, by registered mail addressed to "The Registry, The Trial Division, The Federal Court of Canada, Ottawa, Canada".

(2) Les deux formalités prévues au paragraphe (1) peuvent s'effectuer par courrier recommandé expédié à l'adresse suivante : Greffe de la Cour fédérale du Canada, Section de première instance, Ottawa, Canada.

Procédure de dépôt

Service of originating document

(3) When the original and two copies of the originating document have been filed and the filing fee has been paid as required by this section, an officer of the Registry of the Court shall, after verifying the accuracy of the copies, forthwith, on behalf of the claimant, serve the originating document on Her Majesty by transmitting the copies to the office of the Deputy Attorney General of Canada.

(3) Une fois les deux formalités visées au paragraphe (1) accomplies, le fonctionnaire compétent du greffe de la Cour signifie aussitôt, après en avoir vérifié l'exactitude, l'acte introductif d'instance à Sa Majesté, pour le compte du requérant, en en transmettant les copies au bureau du sous-procureur général du Canada.

Signification de l'acte introductif d'instance

Certificate

(4) When the copies have been transmitted to the office of the Deputy Attorney General of Canada under subsection (3), a certificate

(4) Une fois les copies transmises au bureau du sous-procureur général du Canada sous le régime du paragraphe (3), un certificat at-

Certificat

Certificate to be evidence	signed by an officer of the Registry respecting the date of filing and the date of transmission of the copies shall be delivered, or forwarded by registered mail, to the claimant or the claimant's counsel or solicitor at the address appearing on the originating document, or at such other address as may have been communicated to the Registry for the purpose.	tant la date de dépôt et la date de transmission des copies est signé par le fonctionnaire compétent du greffe et délivré, ou envoyé par courrier recommandé, au requérant ou à son avocat à l'adresse figurant sur l'acte introductif d'instance ou à l'adresse communiquée au greffe à cette fin.	Preuve constituée par le certificat
No juries	(5) A certificate under subsection (4) is evidence of the date of filing and the date of service of the originating document referred to in the certificate. R.S., c. 10(2nd Supp.), s. 48.	(5) Le certificat établi aux termes du paragraphe (4) fait foi de la date de dépôt et de la date de signification de l'acte introductif d'instance dont il y est fait mention. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 48.	Audition sans jury
Stay of proceedings	49. All causes or matters before the Court shall be heard and determined without a jury. R.S., c. 10(2nd Supp.), s. 49.	49. Dans toutes les affaires dont elle est saisie, la Cour exerce sa compétence sans jury. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 49.	Suspension d'instance
Idem	50. (1) The Court may, in its discretion, stay proceedings in any cause or matter, (a) on the ground that the claim is being proceeded with in another court or jurisdiction; or (b) where for any other reason it is in the interest of justice that the proceedings be stayed.	50. (1) La Cour a le pouvoir discrétionnaire de suspendre les procédures dans toute affaire : a) au motif que la demande est en instance devant un autre tribunal; b) lorsque, pour quelque autre raison, l'intérêt de la justice l'exige.	Idem
Lifting of stay	(2) The Court shall, on the application of the Attorney General of Canada, stay proceedings in any cause or matter in respect of a claim against the Crown if it appears that the claimant has an action or proceeding in respect of the same claim pending in any other court against a person who, at the time when the cause of action alleged in the action or proceeding arose, was, in respect thereof, acting so as to engage the liability of the Crown.	(2) Sur demande du procureur général du Canada, la Cour suspend les procédures dans toute affaire relative à une demande contre la Couronne s'il apparaît que le demandeur a intenté, devant un autre tribunal, une procédure relative à la même demande contre une personne qui, à la survenance du fait générateur allégué dans la procédure, agissait en l'occurrence de telle façon qu'elle engageait la responsabilité de la Couronne.	Levée de la suspension
Reasons for judgment to be filed	(3) Any stay ordered under this section may subsequently be lifted in the discretion of the Court. R.S., c. 10(2nd Supp.), s. 50.	(3) La suspension peut ultérieurement être levée à l'appréciation de la Cour. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 50.	Dépôt des motifs du jugement
Powers of Court of Appeal	51. Where a judge gives reasons for a judgment pronounced by him or pronounced by a court of which he was a member, he shall file a copy of the reasons in the Registry of the Court. R.S., c. 10(2nd Supp.), s. 51.	51. Le juge qui motive un jugement rendu par lui ou par le tribunal dont il est membre dépose une copie de l'énoncé des motifs au greffe de la Cour. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 51.	Pouvoirs de la Cour d'appel

## JUDGMENTS OF COURT OF APPEAL

## JUGEMENTS DE LA COUR D'APPEL

52. The Federal Court of Appeal may  
(a) quash proceedings in cases brought before it in which it has no jurisdiction or whenever those proceedings are not taken in good faith;

52. La Cour d'appel peut :  
a) arrêter les procédures dans les causes qui ne sont pas de son ressort ou entachées de mauvaise foi;  
b) dans le cas d'un appel d'une décision de la Section de première instance :



(b) in the case of an appeal from the Trial Division,

(i) dismiss the appeal or give the judgment and award the process or other proceedings that the Trial Division should have given or awarded,

(ii) in its discretion, order a new trial, if the ends of justice seem to require it, or

(iii) make a declaration as to the conclusions that the Trial Division should have reached on the issues decided by it and refer the matter back for a continuance of the trial on the issues that remain to be determined in the light of that declaration;

(c) in the case of an appeal other than an appeal from the Trial Division,

(i) dismiss the appeal or give the decision that should have been given, or

(ii) in its discretion, refer the matter back for determination in accordance with such directions as it considers to be appropriate; and

(d) in the case of an application to review and set aside a decision of a federal board, commission or other tribunal, either dismiss the application, set aside the decision or set aside the decision and refer the matter back to the board, commission or other tribunal for determination in accordance with such directions as it considers to be appropriate. R.S., c. 10(2nd Supp.), s. 52.

(i) soit rejeter l'appel ou rendre le jugement que la Section de première instance aurait dû rendre et prendre toutes mesures d'exécution ou autres que celle-ci aurait dû prendre,

(ii) soit, à son appréciation, ordonner un nouveau procès, si l'intérêt de la justice paraît l'exiger,

(iii) soit énoncer, dans une déclaration, les conclusions auxquelles la Section de première instance aurait dû arriver sur les points qu'elle a tranchés et lui renvoyer l'affaire pour poursuite de l'instruction, à la lumière de cette déclaration, sur les points en suspens;

e) dans les autres cas d'appel :

(i) soit rejeter l'appel ou rendre la décision qui aurait dû être rendue,

(ii) soit, à son appréciation, renvoyer l'affaire pour jugement conformément aux instructions qu'elle estime appropriées;

d) dans le cas d'une demande de révision et d'annulation d'une décision d'un office fédéral, soit rejeter la demande, soit infirmer la décision, soit infirmer la décision et renvoyer l'affaire à l'office pour jugement conformément aux instructions qu'elle estime appropriées. S.R., ch. 10(2<sup>e</sup> suppl.), art. 52.

EVIDENCE

PREUVE

Taking of evidence

53. (1) The evidence of any witness may by order of the Court be taken, subject to any rule or order that may relate to the matter, on commission, on examination or by affidavit.

53. (1) La déposition d'un témoin peut, par ordonnance de la Cour et sous réserve de toute règle ou ordonnance applicable en la matière, être recueillie soit par commission rogatoire, soit lors d'un interrogatoire, soit par affidavit.

Déposition

Admissibility of evidence

(2) Evidence that would not otherwise be admissible shall be admissible, in the discretion of the Court and subject to any rule that may relate to the matter, if it would be admissible in a similar matter in a superior court of a province in accordance with the law in force in any province, notwithstanding that it is not admissible by virtue of section 40 of the *Canada Evidence Act*. R.S., c. 10(2nd Supp.), s. 53.

(2) Par dérogation à l'article 40 de la *Loi sur la preuve au Canada* mais sous réserve de toute règle applicable en la matière, la Cour a le pouvoir discrétionnaire d'admettre une preuve qui ne serait pas autrement admissible si, selon le droit en vigueur dans une province, elle l'était devant une cour supérieure de cette province. S.R., ch. 10(2<sup>e</sup> suppl.), art. 53.

Admissibilité de la preuve

Who may administer oath, affidavit or affirmation

54. (1) All persons authorized to take and receive affidavits to be used in any of the superior courts of a province may administer oaths and take and receive affidavits, declara-

54. (1) Les personnes habilitées à recevoir des affidavits destinés à servir devant une cour supérieure provinciale peuvent, dans cette province, faire prêter serment et recevoir les affi-

Habilitation à faire prêter serment

	tions and solemn affirmations in that province to be used in the Court.	davits, déclarations et affirmations solennelles destinés à servir devant la Cour.	
Person empowered by commission	(2) The Governor in Council may, by commission, empower such person as the Governor in Council thinks necessary, within or outside Canada, to administer oaths and to take and receive affidavits, declarations and solemn affirmations in or concerning any proceeding had or to be had in the Court.	(2) Quand il le juge nécessaire, le gouverneur en conseil peut, par commission, habiliter certaines personnes, au Canada ou à l'étranger, à faire prêter serment et à recevoir des affidavits et des déclarations ou affirmations solennelles lors ou à l'occasion de toute procédure actuelle ou éventuelle devant la Cour.	Habilitation des serments faits par commission
Oath, affidavit or affirmation as valid as if taken before the Court	(3) Every oath, affidavit, declaration or solemn affirmation taken or made pursuant to this section is as valid and of the same effect, to all intents, as if it had been administered, taken, sworn, made or affirmed before the Court.	(3) Les serments, affidavits, déclarations ou affirmations solennelles faits en conformité avec le présent article ont la même valeur que s'ils étaient faits devant la Cour.	Validité des serments faits hors Cour
Style of commissioner	(4) Every commissioner empowered under subsection (2) shall be styled a commissioner for administering oaths in the Federal Court of Canada. R.S., c. 10(2nd Supp.), s. 54.	(4) Tout commissaire habilité en application du paragraphe (2) porte le titre de commissaire aux serments auprès de la Cour fédérale du Canada. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 54.	Titre du commissaire
<b>PROCESS</b>		<b>MOYENS DE CONTRAINTE</b>	
Application of process	<b>55.</b> (1) The process of the Court shall run throughout Canada, including its territorial waters, and any other place to which legislation enacted by Parliament has been made applicable.	<b>55.</b> (1) Les moyens de contrainte de la Cour sont exécutoires dans tout le Canada, y compris dans ses eaux territoriales, et en tout autre lieu où s'applique la législation fédérale.	Champ d'application
Enforcement of order for payment of money	(2) An order for payment of money, whether for costs or otherwise, may be enforced in the same manner as a judgment.	(2) L'ordonnance de paiement, notamment des dépens, peut être exécutée de la même manière qu'un jugement.	Exécution des ordonnances de paiement
No attachment for non-payment only	(3) No attachment as for contempt shall issue for the non-payment of money alone.	(3) Le défaut de paiement ne peut justifier seul la contrainte par corps.	Impossibilité de contrainte par corps
Sheriff to execute process	(4) A sheriff or marshal shall execute the process of the Court that is directed to him, whether or not it requires him to act outside his geographical jurisdiction, and shall perform such other duties as may be expressly or impliedly assigned to him by the Rules.	(4) Le shérif ou le prévôt exécute les moyens de contrainte de la Cour qui lui sont adressés même s'il doit pour cela agir en dehors de son ressort: il exerce en outre les fonctions qui peuvent lui être attribuées expressément ou implicitement par les règles.	Fonctions du shérif
Absence or incapacity of sheriff	(5) In any case where there is no sheriff or marshal or a sheriff or marshal is unable or unwilling to act, the process of the Court shall be directed to a deputy sheriff or deputy marshal, or to such other person as may be provided by the Rules or by a special order of the Court made for a particular case, and any such person is entitled to take and retain for his own use such fees as may be provided by the Rules or the special order. R.S., c. 10(2nd Supp.), s. 55.	(5) En cas d'absence ou d'empêchement du shérif ou du prévôt, ou de vacance du poste ou de refus d'exécution par le titulaire, le moyen de contrainte est adressé au shérif adjoint ou prévôt adjoint, ou à toute autre personne prévue par les règles ou une ordonnance spécifique de la Cour. Cette personne a droit, pour son propre compte, aux émoluments prévus par les règles ou l'ordonnance en cause. S.R., ch. 10(2 <sup>e</sup> suppl.), art. 55.	Absence ou empêchement du shérif
Analogy to provincial process	<b>56.</b> (1) In addition to any writs of execution or other process that are prescribed by the	<b>56.</b> (1) Outre les brefs de saisie-exécution ou autres moyens de contrainte prescrits par les	Analogie avec les moyens de contrainte des tribunaux provinciaux

Rules for enforcement of its judgments or orders, the Court may issue process against the person or the property of any party, of the same tenor and effect as those that may be issued out of any of the superior courts of the province in which any judgment or order is to be executed, and where, by the law of that province, an order of a judge is required for the issue of any process, a judge of the Court may make a similar order with respect to like process to issue out of the Court.

règles pour l'exécution des jugements ou ordonnances de la Cour, celle-ci peut délivrer des moyens de contrainte visant la personne ou les biens d'une partie et ayant la même teneur et le même effet que ceux émanant d'une cour supérieure de la province dans laquelle le jugement ou l'ordonnance doivent être exécutés. Si, selon le droit de la province, le moyen de contrainte que doit délivrer la Cour nécessite l'ordonnance d'un juge, un juge de la Cour peut rendre une telle ordonnance.

Process against person

(2) No person shall be taken into custody under process of execution for debt issued out of the Court.

(2) La délivrance, par la Cour, d'un bref de saisie-exécution pour dette ne peut donner lieu à incarcération.

Moyens de contrainte visant une personne

Process against property

(3) All writs of execution or other process against property, whether prescribed by the Rules or authorized by subsection (1), shall, unless otherwise provided by the Rules, be executed, with respect to the property liable to execution and the mode of seizure and sale, as nearly as possible in the same manner as similar writs or process, issued out of the superior courts of the province in which the property to be seized is situated, are, by the law of that province, required to be executed, and the writs or other process issued by the Court shall bind property in the same manner as similar writs or process issued by the provincial superior courts, and the rights of purchasers thereunder are the same as those of purchasers under those similar writs or process.

(3) Sauf disposition contraire des règles, les brefs de saisie-exécution ou autres moyens de contrainte visant des biens — qu'ils soient prescrits par les règles ou autorisés aux termes du paragraphe (1) — sont, quant aux catégories de biens saisissables et au mode de saisie et de vente, exécutés autant que possible de la manière fixée, pour des moyens de contrainte semblables émanant d'une cour supérieure provinciale, par le droit de la province où sont situés les biens à saisir. Ils ont les mêmes effets que ces derniers, quant aux biens en question et aux droits des adjudicataires.

Moyens de contrainte visant des biens meubles ou immeubles

Claim against property seized

(4) Every claim made by any person to property seized under a writ of execution or other process issued out of the Court, or to the proceeds of the sale of that property, shall, unless otherwise provided by the Rules, be heard and disposed of as nearly as may be according to the procedure applicable to like claims to property seized under similar writs or process issued out of the courts of the province.

(4) Sauf disposition contraire des règles, l'instruction et le jugement de toute contestation en matière de saisie effectuée en vertu d'un moyen de contrainte de la Cour, ou de toute prétention sur le produit des biens saisis, suivent autant que possible la procédure applicable aux revendications semblables concernant des biens saisis en vertu de moyens de contrainte similaires émanant des tribunaux provinciaux.

Opposition à saisie

No execution against Crown

(5) No execution shall issue on a judgment given by the Court against the Crown. R.S., c. 10(2nd Supp.), s. 56.

(5) Les jugements rendus par la Cour contre la Couronne ne sont pas susceptibles d'exécution par voie de contrainte. S.R., ch. 10(2<sup>e</sup> suppl.), art. 56.

Non-exécution contre la Couronne

GENERAL

DISPOSITIONS GÉNÉRALES

Crown costs to be paid to Receiver General

57. (1) Any money or costs awarded to the Crown in any proceedings in the Court shall be paid to the Receiver General.

57. (1) Les sommes d'argent ou dépens adjugés à la Couronne dans toutes procédures devant la Cour sont versés au receveur général.

Versement au receveur général des dépens dus à la Couronne

Exception

(2) All fees payable in respect of proceedings in the Court shall be paid to the Receiver

(2) Les frais occasionnés par les procédures devant la Cour sont payables au receveur général.

Exception

General unless those fees are, in accordance with an arrangement made by the Minister of Justice, to be received and dealt with in the same manner as amounts paid as provincial court fees, in which case they shall be dealt with as so provided.

ral sauf si s'applique à leur égard un arrangement conclu par le ministre de la Justice, aux termes duquel ils doivent être perçus et traités de la même façon que les sommes payées à titre de frais judiciaires dans une affaire relevant d'un tribunal provincial.

Costs against the Crown to be paid out of C.R.F.

(3) There shall be paid out of the Consolidated Revenue Fund any money or costs awarded to any person against the Crown in any proceedings in the Court. R.S., c. 10(2nd Supp.), s. 57.

(3) Les sommes d'argent ou dépens adjugés à une personne contre la Couronne, dans toutes procédures devant la Cour, sont prélevés sur le Trésor. S.R., ch. 10(2<sup>e</sup> suppl.), art. 57.

Prélèvement sur le Trésor des dépens dus par la Couronne

Law reports editor

58. (1) The Minister of Justice shall appoint or designate a fit and proper person to be editor of the official reports of the decisions of the Court and may appoint a committee of not more than five persons to advise the editor.

58. (1) Le ministre de la Justice nomme ou désigne au poste d'arrêviste une personne qualifiée chargée d'éditer le recueil des décisions de la Cour; il peut aussi nommer un comité de cinq personnes au plus pour conseiller l'arrêviste.

Arrêviste

Contents

(2) Only such of the decisions of the Court or such parts of such decisions as, in the opinion of the editor, are of sufficient significance or importance to warrant publication in the official reports shall be included therein.

(2) Ne sont publiés dans le recueil que les décisions ou les extraits de décisions de la Cour considérés par l'arrêviste comme présentant suffisamment d'importance ou d'intérêt.

Contenu du recueil

Printing and distribution

(3) The official reports shall be printed and shall be distributed with or without charge as the Governor in Council may direct.

(3) Le recueil est imprimé et distribué, gratuitement ou non, selon les instructions du gouverneur en conseil.

Impression et distribution

Official languages

(4) Each decision reported in the official reports shall be published therein in both official languages. R.S., c. 10(2nd Supp.), s. 58.

(4) Les décisions publiées dans le recueil le sont dans les deux langues officielles. S.R., ch. 10(2<sup>e</sup> suppl.), art. 58.

Langues officielles

Police force

59. Such services or assistance in connection with the conduct of the Court's hearings, the security of the Court, its premises and staff or the execution of its orders and judgments as may, having regard to the circumstances, be found necessary shall be provided, at the request of the Chief Justice, by the Royal Canadian Mounted Police or such other police force as the Governor in Council may designate. R.S., c. 10(2nd Supp.), s. 59.

59. Les services ou l'assistance qui peuvent, compte tenu des circonstances, être jugés nécessaires, en ce qui concerne la conduite des débats de la Cour, la sécurité de ses membres, de ses locaux et de son personnel, ou l'exécution de ses ordonnances et jugements, sont fournis, à la demande du juge en chef, par la Gendarmerie royale du Canada ou tout autre corps policier que le gouverneur en conseil peut désigner. S.R., ch. 10(2<sup>e</sup> suppl.), art. 59.

Police

SCHEDULE

(Section 48)

IN THE FEDERAL COURT OF CANADA TRIAL DIVISION

BETWEEN

A.B.

Plaintiff

and

Her Majesty the Queen

Defendant

STATEMENT OF CLAIM

or

DECLARATION

(N.B. Either title may be used)

Facts

(State with convenient certainty the facts on which the plaintiff relies as entitling him to relief.)

Relief Sought

The plaintiff therefore claims as follows:

(a)

(b)

Dated at ..... the ..... day of ....., 19.....

(Signature)  
Counsel for Plaintiff  
(or the plaintiff himself  
if he acts for himself)

R.S., c. 10(2nd Supp.), Sch. I.

ANNEXE

(article 48)

COUR FÉDÉRALE DU CANADA SECTION DE PREMIÈRE INSTANCE

ENTRE

A.B.

Demandeur

et

Sa Majesté la Reine

Défenderesse

DÉCLARATION

Exposé des faits

(Exposer convenablement les faits invoqués par le demandeur à l'appui de sa demande.)

Réparation visée

En conséquence, le demandeur requiert :

a)

b)

Fait à ..... le .....

(Signature)  
Avocat du demandeur  
(ou le demandeur en personne  
s'il agit lui-même)

S.R., ch. 10(2<sup>e</sup> suppl.), ann. I.

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## FEDERAL COURTS ACT

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### FEDERAL COURT ACT

- R.S.C. 1985, Chap. F-7  
Amended R.S.C. 1985, c. 41 (1st Supp.), s. 11(1) and (2)  
Amended R.S.C. 1985, c. 30 (2nd Supp.), s. 61  
Amended R.S.C. 1985, c. 16 (3rd Supp.), s. 7  
Amended R.S.C. 1985, c. 51 (4th Supp.), ss. 10 to 12  
Amended 1990, c. 8, s. 1 to 19 and 78(1)); brought into force February 1, 1992 by SI/92-6, *Can. Gaz., Part II*, January 1, 1992  
Amended 1990, c. 37, s. 34; brought into force April 20, 1993  
Amended 1992, c. 1, s. 68; in force February 28, 1992  
Amended 1992, c. 26, s. 17; brought into force August 28, 1992 by SI/92-157, *Can. Gaz., Part II*, September 9, 1992  
Amended 1992, c. 33, s. 69; brought into force May 9, 1995 by SI/95-61, *Can. Gaz., Part II*, May 31, 1995  
Amended 1992, c. 49, ss. 127 and 128; brought into force February 1, 1993  
Amended 1993, c. 27, s. 214; in force June 10, 1993  
Amended 1993, c. 34, s. 70; to come into force when 1992, c. 33, s. 69 is brought into force; in force May 9, 1995  
Amended 1996, c. 10, s. 229; brought into force July 1, 1996 by SI/96-53, *Can. Gaz., Part II*, June 26, 1996  
Amended 1996, c. 22, s. 1; deemed in force November 28, 1995  
Amended 1996, c. 23, s. 187(c); in force June 30, 1996  
Amended 1996, c. 31, ss. 82 to 84; brought into force January 31, 1997 by SI/97-21, *Can. Gaz., Part II*, February 5, 1997  
Amended 1998, c. 26, s. 73; brought into force January 1, 1999 by SI/99-2, *Can. Gaz., Part II*, January 6, 1999  
Amended 1999, c. 31, s. 92; in force June 17, 1999  
Amended 2001, c. 6, s. 115; in force August 8, 2001 (as provided by s. 131(1))  
Amended 2001, c. 41, s. 95; brought into force December 24, 2001 by SI/2002-16, *Can. Gaz., Part II*, January 2, 2002  
Renamed 2002, c. 8, s. 14; brought into force July 2, 2003 by SI/2003-109, *Can. Gaz., Part II*, June 4, 2003, the FEDERAL COURTS ACT, *which see*

### FEDERAL COURTS ACT

- R.S.C. 1985, Chap. F-7  
Amended R.S.C. 1985, c. 41 (1st Supp.), s. 11(1) and (2)  
Amended R.S.C. 1985, c. 30 (2nd Supp.), s. 61  
Amended R.S.C. 1985, c. 16 (3rd Supp.), s. 7  
Amended R.S.C. 1985, c. 51 (4th Supp.), ss. 10 to 12  
Amended 1990, c. 8, s. 1 to 19 and 78(1)); brought into force February 1, 1992 by SI/92-6, *Can. Gaz., Part II*, January 1, 1992  
Amended 1990, c. 37, s. 34; brought into force April 20, 1993  
Amended 1992, c. 1, s. 68; in force February 28, 1992  
Amended 1992, c. 26, s. 17; brought into force August 28, 1992 by SI/92-157, *Can. Gaz., Part II*, September 9, 1992  
Amended 1992, c. 33, s. 69; brought into force May 9, 1995 by SI/95-61, *Can. Gaz., Part II*, May 31, 1995  
Amended 1992, c. 49, ss. 127 and 128; brought into force February 1, 1993  
Amended 1993, c. 27, s. 214; in force June 10, 1993  
Amended 1993, c. 34, s. 70; to come into force when 1992, c. 33, s. 69 is brought into force; in force May 9, 1995

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**GEN.****FEDERAL COURTS ACT**

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Amended 1996, c. 10, s. 229; brought into force July 1, 1996 by SI/96-53, *Can. Gaz., Part II*, June 26, 1996

Amended 1996, c. 22, s. 1; deemed in force November 28, 1995

Amended 1996, c. 23, s. 187(c); in force June 30, 1996

Amended 1996, c. 31, ss. 82 to 84; brought into force January 31, 1997 by SI/97-21, *Can. Gaz., Part II*, February 5, 1997

Amended 1998, c. 26, s. 73; brought into force January 1, 1999 by SI/99-2, *Can. Gaz., Part II*, January 6, 1999

Amended 1999, c. 31, s. 92; in force June 17, 1999

Amended 2001, c. 6, s. 115; in force August 8, 2001 (as provided by s. 131(1))

Amended 2001, c. 41, ss. 95 and 144(2)(a); s. 95 brought into force December 24, 2001 by SI/2002-16, *Can. Gaz., Part II*, January 2, 2002; s. 144(2) in force July 2, 2003 (as provided by the section)

Amended 2002, c. 8, ss. 13 to 58; brought into force July 2, 2003 by SI/2003-109, *Can. Gaz., Part II*, June 4, 2003

Amended 2003, c. 22, ss. 167 and 225(w); brought into force April 1, 2005 by para. (b) of SI/2005-24, *Can. Gaz., Part II*, April 6, 2005

Amended 2004, c. 7, s. 7; brought into force May 17, 2004 by SI/2004-52, *Can. Gaz., Part II*, June 2, 2004

Amended 2005, c. 46, s. 56.1; brought into force April 15, 2007 by SI/2007-43, *Can. Gaz., Part II*, April 4, 2007

Amended 2006, c. 9, ss. 5, 6, 38 and 222; s. 222 in force December 12, 2006; ss. 5 and 6 brought into force July 9, 2007 by SI/2007-75, *Can. Gaz., Part II*, July 11, 2007; s. 38 in force July 9, 2007

Amended 2006, c. 11, ss. 20 to 24; in force December 14, 2006

Amended 2008, c. 22, s. 46; in force October 16, 2008

Amended 2009, c. 21, s. 18; in force September 21, 2009

*Administered by the Department of Justice and the Attorney General*

**Generally**

*Hollandsche Aanneming Maatschappij v. "Ryan Leet" (The)* (1997), 135 F.T.R. 67 (T.D.).

The parent company of the owner of a ship subject to an action is not thereby a beneficial owner within this provision. A ship owned by the parent is not subject to arrest as a sister ship owned by the subsidiary.

*Schenmann v. Gluppe* (1998), 84 A.C.W.S. (3d) 2 (F.C.T.D.).

The Act does not give the court the discretion to treat an action as an application for judicial review.

**Long Title**

Replaced 2002, c. 8, s. 13:

**An Act respecting the Federal Court of Appeal and the Federal Court**

**Section 1**

Replaced 2002, c. 8, s. 14:

**1. This Act may be cited as the *Federal Courts Act*.**

**Section 2**

Renumbered as subsec. (1) 1990, c. 8, s. 1(1).

Subsec. (1) definition "Associate Chief Justice" repealed 2002, c. 8, s. 15(1).

Subsec. (1) definition "Chief Justice" repealed 2002, c. 8, s. 15(1).

Subsec. (1) definition "Court" repealed 2002, c. 8, s. 15(1).

Subsec. (1) definition "Court of Appeal" repealed 2002, c. 8, s. 15(1).

Subsec. (1) definition "federal board, commission or other tribunal" re-enacted 1990, c. 8, s. 1(3); replaced 2002, c. 8, s. 15(2):

**"federal board, commission or other tribunal" means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the *Constitution Act, 1867*;**

Subsec. (1) definition "Federal Court of Appeal" repealed 2002, c. 8, s. 15(1).

Subsec. (1) definition "judge" repealed 2002, c. 8, s. 15(1).

Subsec. (1) definition "Registry" new 2002, c. 8, s. 15(3):

**"Registry" means a registry established by the Chief Administrator of the Courts Administration Service pursuant to the *Courts Administration Service Act* for the purposes of this Act.**

Subsec. (1) definition "ship" re-enacted 1990, c. 8, s. 1(3); replaced 2001, c. 6, s. 115:

**"ship" means any vessel or craft designed, used or capable of being used solely or partly for navigation, without regard to method or lack of propulsion, and includes**

**(a) a ship in the process of construction from the time that it is capable of floating, and**

**(b) a ship that has been stranded, wrecked or sunk and any part of a ship that has broken up;**

Definition "Supreme Court" repealed 1990, c. 8, s. 1(2).

Subsec. (1) definition "Trial Division" repealed 2002, c. 8, s. 15(1).

Subsec. (2) enacted 1990, c. 8, s. 1(4); re-enacted 2004, c. 7, s. 7 (however s. 7 replaced by 2004, c. 7, s. 38); re-enacted 2006, c. 9, s. 5; replaced 2006, c. 9, s. 38:

**(2) For greater certainty, the expression "federal board, commission or other tribunal", as defined in subsection (1), does not include the Senate, the House of Commons, any committee or member of either House, the Senate Ethics Officer or the Conflict of Interest and Ethics Commissioner with respect to the exercise of the jurisdiction or powers referred to in sections 41.1 to 41.5 and 86 of the *Parliament of Canada Act*.**

*Musqueam Indian Band v. Canada (Governor in Council)*, [2004] 4 F.C.R. 391, 13 Admin. L.R. (4th) 313, [2004] 3 C.N.L.R. 252, 205 F.T.R. 9 (F.C.).

The federal Crown, the Governor in Council, the Treasury Board and the Minister of Fisheries and Oceans had the status of a federal board, commission or other tribunal that was subject to judicial review proceedings. A Federal board, commission or other tribunal encompassed any body that exercised jurisdiction or powers under a federal statute.



Subsec. (1) definition "Canadian maritime law" *Q.N.S. Paper Co. v. Chartwell Shipping Ltd.*, [1989] 2 S.C.R. 683, 62 D.L.R. (4th) 36, 26 Q.A.C. 81, 101 N.R.1.

The definition of "Canadian maritime law" includes all claims dealing with maritime matters and is not frozen by pre-existing admiralty jurisdiction. It encompasses the maritime law of England including the common law principles of tort, contract, agency and bailment.

Subsec. (1) definition "Crown" *Greeley v. "Tami Joan" (The)* (1996), 113 F.T.R. 66 (T.D.).

"Crown" is intended to refer to Her Majesty in right of Canada, implicitly excluding Her Majesty in right of a Province.

Subsec. (1) definition "federal board" *Frank v. Bottle*, [1994] 2 C.N.L.R. 45, 65 F.T.R. 89 (T.D.).

An Indian tribe council is a "federal board, commission or tribunal" within the meaning of s. 2 of the *Federal Court Act*.

Subsec. (1) definition "federal board, commission or other tribunal" *McCabe v. Canada (Attorney General)*, [2001] 3 F.C. 430, 199 D.L.R. (4th) 341, 33 Admin. L.R. (3d) 296, 204 F.T.R. 49, 41 C.R. (5th) 388 (T.D.).

The National Parole Board was a "federal board" as a result of exercising its statutory powers under the *Corrections and Conditional Release Act* (Can.).

Subsec. (1) definition "federal board, commission or other tribunal" *DRL Vacations Ltd. v. Halifax Port Authority*, [2006] 3 F.C.R. 516, 274 F.T.R. 293.

The specific powers being exercised was the determining factor, as an entity could be a federal board for certain purposes and not for others. Here, there was clearly a connection between the Port Authority and the federal crown.

Subsec. (1) *Saskatchewan Wheat Pool v. Canada (Attorney General)* (1993), 67 F.T.R. 98, 107 D.L.R. (4th) 190, 17 Admin. L.R. (2d) 243 (T.D.).

The term "federal board" includes the Governor in Council when acting pursuant to a statute.

*Fuchs v. Canada*, [1997] 2 C.T.C. 246, 98 D.T.C. 6560, 129 F.T.R. 168 (T.D.).

The court concluded that the Minister's collection officer could be considered a "federal board, commission or other tribunal".

*Canadian Restaurant and Foodservices Assn. v. Canadian Dairy Commission*, [2001] 3 F.C. 20, 200 F.T.R. 138 (T.D.).

The words "conferred by or under an Act of Parliament" mean that the source of jurisdiction must be found in an Act of Parliament.

*Black v. Canada (Prime Minister)* (2001), 199 D.L.R. (4th) 228, 54 O.R. (3d) 215, 147 O.A.C. 141 *sub nom. Black v. Chretien* (C.A.).

The phrase "by or under an order made pursuant to a prerogative of the Crown" in s. 2(1) of the *Federal Court Act* can be construed to mean that the phrase "an order" modifies both "by" and "under", or that it modifies only "under". A fair reading of the section suggests that the first interpretation is preferable. In any event, to oust the jurisdiction of provincial superior courts, explicit statutory language is required and such language is lacking.

### Section 3

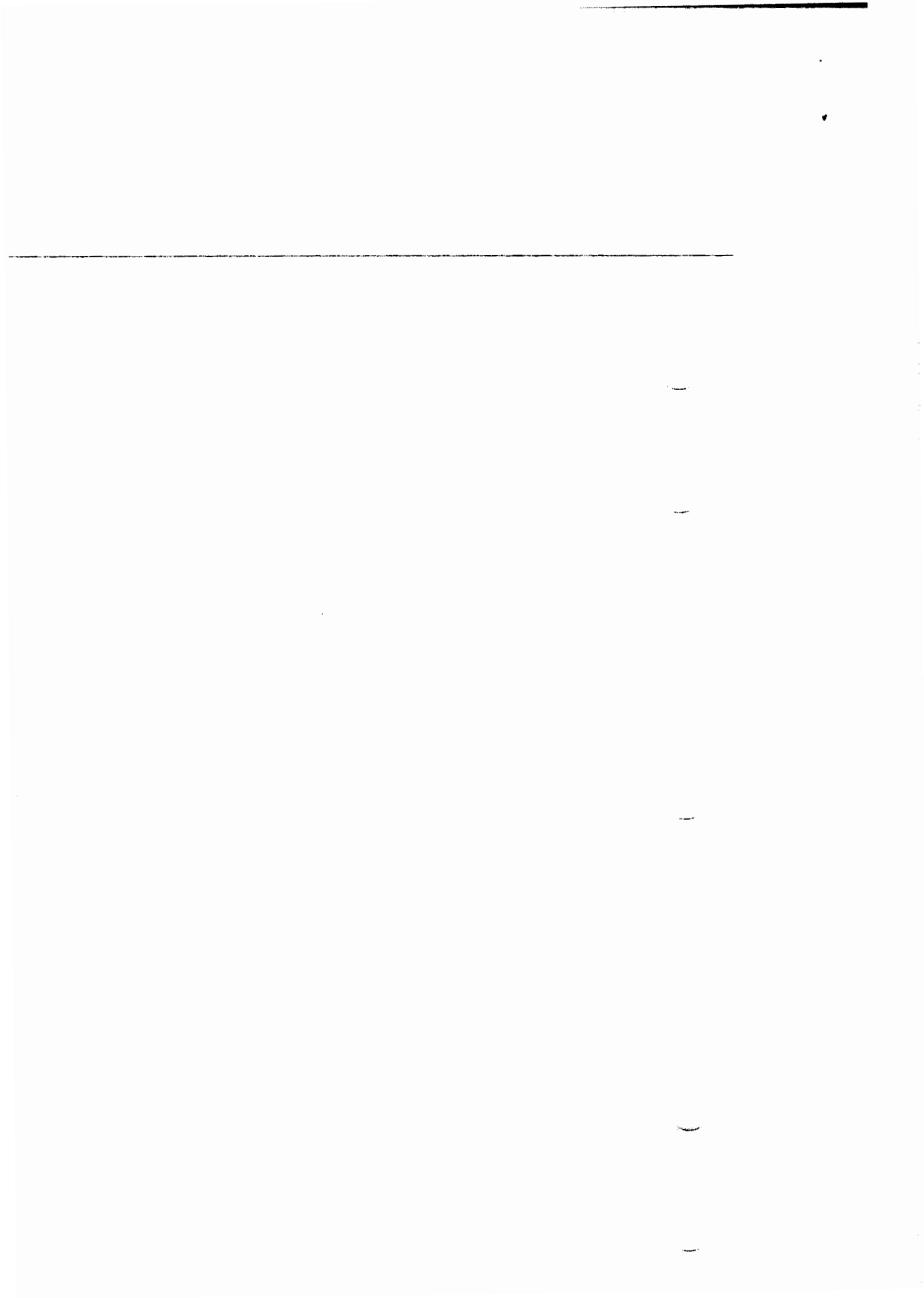
Replaced, with heading, 2002, c. 8, s. 16:

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**THE COURTS**

**3. The division of the Federal Court of Canada called the Federal Court — Appeal Division is continued under the name "Federal Court of Appeal" in English**

*(The next page is F5-5)*



and "Cour d'appel fédérale" in French. It is continued as an additional court of law, equity and admiralty in and for Canada, for the better administration of the laws of Canada and as a superior court of record having civil and criminal jurisdiction.

#### Section 4

Replaced 2002, c. 8, s. 16:

4. The division of the Federal Court of Canada called the Federal Court — Trial Division is continued under the name "Federal Court" in English and "Cour fédérale" in French. It is continued as an additional court of law, equity and admiralty in and for Canada, for the better administration of the laws of Canada and as a superior court of record having civil and criminal jurisdiction.

#### Section 5

Amended R.S.C. 1985, c. 41 (1st Supp.), s. 11(1), (2), as to subsec. (1) by re-enacting subsec. (1)(c), and as to subsec. (2) by re-enacting subsec. (6); amended 1992, c. 49, s. 127(1), (2), as to subsec. (1) by re-enacting subsec. (1)(c), and as to subsec. (2) by re-enacting subsec. (6); amended 1996, c. 22, s. 1 by re-enacting subsec. (5); amended 2001, c. 41, ss. 95(1), (2), and 144(2), as to subsec. (1) by re-enacting subsec. (1)(c), as to subsec. (2) by re-enacting subsec. (6) and as to s. 144(2)(a) by replacing subsec. (1); replaced, with heading, 2002, c. 8, s. 16:

#### THE JUDGES

5. (1) The Federal Court of Appeal consists of a chief justice called the Chief Justice of the Federal Court of Appeal, who is the president of the Federal Court of Appeal, and 12 other judges.

(2) For each office of judge of the Federal Court of Appeal, there is an additional office of supernumerary judge that a judge of the Federal Court of Appeal may elect under the *Judges Act* to hold.

(3) For the office of Chief Justice of the Federal Court of Appeal, there is an additional office of judge that the Chief Justice may elect under the *Judges Act* to hold.

(4) Every judge of the Federal Court is, by virtue of his or her office, a judge of the Federal Court of Appeal and has all the jurisdiction, power and authority of a judge of the Federal Court of Appeal.

#### Section 5.1

Enacted 2002, c. 8, s. 16; amended 2001, c. 41, s. 144(2)(b) by replacing subsec. (1):

5.1 (1) The Federal Court consists of a chief justice called the Chief Justice of the Federal Court, who is the president of the Federal Court, and 32 other judges.

(2) For each office of judge of the Federal Court, there is an additional office of supernumerary judge that a judge of the Federal Court may elect under the *Judges Act* to hold.

(3) For the office of Chief Justice of the Federal Court, there is an additional office of judge that the Chief Justice may elect under the *Judges Act* to hold.

(4) Every judge of the Federal Court of Appeal is, by virtue of that office, a judge of the Federal Court and has all the jurisdiction, power and authority of a judge of the Federal Court.

**Section 5.2**

New 2002, c. 8, s. 16:

**5.2 The judges of the Federal Court of Appeal and the Federal Court are to be appointed by the Governor in Council by letters patent under the Great Seal.**

**Section 5.3**

New 2002, c. 8, s. 16:

**5.3 A person may be appointed a judge of the Federal Court of Appeal or the Federal Court if the person**

- (a) is or has been a judge of a superior, county or district court in Canada;**
- (b) is or has been a barrister or advocate of at least 10 years standing at the bar of any province; or**
- (c) has, for at least 10 years,**
  - (i) been a barrister or advocate at the bar of any province, and**
  - (ii) after becoming a barrister or advocate at the bar of any province, exercised powers and performed duties and functions of a judicial nature on a full-time basis in respect of a position held under a law of Canada or a province.**

**Section 5.4**

Enacted 2002, c. 8, s. 16; replaced 2006, c. 11, s. 20:

**5.4 At least five of the judges of the Federal Court of Appeal and at least 10 of the judges of the Federal Court must be persons who have been judges of the Court of Appeal or of the Superior Court of the Province of Quebec, or have been members of the bar of that Province.**

**Section 6**

Re-enacted 2002, c. 8, s. 16; amended 2006, c. 11, s. 21 by replacing subsec. (2):

**6. (1) The Chief Justices of the Federal Court of Appeal and the Federal Court and the other judges of those courts have rank and precedence among themselves in the following order:**

- (a) the Chief Justice of the Federal Court of Appeal;**
- (b) the Chief Justice of the Federal Court;**
- (c) the other judges of the Federal Court of Appeal, according to seniority determined by reference to the respective times when they became judges of the Federal Court of Canada or the Federal Court of Appeal; and**
- (d) the other judges of the Federal Court, according to seniority determined by reference to the respective times when they became judges of the Federal Court of Canada or the Federal Court.**

**(2) If the office of Chief Justice of the Federal Court of Appeal or the office of the Chief Justice of the Federal Court is vacant, or the Chief Justice of either court is absent from Canada or is for any reason unable or unwilling to act, the powers and duties of the Chief Justice shall be exercised and performed by**

- (a) the judge of the Federal Court of Appeal or of the Federal Court, as the case may be, who has been designated for that purpose by the Chief Justice of that Court; or**

(b) if no judge has been so designated, or if the judge so designated is absent from Canada or is unable or unwilling to act, the senior judge of the same court who is in Canada and is able and willing to act and who has not elected to hold office as a supernumerary judge under section 28 of the *Judges Act*.

#### Section 7

Amended 2002, c. 8, s. 17 by replacing subsec. (1); amended 2006, c. 11, s. 22 by replacing subsec. (2):

7. (1) The judges of the Federal Court of Appeal and the Federal Court shall reside in the National Capital Region described in the schedule to the *National Capital Act* or within 40 kilometres of that Region.

(2) Notwithstanding subsection (1), the Rules may provide for a rota of judges in order to ensure continuity of judicial availability in any centre where the volume of work or other circumstances make such an arrangement expedient.

#### Section 8

Amended R.S.C. 1985, c. 16 (3rd Supp.), s. 7(1) by re-enacting subsec. (2) and adding subsec. (3) (subsec. (2), as enacted by s. 7(1), deemed in force April 17, 1985); amended 2002, c. 8, s. 18 by replacing subsections (1) and (2):

8. (1) Subject to subsection (2), the judges of the Federal Court of Appeal and the Federal Court hold office during good behaviour, but are removable by the Governor General on address of the Senate and House of Commons.

(2) A judge of the Federal Court of Appeal or the Federal Court ceases to hold office on becoming 75 years old.

(3) A judge who holds office on March 1, 1987 may retire at the age of seventy years.

#### Section 9

Replaced 2002, c. 8, s. 19:

9. (1) Before judges of the Federal Court of Appeal or the Federal Court begin to perform their duties as judges, they shall take an oath that they will duly and faithfully execute their powers and trusts as judges to the best of their skill and knowledge.

(2) The oath shall be administered to the Chief Justice of the Federal Court of Appeal before the Governor General, and to the other judges of that court by the Chief Justice of that court or, in the absence or incapacity of the Chief Justice, by any other judge of that court.

(3) The oath shall be administered to the Chief Justice of the Federal Court before the Governor General, and to the other judges of that court by the Chief Justice of that court or, in the absence or incapacity of the Chief Justice, by any other judge of that court.

#### Section 10

Replaced 2002, c. 8, s. 19:

10. (1) Subject to subsection (3), any judge of a superior, county or district court in Canada, and any person who has held office as a judge of a superior, county or district court in Canada, may, at the request of the Chief Justice of the Federal Court of Appeal made with the approval of the Governor in Council, act as a judge

of the Federal Court of Appeal, and while so acting has all the powers of a judge of that court and shall be referred to as a deputy judge of that court.

(1.1) Subject to subsection (3), any judge of a superior, county or district court in Canada, and any person who has held office as a judge of a superior, county or district court in Canada, may, at the request of the Chief Justice of the Federal Court made with the approval of the Governor in Council, act as a judge of the Federal Court, and while so acting has all the powers of a judge of that court and shall be referred to as a deputy judge of that court.

(2) No request may be made under subsection (1) or (1.1) to a judge of a superior, county or district court in a province without the consent of the chief justice or chief judge of the court of which he or she is a member, or of the attorney general of the province.

(3) The Governor in Council may approve the making of requests under subsection (1) or (1.1) in general terms or for particular periods or purposes, and may limit the number of persons who may act under this section.

(4) A person who acts as a judge of a court under subsection (1) or (1.1) shall be paid a salary for the period that the judge acts, at the rate fixed by the Judges Act for a judge of the court other than the Chief Justice of the court, less any amount otherwise payable to him or her under that Act in respect of that period, and shall also be paid the travel allowances that a judge is entitled to be paid under the *Judges Act*.

#### Section 10.1

New 2002, c. 8, s. 19:

10.1 The judges of the Federal Court of Appeal shall meet at least once in each year, on a day fixed by the Chief Justice of the court, in order to consider this Act, the Rules and the administration of justice, as shall the judges of the Federal Court on a day fixed by the Chief Justice of that court.

#### Section 11

Replaced, with heading, 2002, c. 8, s. 19:

##### BARRISTERS, ADVOCATES, ATTORNEYS AND SOLICITORS

11. (1) Every person who is a barrister or an advocate in a province may practise as a barrister or an advocate in the Federal Court of Appeal or the Federal Court.

(2) Every person who is an attorney or a solicitor in a superior court of a province may practise as an attorney or a solicitor in the Federal Court of Appeal or the Federal Court.

(3) Every person who may practise as a barrister, an advocate, an attorney or a solicitor in the Federal Court of Appeal or the Federal Court is an officer of that Court.

#### Section 12

Amended 2002, c. 8, s. 20(1), (2), as to subsec. (1) by replacing subsec. (1) and as to subsec. (2) by adding subsecs. (6) to (8); amended 2003, c. 22, s. 225(w) (however that amendment itself, replaced by 2003, c. 22, s. 263) by replacing the expression "Public Service" with the expression "public service", other than in the expressions "Public Service corporation", "*Public Service Employment Act*", "Public Service Pension Fund"

and "*Public Service Superannuation Act*" in subsec. (5); amended 2006, c. 11, s. 23 by repealing subsec. (2):

12. (1) The Governor in Council may appoint as prothonotaries of the Federal Court any fit and proper persons who are barristers or advocates in a province and who are, in the opinion of the Governor in Council, necessary for the efficient performance of the work of that court that, under the Rules, is to be performed by them.

. . . . .

(6) A prothonotary shall have the same immunity from liability as a judge of the Federal Court.

(7) A prothonotary shall hold office during good behaviour but may be removed by the Governor in Council for cause.

(8) A prothonotary, whether appointed before or after the coming into force of this subsection, shall cease to hold office on becoming 75 years old.

### Section 13

Amended 2002, c. 8, s. 21(1) and (2), as to subsec. (1) by replacing subssecs. (1) and (2), and as to subsec. (2) by replacing subsec. (4):

13. (1) The Governor in Council may appoint a sheriff of the Federal Court of Appeal and of the Federal Court for any geographical area.

(2) If no sheriff is appointed under subsection (1) for a court for a geographical area, the sheriff and deputy sheriffs of the county or other judicial division or part of the county within that geographical area who are appointed under provincial law are *ex officio* sheriff and deputy sheriffs, respectively, of the Federal Court of Appeal and of the Federal Court.

. . . . .

(4) Every sheriff of the Federal Court of Appeal and of the Federal Court is *ex officio* a marshal of that court and every deputy sheriff of the Federal Court of Appeal and of the Federal Court is *ex officio* a deputy marshal of that court.

Subsec. (1) *Iscar Ltd. v. Karl Hertel GmbH*, [1989] 3 F.C. 479, 25 C.P.R. (3d) 116, 24 C.I.P.R. 202, 27 F.T.R. 186 (T.D.).

Prothonotary has jurisdiction to hear motion to strike claim as disclosing no reasonable cause of action. Such motion is interlocutory under Rule 336(1) and jurisdiction is not restricted to judge by virtue of ss. 2, 5.

### Section 14

Replaced, with heading, 2002, c. 8, s. 22:

#### JUDICIAL ADMINISTRATORS

14. (1) The Chief Justice of the Federal Court of Appeal may designate an employee of the Service as the Judicial Administrator of the Federal Court of Appeal, and the Chief Justice of the Federal Court may designate an employee of the Courts Administration Service as the Judicial Administrator of the Federal Court.

(2) The Judicial Administrator of the Federal Court of Appeal shall perform any non-judicial work that may be delegated to him or her by the Chief Justice of that court, in accordance with the instructions given by the Chief Justice, including



(a) the making of an order fixing the time and place of a hearing, or adjourning a hearing;

(b) arranging for the distribution of judicial business in the court; and

(c) arranging from time to time for the establishment of any panels of judges of the court that are necessary.

(3) The Judicial Administrator of the Federal Court shall perform any non-judicial work that may be delegated to him or her by the Chief Justice of that court, in accordance with the instructions given by the Chief Justice, including

(a) the making of an order fixing the time and place of a trial or hearing, or adjourning a trial or hearing; and

(b) arranging for the distribution of judicial business in the court.

(4) A designation made under subsection (1) may be revoked at any time and is automatically revoked when the Chief Justice by whom it was made ceases to hold office as Chief Justice.

#### Section 15

Replaced 2002, c. 8, s. 23:

15. (1) Subject to the Rules, any judge of the Federal Court may sit and act at any time and at any place in Canada for the transaction of the business of the court or any part of it and, when a judge so sits or acts, the judge constitutes the court.

(2) Subject to the Rules, the Chief Justice of the Federal Court shall make all arrangements that may be necessary or proper for the holding of courts, or otherwise for the transaction of business of the Federal Court, and the arrangements from time to time of judges to hold the courts or to transact that business.

(3) The trial or hearing of any matter in the Federal Court may, by order of that court, take place partly at one place and partly at another.

#### Section 16

Amended 1990, c. 8, s. 2 by re-enacting subsec. (1); replaced 2002, c. 8, s. 23:

16. (1) Except as otherwise provided in this Act or any other Act of Parliament, every appeal and every application for leave to appeal to the Federal Court of Appeal, and every application for judicial review or reference to that court, shall be heard in that court before not fewer than three judges sitting together and always before an uneven number of judges. Otherwise, the business of the Federal Court of Appeal shall be dealt with by such judge or judges as the Chief Justice of that court may arrange.

(2) The Chief Justice of the Federal Court of Appeal shall designate the judges to sit from time to time and the appeals or matters to be heard by them.

(3) The place of each sitting of the Federal Court of Appeal shall be arranged by the Chief Justice of that court to suit, as nearly as may be, the convenience of the parties.

(4) A judge shall not sit on the hearing of an appeal from a judgment he or she has pronounced.

(5) The Chief Justice of the Federal Court of Appeal, when present at any sittings of that court, shall preside and, in the absence of the Chief Justice, the senior judge of that court who is present shall preside.

## Section 17

Heading preceding section replaced 2002, c. 8, s. 24.

Amended 1990, c. 8, s. 3(1) to (4), as to subsec. (1) by re-enacting subssecs. (1) and (2), as to subsec. (2) by re-enacting subsec. (4), as to subsec. (3) by re-enacting subsec. (5)(b) and as to subsec. (4) by re-enacting subsec. (6); amended 2002, c. 8, s. 25(1) to (5), as to subsec. (1) by replacing subsec. (1), as to subsec. (2) by replacing the portion of subsec. (2) preceding para. (a), as to subsec. (3) by replacing subssecs. (3) and (4), as to subsec. (4) by replacing the portion of subsec. (5) preceding para. (a), and as to subsec. (5) by replacing subsec. (6):

## JURISDICTION OF FEDERAL COURT

17. (1) Except as otherwise provided in this Act or any other Act of Parliament, the Federal Court has concurrent original jurisdiction in all cases in which relief is claimed against the Crown.

(2) Without restricting the generality of subsection (1), the Federal Court has concurrent original jurisdiction, except as otherwise provided, in all cases in which

- (a) the land, goods or money of any person is in the possession of the Crown;
- (b) the claim arises out of a contract entered into by or on behalf of the Crown;
- (c) there is a claim against the Crown for injurious affection; or
- (d) the claim is for damages under the *Crown Liability and Proceedings Act*.

(3) The Federal Court has exclusive original jurisdiction to hear and determine the following matters:

(a) the amount to be paid if the Crown and any person have agreed in writing that the Crown or that person shall pay an amount to be determined by the Federal Court, the Federal Court — Trial Division or the Exchequer Court of Canada; and

(b) any question of law, fact or mixed law and fact that the Crown and any person have agreed in writing shall be determined by the Federal Court, the Federal Court — Trial Division or the Exchequer Court of Canada.

(4) The Federal Court has concurrent original jurisdiction to hear and determine proceedings to determine disputes in which the Crown is or may be under an obligation and in respect of which there are or may be conflicting claims.

(5) The Federal Court has concurrent original jurisdiction

. . . . .

(b) in proceedings in which relief is sought against any person for anything done or omitted to be done in the performance of the duties of that person as an officer, servant or agent of the Crown.

(6) If an Act of Parliament confers jurisdiction in respect of a matter on a court constituted or established by or under a law of a province, the Federal Court has no jurisdiction to entertain any proceeding in respect of the same matter unless the Act expressly confers that jurisdiction on that court.

*Rudolph Wolff & Co. v. Canada*, [1990] 1 S.C.R. 695, 69 D.L.R. (4th) 392, 39 O.A.C. 1, 43 Admin. L.R. 1, 41 C.P.C. (2d) 1, 46 C.R.R. 263, 106 N.R. 1.

This provision does not violate s. 15 of the *Canadian Charter of Rights and Freedoms*. The Crown is not an individual subject to comparison with others. Persons having claims against the Crown are not a disadvantaged group within the meaning of s. 15.

*Greeley v. "Tami Joan" (The)* (1996), 63 A.C.W.S. (3d) 1272 (F.C.T.D.).

"Crown" intended to refer to Her Majesty in right of Canada, implicitly excluding Her Majesty in right of a Province.

Subsec. (2)(a), (b) *Ontario Cruisemarine Ltd. v. Canada* (1990), 35 F.T.R. 241 (T.D.).

The Federal Court had jurisdiction in a case where complaints of the plaintiff were that its property adhered to the land of the Crown in a manner unjustly enriching the Crown and that contracts entered into by the Commission on behalf of the Crown had either been breached or were in need of rectification.

Subsec. (2)(b) *Williams v. Walpole Island Band*, [1990] 4 C.N.L.R. 116 (Ont. Dist. Ct.).

The fact that a Band Council acts under the authority of the *Indian Act* does not equate with the conclusion that the Council enters into contracts "on behalf of the Crown".

### Section 18

Re-enacted 1990, c. 8, s. 4; amended 2002, c. 8, s. 26(1) and (2), as to subsec. (1) by replacing the portion of subsec. (1) preceding para. (a) and as to subsec. (2) by replacing subsec. (2):

**18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction**

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

(2) The Federal Court has exclusive original jurisdiction to hear and determine every application for a writ of *habeus corpus ad subjiciendum*, writ of *certiorari*, writ of prohibition or writ of *mandamus* in relation to any member of the Canadian Forces serving outside Canada.

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.

*Cree Regional Authority v. Canada (Federal Administrator)* (1991), 81 D.L.R. (4th) 659, [1991] 3 F.C. 533 *sub nom. Quebec (Procureur General) v. Cree Regional Authority*, 43 F.T.R. 240n, 1 Admin. L.R. (2d) 173, [1991] 3 C.N.L.R. 82, 127 N.R. 52 (C.A.).

The administrator, appointed to implement an agreement for developmental control of Northern Quebec, was a board within this provision, where the agreement was confirmed by legislation, so that his decisions and steps taken in implementation of the agreement were reviewable by the court.

*Chapman v. Chicago* (1991), 5 O.R. (3d) 220, 52 O.A.C. 308 (Gen. Div.).

An Indian band is not a federal board or tribunal.

*Donald v. Canada (National Parole Board)* (1992), 15 W.C.B. (2d) 237 (B.C.S.C.).

Although s. 18 confers exclusive jurisdiction over a review of decisions of federal bodies to the Federal Court, provincial superior courts retain jurisdiction by way of *habeas corpus* to review the validity of a detention imposed by the Parole Board.

*Alberta v. Canadian Wheat Board* (Alberta v. Canadian Wheat Board, [1998] 2 F.C. 156, 138 F.T.R. 186, 2 Admin. L.R. (3d) 187 (T.D.), affd 159 F.T.R. 160n, 13 Admin. L.R. (3d) 4, 234 N.R. 74 (C.A.).

The grain delivery program of the Canadian Wheat Board was not a "matter" within the meanings of ss. 18 and 18.1 and was not subject to judicial review.

*Canada v. Mid-Atlantic Minerals Inc.* (2001), 206 F.T.R. 161 (T.D.), appeal allowed in part [2003] 1 F.C. 168, 223 F.T.R. 252 (T.D.), affd 247 F.T.R. 160n, 316 N.R. 323 (C.A.).

The plaintiff brought an action on account. The defendant claimed that the regulations were in part discriminatory and illegal. The court held that it was not necessary for the defendant to file an application for judicial review for recognition of its allegations. There is nothing in this section requiring a defendant to launch a preventive challenge to a plaintiff's "decision" to claim a sum of money from it.

*Horseman v. Horse Lake First Nation* (2002), 218 D.L.R. (4th) 523, 323 A.R. 81 (Alta. Q.B.).

For a subject matter to be given to the Federal Court under ss. 18 and 18.1, there had to be a statutory grant of jurisdiction by Parliament to the Federal Court; there had to be an existing body of federal law which was essential to the disposition of the case and which nourished the statutory grant of jurisdiction; and the law on which the case was based had to be a law of Canada.

*Musqueam Indian Band v. Canada (Governor in Council)* (2004), 13 Admin. L.R. (4th) 313, [2004] 3 C.N.L.R. 252 (F.C.).

the federal Crown, the Governor in Council, the Treasury Board and the Minister of Fisheries and Oceans had the status of a federal board, commission or other tribunal that was subject to judicial review proceedings. A Federal board, commission or other tribunal encompassed any body that exercised jurisdiction or powers under a federal statute.

Subsec. (3) *Schemmann v. Gluppe* (1998), 84 A.C.W.S. (3d) 2 (F.C.T.D.).

This provision stipulates that extraordinary remedies, which include injunctions against federal boards, commissions or other tribunals, may only be obtained on application for judicial review under s. 18.1 of the Act.

Subsec. (3) *Twenion v. Canada* (1999), 177 F.T.R. 249 (T.D.).

*Certiorari* could be obtained only on application for judicial review pursuant to this subsection.

### Section 18.1

Enacted 1990, c. 8, s. 5; amended 2002, c. 8, s. 27(1) to (4), as to subsec. (1) by replacing subsec. (2), as to subsec. (2) by replacing the portion of subsec. (3) preceding para. (a), as to subsec. (3) by replacing the portion of subsec. (4) preceding para. (a) and as to (4) by replacing subsec. (5):

**18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.**

**(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.**

(3) On an application for judicial review, the Federal Court may

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

(e) acted, or failed to act, by reason of fraud or perjured evidence; or

(f) acted in any other way that was contrary to law.

(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may

(a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and

(b) in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.

*Alberta v. Canadian Wheat Board*, [1998] 2 F.C. 156, 138 F.T.R. 186, 2 Admin. L.R. (3d) 187 (T.D.), affd 159 F.T.R. 160n, 13 Admin. L.R. (3d) 4, 234 N.R. 74 (C.A.).

The grain delivery program of the Canadian Wheat Board was not a "matter" within the meanings of ss. 18 and 18.1 and was not subject to judicial review.

*Mennes v. Canada (Attorney General)* (1998), 149 F.T.R. 317, 9 Admin. L.R. (3d) 119 (T.D.), affd 68 F.T.R. 320n, 247 N.R. 295 (C.A.), leave to appeal to S.C.C. refused 259 N.R. 195n.

The court lacks jurisdiction to judicially review the direction of the Chief Justice.

*Monsanto Co. v. Canada (Commissioner of Patents)* (1999), 172 F.T.R. 210, 1 C.P.R. (4th) 500 (T.D.).

A notice of allowance issued by the Patent Commissioner was not a "decision" under this section. A notice is merely one of the administrative steps leading to the issuance of a patent.

*Horseman v. Horse Lake First Nation* (2002), 218 D.L.R. (4th) 523, 323 A.R. 81 (Alta. Q.B.), see s. 18, *supra*.

*Ellis v. Horgan* (2006), 151 A.C.W.S. (3d) 843, 2006 FC 1086.

An application was brought for an order requiring the Deputy Minister to answer a series of questions relating to jurisdictional issues over Indian persons and lands. A

motion to dismiss the application was allowed. There was no decision or order that could be the subject of proceedings under s. 18.1 of the Act. The section did not permit the questioning of the Minister or Deputy Minister in the absence of an underlying decision or order.

Subsec. (1) *Saskatchewan Wheat Pool v. Canada (Attorney General)* (1993), 67 F.T.R. 98, 107 D.L.R. (4th) 190, 17 Admin. L.R. (2d) 243 (T.D.).

The term "federal board" includes the Governor in Council when acting pursuant to a statute.

Subsec. (1) *Autocar Connaissanceur Inc. v. Lalancette* (1997), 136 F.T.R. 99 (T.D.).

The section which allows the Attorney General to apply for judicial review does not eliminate the procedural requirement for it to seek leave for intervener status in appropriate cases.

Subsec. (1) *Morneault v. Canada (Attorney General)* (1998), 150 F.T.R. 28, 10 Admin. L.R. (3d) 251 (T.D.), appeal allowed in part [2001] 1 F.C. 30, 189 D.L.R. (4th) 96, 32 Admin. L.R. (3d) 292, 184 F.T.R. 15n, 256 N.R. 85 (C.A.).

The Commission of Inquiry into the deployment of Canadian forces to Somalia issued a report on the pre-deployment stage, which found that the applicant was guilty of misconduct. This section enabled "anyone directly affected by the matter" to seek judicial review. The findings were extremely important to the commanding officer due to the impact of the findings on his reputation and that without review that damage could never be corrected, thereby making the findings reviewable under this section.

Subsec. (1) *Federation Franco-Tenoise v. Canada (Procureure Generale)*, [2001] 1 F.C. 241, 192 F.T.R. 220 (F.C.T.D.), revd [2001] 3 F.C. 641, 203 D.L.R. (4th) 556, 206 F.T.R. 320n, 274 N.R. 1 (F.C.A.).

Although the Government of Canada dealt with the territories as far as constitutionally possible as if it were dealing with provinces, and although Parliament had invested the territories with the attributes of genuine responsible government, the territories did not have the status of provinces and remained creatures of the federal government. The "Crown" contemplated by s. 17 was the federal Crown. It followed that the other defendants could not be the Crown for the purposes of s. 17, as they were not components of the federal executive power.

Subsec. (2) *Fan v. Canada (Minister of Citizenship and Immigration)* (1998), 152 F.T.R. 301, 44 Imm. L.R. (2d) 298 (T.D.).

The words "in respect of" in this subsection are broad enough to encompass proceedings for declaration that that section of the *Immigration Regulations*, SOR/78-172, defining "adopted", is *ultra vires* Parliament of Canada.

Subsec. (3) *Canada v. Mid-Atlantic Minerals Inc.* (2001), 206 F.T.R. 161 (T.D.), appeal allowed in part [2003] 1 F.C. 168, 223 F.T.R. 252 (T.D.), affd 247 F.T.R. 160n, 316 N.R. 323 (C.A.).

The plaintiff brought an action on account. The defendant claimed that the regulations were in part discriminatory and illegal. The court held that it was not necessary for the defendant to file an application for judicial review for recognition of its allegations. There is nothing in this section requiring a defendant to launch a preventive challenge to a plaintiff's "decision" to claim a sum of money from it.

Subsec. (3)(b) *Ali v. Canada (Minister of Employment and Immigration)*, [1994] 3 F.C. 73, 27 Admin. L.R. (2d) 110, 76 F.T.R. 182, 24 Imm. L.R. 289 (T.D.).

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**S. 18.1**

**FEDERAL COURTS ACT**

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The court quashed the decision of the Convention Refugee Determination Division that the applicant was not a Convention refugee. The court had jurisdiction under this provision to issue specific instructions to the Division concerning the result.

Subsec. (3)(b) *Vuong v. Canada (Minister of Citizenship and Immigration)* (1998), 153 F.T.R. 207, 47 Imm. L.R. (2d) 129 (T.D.).

The Federal Court, Trial Division, has jurisdiction under this section to make direction compelling the Convention Refugee Determination Division to achieve specific results. It is appropriate to make such direction where, but for legal error, an alien would necessarily be found to be a Convention refugee.

*(The next page is F5-15)*

Subsec. (4) *Morneault v. Canada (Attorney General)* (1998), 150 F.T.R. 28, 10 Admin. L.R. (3d) 251 (T.D.), appeal allowed in part [2001] 1 F.C. 30, 189 D.L.R. (4th) 96, 32 Admin. L.R. (3d) 292, 184 F.T.R. 15n, 256 N.R. 85 (C.A.).

The Commission of Inquiry into the deployment of Canadian forces to Somalia issued a report on the pre-deployment stage, which found that the applicant was guilty of misconduct. While the findings made by the Commission of Inquiry did not constitute "decisions" within the meaning of para. (d) of this section, under para. (b) an unsupported finding made in an exercise of the commission's statutory powers fell within the scope of the requirement for the observance of natural justice and procedural fairness. The findings were extremely important to the commanding officer because of their impact on his reputation.

### Section 18.2

Enacted 1990, c. 8, s. 5; replaced 2002, c. 8, s. 28:

**18.2 On an application for judicial review, the Federal Court may make any interim orders that it considers appropriate pending the final disposition of the application.**

*Strizhko v. Canada (Minister of Citizenship and Immigration)* (1998), 150 F.T.R. 244 (T.D.)

This section does not allow the court to disregard the discretion of the Minister (or of an authorized official) without the benefit of a judicial review of the decision and order him to issue forthwith a temporary permit allowing entry to Canada.

Subsec. (2) *Alberta Wilderness Assn. v. Canada (Minister of Fisheries and Oceans)* (1997), 26 C.E.L.R. (N.S.) 238, 146 F.T.R. 19 (T.D.)

It is doubtful that a review panel report under the *Canadian Environmental Assessment Act* is a decision or order under the *Federal Court Act*.

### Section 18.3

Enacted 1990, c. 8, s. 5; replaced 2002, c. 8, s. 28:

**18.3 (1) A federal board, commission or other tribunal may at any stage of its proceedings refer any question or issue of law, of jurisdiction or of practice and procedure to the Federal Court for hearing and determination.**

**(2) The Attorney General of Canada may, at any stage of the proceedings of a federal board, commission or other tribunal, other than a service tribunal within the meaning of the *National Defence Act*, refer any question or issue of the constitutional validity, applicability or operability of an Act of Parliament or of regulations made under an Act of Parliament to the Federal Court for hearing and determination.**

*Reference re: Official Languages Act* (1997), 78 A.C.W.S. (3d) 45 (F.C.T.D.)

A reference under this provision may be validly filed by a body that exercises administrative powers.

Subsec. (2) *Magee v. Canada (Human Rights Commission)* (1997), 75 A.C.W.S. (3d) 246 (F.C.T.D.)

The Attorney General was entitled "as of right", without leave, to withdraw a reference which it brought, despite another part's request to make arguments on the reference.



**Section 18.4**

Enacted 1990, c. 8, s. 5; replaced 2002, c. 8, s. 28:

**18.4 (1)** Subject to subsection (2), an application or reference to the Federal Court under any of sections 18.1 to 18.3 shall be heard and determined without delay and in a summary way.

**(2)** The Federal Court may, if it considers it appropriate, direct that an application for judicial review be treated and proceeded with as an action.

*MacInnis v. Canada (Attorney General)*, [1994] 2 F.C. 464, 113 D.L.R. (4th) 529, 25 Admin. L.R. (2d) 294, 76 F.T.R. 67, 166 N.R. 57 (C.A.).

Complexity of facts and issues were not relevant considerations. In general, this section should be used only where facts cannot be satisfactorily established or weighted through affidavit evidence.

Subsec. (2) *McLeod Lake Indian Band v. Chingee* (1998), 144 F.T.R. 198 (F.C.T.D.)

The court converted an application for judicial review into an action where the court seriously questioned whether an affidavit approach would give adequate knowledge of the practice and customs of the Indian band in choosing its chief and councillors.

Subsec. (2) *Tihomirovs v. Canada (Minister of Citizenship and Immigration)* (2005), 259 D.L.R. (4th) 534, 31 Admin. L.R. (4th) 265, 142 A.C.W.S. (3d) 713, 2005 FCA 308.

The desire to seek certification of a class action was a relevant consideration on a motion to convert the judicial review into an action under s. 18.4(2).

Subsec. (2) *Canadian Private Copying Collective v. Fuzion Technology Corp.* (2005), 47 C.P.R. (4th) 256, 143 A.C.W.S. (3d) 974, 2005 FC 1557.

The Copyright Board certified a tariff for blank audio recording media. The applicant sought recovery of the sums allegedly due from the respondents under the tariff. The proceeding was commenced by application. The applicant brought the action in Federal Court against persons who were not parties in the application. The applicant's motion to convert the application to an action was dismissed. The applicant had a choice of action or application. The applicant was not deceived or coerced into making the choice. The conversion of the applicant's own choice in proceeding by way of application to action was not justified. Section 18.4(2) of the Act was not applicable to proceedings commenced under s. 34(4) of the *Copyright Act* (Can.). Rule 107 of the *Federal Court Rules* (Can.), was not applicable. The balance of the motion was left to those who were case managing the proceedings.

**Section 18.5**

Enacted 1990, c. 8, s. 5; replaced 2002, c. 8, s. 28:

**18.5** Despite sections 18 and 18.1, if an Act of Parliament expressly provides for an appeal to the Federal Court, the Federal Court of Appeal, the Supreme Court of Canada, the Court Martial Appeal Court, the Tax Court of Canada, the Governor in Council or the Treasury Board from a decision or an order of a federal board, commission or other tribunal made by or in the course of proceedings before that board, commission or tribunal, that decision or order is not, to the extent that it may be so appealed, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with that Act.

*Brydges v. Kinsman* (1990), 36 F.T.R. 216, 90 D.T.C. 6463, [1990] C.T.C. 208 (F.C.T.D.).

Section 18.5 (formerly s. 29) deprives the Trial Division of jurisdiction to entertain s. 18 proceedings where an appeal from the assessment being challenged is provided for in the *Income Tax Act*.

*Webster v. Canada (Attorney General)*, [2004] 1 C.T.C. 168, 2003 D.T.C. 5701, 312 N.R. 235, 126 A.C.W.S. (3d) 527, 2003 FCA 388, leave to appeal to S.C.C. refused 330 N.R. 190n.

This section provided that where an Act of Parliament provided for an appeal to the Tax Court of Canada of a decision, that decision was not to be dealt with other than in accord with that Act. The *Income Tax Act* (Can.) provided that decisions that confirmed assessments were to be appealed to the Tax Court. An application in Federal Court for a judicial review of the confirmation was barred.

*Walker v. Canada* [2006] 1 C.T.C. 130, 2005 D.T.C. 5719, 144 A.C.W.S. (3d) 377, 2005 FCA 393.

In enacting this section, Parliament intended to avoid parallel proceedings in Federal Court in those instances where federal status expressly provides for an appeal in another forum.

#### Section 19

Replaced 2002, c. 8, s. 28:

**19. If the legislature of a province has passed an Act agreeing that the Federal Court, the Federal Court of Canada or the Exchequer Court of Canada has jurisdiction in cases of controversies between Canada and that province, or between that province and any other province or provinces that have passed a like Act, the Federal Court has jurisdiction to determine the controversies.**

#### Section 20

Amended 1990, c. 37, s. 34(1) and (2), as to subsec. (1) by re-enacting subsec. (1)(a) and (b) and as to subsec. (2) by re-enacting subsec. (2); amended 2002, c. 8, s. 29(1) and (2), as to subsec. (1) by replacing the portion of subsec. (1) preceding para. (a) and as to subsec. (2) by replacing subsec. (2):

**20. (1) The Federal Court has exclusive original jurisdiction, between subject and subject as well as otherwise,**

**(a) in all cases of conflicting applications for any patent of invention, or for the registration of any copyright, trade-mark, industrial design or topography within the meaning of the *Integrated Circuit Topography Act*; and**

**(b) in all cases in which it is sought to impeach or annul any patent of invention or to have any entry in any register of copyrights, trade-marks, industrial designs or topographies referred to in paragraph (a) made, expunged, varied or rectified.**

**(2) The Federal Court has concurrent jurisdiction in all cases, other than those mentioned in subsection (1), in which a remedy is sought under the authority of an Act of Parliament or at law or in equity respecting any patent of invention, copyright, trade-mark, industrial design or topography referred to in paragraph (1)(a).**

#### Section 21

Replaced 2002, c. 8, s. 30:

**21. The Federal Court has exclusive jurisdiction to hear and determine all appeals that may be brought under subsection 14(5) of the *Citizenship Act*.**

**Section 22**

Amended 1996, c. 31, s. 82 by replacing subsec. (3)(c); amended 2002, c. 8, s. 31(1) to (4), as to subsec. (1) by replacing subsec. (1), as to subsec. (2) by replacing the portion of subsec. (2) preceding para. (a), as to subsec. (3) by replacing subsec. (2)(o) and as to subsec. (4) by replacing the portion of subsec. (3) preceding para. (a):

**22. (1) The Federal Court has concurrent original jurisdiction, between subject and subject as well as otherwise, in all cases in which a claim for relief is made or a remedy is sought under or by virtue of Canadian maritime law or any other law of Canada relating to any matter coming within the class of subject of navigation and shipping, except to the extent that jurisdiction has been otherwise specially assigned.**

**(2) Without limiting the generality of subsection (1), for greater certainty, the Federal Court has jurisdiction with respect to all of the following:**

. . . . .

**(o) any claim by a master, officer or member of the crew of a ship for wages, money, property or other remuneration or benefits arising out of his or her employment;**

. . . . .

**(3) For greater certainty, the jurisdiction conferred on the Federal Court by this section applies**

. . . . .

**(c) in relation to all claims, whether arising on the high seas, in Canadian waters or elsewhere and whether those waters are naturally navigable or artificially made so, including, without restricting the generality of the foregoing, in the case of salvage, claims in respect of cargo or wreck found on the shores of those waters; and**

Subsec. (1) *Radil Bros. Fishing Co. v. Canada (Department of Fisheries and Oceans, Regional Director General)* (1999), 175 F.T.R. 182 (F.C.T.D.), revd 29 Admin. L.R. (3d) 159 *sub nom. Radil Bros. Fishing Co. v. Canada (Minister of Fisheries & Oceans)*, 197 F.T.R. 169, 101 A.C.W.S. (3d) 450 (F.C.T.D.), appeal allowed in part [2002] 2 F.C. 219, 207 D.L.R. (4th) 82, 286 N.R. 295, 109 A.C.W.S. (3d) 360 (F.C.A.).

The claim could not be qualified a Canadian maritime law pursuant to s. 22(1) of the Act.

Subsec. (1) *Trawlercat Marine Inc. v. Folden* (2002), 22 C.P.R. (4th) 515, 225 F.T.R. 251 (F.C.T.D.).

Section 22(1) is to be broadly construed to give the court jurisdiction over subject matter so integrally connected to maritime matters as to be legitimate Canadian maritime law. The plaintiffs' copyright claim involved plans for a ship neither built nor in existence. The claim did not therefore fall within maritime law or federal jurisdiction in respect of navigation and shipping and was not therefore within the *in rem* jurisdiction established pursuant to s. 22(1).

Subsec. (2)(i) *Shibamoto & Co. v. Western Fish Producers Inc.*, [1990] 1 F.C. 542, 63 D.L.R. (4th) 549, 30 F.T.R. 35, 103 N.R. 241 (C.A.).

A contract that provides for the stationing of a representative on board a fish processing ship for the purpose of price determination and technicians on board for the

preparation of fish, is a contract for the use of the ship even though not all of the ship is necessarily being used.

Subsec. (2)(m) *Charles R. Bell Ltd. v. Stephanie Colleen (The)* (1990), 36 F.T.R. 210 (T.D.).

The sale of a marine diesel engine package and associated parts and equipment to be installed in a vessel would be goods supplied to a ship for her operation.

Subsec. (2)(m) *Radil Bros. Fishing Co. v. Canada (Department of Fisheries and Oceans, Regional Director General)* (1999), 175 F.T.R. 182 (F.C.T.D.), revd 29 Admin. L.R. (3d) 159 *sub nom. Radil Bros. Fishing Co. v. Canada (Minister of Fisheries & Oceans)*, 197 F.T.R. 169, 101 A.C.W.S. (3d) 450 (F.C.T.D.), appeal allowed in part [2002] 2 F.C. 219, 207 D.L.R. (4th) 82, 286 N.R. 295, 109 A.C.W.S. (3d) 360 (F.C.A.).

The claim did not fall within s. 22(2)(m) because a fishing licence, and even more so a quota attributed to a fishing licence, could not be equated with "goods, materials or services" supplied to a ship.

Subsec. (2)(n) *Charles R. Bell Ltd. v. Stephanie Colleen (The)*, *supra*. The sale of a marine diesel engine may be considered as relating to the construction and equipping of a vessel where the engine was sold so that shipbuilder could equip the vessel they were building with a marine diesel engine.

### Section 23

Amended 2002, c. 8, s. 32 by replacing the portion preceding para. (a):

**23. Except to the extent that jurisdiction has been otherwise specially assigned, the Federal Court has concurrent original jurisdiction, between subject and subject as well as otherwise, in all cases in which a claim for relief is made or a remedy is sought under an Act of Parliament or otherwise in relation to any matter coming within any of the following classes of subjects:**

*CUPE v. Canadian Broadcasting Corp.*, [1991] 2 F.C. 455, 50 Admin. L.R. 237, 46 F.T.R. 259 (T.D.).

The power of the Canadian Radio-Television and Telecommunications Commission to review the decisions of the Canadian Broadcasting Corporation in making cutbacks in services, with public hearing procedures, is a specific assignment of jurisdiction for the purposes of this provision.

### Section 24

Re-enacted R.S.C. 1985, c. 51 (4th Supp.), s. 10 (brought into force January 1, 1991); re-enacted 1990, c. 8, s. 6; repealed 2002, c. 8, s. 33.

### Section 25

Replaced 2002, c. 8, s. 33:

**25. The Federal Court has original jurisdiction, between subject and subject as well as otherwise, in any case in which a claim for relief is made or a remedy is sought under or by virtue of the laws of Canada if no other court constituted, established or continued under any of the *Constitution Acts, 1867 to 1982* has jurisdiction in respect of that claim or remedy.**

*Canada (Human Rights Commission) v. Canadian Liberty Net*, [1992] 3 F.C. 155, 90 D.L.R. (4th) 190, 14 Admin. L.R. 294, 9 C.R.R. (2d) 330, 48 F.T.R. 285 (T.D.), revd [1996] 1 F.C. 804, 132 D.L.R. (4th) 95, 38 Admin. L.R. (2d) 27, 26 C.H.R.R. D/242,

108 F.T.R. 79n, 192 N.R. 298 (C.A.), affd [1998] 1 S.C.R. 626, 157 D.L.R. (4th) 385, 6 Admin. L.R. (3d) 1, 31 C.H.R.R. D/433, 22 C.P.C. (4th) 1, 50 C.R.R. (2d) 189, 147 F.T.R. 305n, 224 N.R. 241.

The Federal Court has jurisdiction under this provision to issue an order enjoining the communication of hate propaganda.

#### Section 26

Replaced 2002, c. 8, s. 33:

**26. The Federal Court has original jurisdiction in respect of any matter, not allocated specifically to the Federal Court of Appeal, in respect of which jurisdiction has been conferred by an Act of Parliament on the Federal Court of Appeal, the Federal Court, the Federal Court of Canada or the Exchequer Court of Canada.**

#### Section 27

Amended R.S.C. 1985, c. 51 (4th Supp.), s. 11(1), (2) (brought into force January 1, 1991), as to subsec. (1) by enacting subsec. (1.1), as to subsec. (2) by re-enacting all that portion following subsec. (2)(b); amended 1990, c. 8, s. 7(1), (2), as to subsec. (1) by striking out the word "or" at the end of subsec. (1)(b), by adding the word "or" at the end of para. (c) and by adding new para. (d), as to subsec. (2) by re-enacting subsec. (2), but s. 7(2) repealed by 1990, c. 8, s. 78(1); amended 1990, c. 8, s. 78(1) by re-enacting subsec. (2); amended 1993, c. 27, s. 214 by re-enacting all that portion following subsec. (1.1)(c); amended 2002, c. 8, s. 34(1) to (3), as to subsec. (1) by replacing subsec. (1), as to subsec. (2) by replacing subsec. (1.1), and as to subsec. (3) by adding subssecs. (1.2) to (1.4) and by replacing subssecs. (2) and (3):

**27. (1) An appeal lies to the Federal Court of Appeal from any of the following decisions of the Federal Court:**

(a) a final judgment;

(b) a judgment on a question of law determined before trial;

(c) an interlocutory judgment; or

(d) a determination on a reference made by a federal board, commission or other tribunal or the Attorney General of Canada.

(1.1) An appeal lies to the Federal Court of Appeal from

(a) a final judgment of the Tax Court of Canada, other than one in respect of which section 18, 18.29, 18.3 or 18.3001 of the *Tax Court of Canada Act* applies;

(b) a judgment of the Tax Court of Canada, other than one in respect of which section 18, 18.29, 18.3 or 18.3001 of the *Tax Court of Canada Act* applies, on a question of law determined before trial; or

(c) an interlocutory judgment or order of the Tax Court of Canada, other than one in respect of which section 18, 18.29, 18.3 or 18.3001 of the *Tax Court of Canada Act* applies.

(1.2) An appeal lies to the Federal Court of Appeal from a final judgment of the Tax Court of Canada in respect of which section 18, 18.29, 18.3 or 18.3001 of the *Tax Court of Canada Act* applies.

(1.3) The only grounds for an appeal under subsection (1.2) are that the Tax Court of Canada

- (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
- (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;
- (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
- (e) acted, or failed to act, by reason of fraud or perjured evidence; or
- (f) acted in any other way that was contrary to law.

(1.4) An appeal under subsection (1.2) shall be heard and determined without delay and in a summary way.

(2) An appeal under this section shall be brought by filing a notice of appeal in the Registry of the Federal Court of Appeal

(a) in the case of an interlocutory judgment, within 10 days after the pronouncement of the judgment or within any further time that a judge of the Federal Court of Appeal may fix or allow before or after the end of those 10 days; and

(b) in any other case, within 30 days, not including any days in July and August, after the pronouncement of the judgment or determination appealed from or within any further time that a judge of the Federal Court of Appeal may fix or allow before or after the end of those 30 days.

(3) All parties directly affected by an appeal under this section shall be served without delay with a true copy of the notice of appeal, and evidence of the service shall be filed in the Registry of the Federal Court of Appeal.

*Samson Indian Band v. Canada* (2001), 281 N.R. 360 (F.C.A.).

The Federal Court of Appeal did not have the jurisdiction to hear an appeal of a decision made on an evidentiary issue during trial.

Subsec. (2)(a) *La-Z-Boy Canada Ltd. v. Allan Morgan and Sons Ltd.* (2004), 35 C.P.R. (4th) 99 (F.C.A.).

The ten-day limit in this provision applies to orders of the Competition Tribunal.

### Section 28

Amended R.S.C. 1985, c. 30 (2nd Supp.), s. 61(1); amended 1990, c. 8, s. 8; amended 1992, c. 26, s. 17 by striking out the word "and" at the end of para. (1)(m), by adding the word "and" to the end of para. (1)(n) and by enacting para. (o); amended 1992, c. 33, s. 69 however this amendment itself amended by 1993, c. 34, s. 70(1) and (2) (in force May 9, 1995), as to s. 70(1) by striking out the two occurrences of the word "and" at the end of para. (n) and as to s. 70(2) by renumbering new para. (o) as para. (p); amended 1992, c. 49, s. 128 by repealing subsec. (1)(g); amended 1996, c. 10, s. 229 by replacing subsec. (1)(k); amended 1996, c. 23, s. 187(c) by replacing the expression "Unemployment Insurance Act" in subsec. (1)(m) with the expression "Employment Insurance Act"; amended 1998, c. 26, s. 73 by replacing subsec. (1)(h); amended 1999, c. 31, s. 92 by replacing subsec. (1)(o); amended 2002, c. 8, s. 35(1) to (3), as to subsec. (1) by replacing that portion of subsec. (1) preceding para. (a), as to subsec. (2) by repealing subsec. (1)(f), as to subsec. (3) by replacing subsecs. (2) and (3); amended 2003, c. 22, s. 167 (however that amendment itself, replaced 2003, c. 22, s. 262) by

replacing subsec. (1)(i); amended 2005, c. 46, s. 56.1, itself enacted by 2006, c. 9, s. 222 by striking out the word "and" at the end of subsec. (1)(o), by adding the word "and" at the end of subsec. (1)(p) and by adding subsec. (1)(q); amended 2006, c. 9, s. 6 by adding subsec. (1)(b.1); amended 2008, c. 22, s. 46 by striking out the word "and" at the end of para. (p), by adding the word "and" at the end of subsec. (1)(q) and by adding subsec. (1)(r):

**28. (1) The Federal Court of Appeal has jurisdiction to hear and determine applications for judicial review made in respect of any of the following federal boards, commissions or other tribunals:**

- (a) the Board of Arbitration established by the *Canada Agricultural Products Act*;
- (b) the Review Tribunal established by the *Canada Agricultural Products Act*;
- (b.1) the Conflict of Interest and Ethics Commissioner appointed under section 81 of the *Parliament of Canada Act*;
- (c) the Canadian Radio-television and Telecommunications Commission established by the *Canadian Radio-television and Telecommunications Commission Act*;
- (d) the Pension Appeals Board established by the *Canada Pension Plan*;
- (e) the Canadian International Trade Tribunal established by the *Canadian International Trade Tribunal Act*;
- (f) the National Energy Board established by the *National Energy Board Act*;
- (g) [*Repealed, 1992, c. 49, s. 128.*]
- (h) the Canada Industrial Relations Board established by the *Canada Labour Code*;
- (i) the Public Service Labour Relations Board established by the *Public Service Labour Relations Act*;
- (j) the Copyright Board established by the *Copyright Act*;
- (k) the Canada Transportation Agency established by the *Canadian Transportation Act*;
- (l) [*Repealed, 2002, c. 8, s. 35(2).*]
- (m) umpires appointed under the *Employment Insurance Act*;
- (n) the Competition Tribunal established by the *Competition Tribunal Act*;
- (o) assessors appointed under the *Canada Deposit Insurance Corporation Act*;
- (p) the Canadian Artists and Producers Professional Relations Tribunal established by subsection 10(1) of the *Status of the Artist Act*;
- (q) the Public Servants Disclosure Protection Tribunal established by the *Public Servants Disclosure Protection Act*; and
- (r) the Specific Claims Tribunal established by the *Specific Claims Tribunal Act*.

(2) Sections 18 to 18.5, except subsection 18.4(2), apply, with any modifications that the circumstances require, in respect of any matter within the jurisdiction of the Federal Court of Appeal under subsection (1) and, when they apply, a reference to the Federal Court shall be read as a reference to the Federal Court of Appeal.

(3) If the Federal Court of Appeal has jurisdiction to hear and determine a matter, the Federal Court has no jurisdiction to entertain any proceeding in respect of that matter.

*Terminaux Portuaires du Québec Inc. v. Maritime Employers' Assn.* (1988), 89 C.L.L.C. 14,009, 89 N.R. 278 (F.C.A.), leave to appeal to S.C.C. refused 92 N.R. 240n sub nom. *Terminaux Portuaires du Québec Inc. v. Assn. des Employeurs Maritimes*.

Per Marceau J.: For the constitutionality of a provision to be raised in a s. 28 *Federal Court Act* proceeding, the public body whose decision was at issue must have been able to raise the question and dispose of it.

*Salibian v. Canada (Minister of Employment & Immigration)*, [1990] 3 F.C. 250, 73 D.L.R. (4th) 551, 11 Imm. L.R. 165, 113 N.R. 123 (C.A.).

Federal Court had jurisdiction under s. 28 of the *Federal Court Act* and s. 82.1(1) of the *Immigration Act* to review decision of Refugee Division even when this was not subject to appeal to the Federal Court under the language of s. 82.3(2) of the *Immigration Act*.

Subsec. (1)(i) *Beirnes v. Canada (Treasury Board—Employment and Immigration)* (1993), 67 F.T.R. 226 (T.D.).

Judicial reviews of decisions of adjudicators rendered under the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 were to be conducted by the Trial Division of the Federal Court.

Subsec. (3) *Canada (Attorney General) v. Inuvialuit Regional Corp.* (1994), 119 D.L.R. (4th) 373, 30 Admin. L.R. (2d) 107, 175 N.R. 353 (F.C.A.).

The implication of this subsection is that there may be sources of judicial review jurisdiction for the Court of Appeal other than s. 28(1).

*Nav Canada v. Canadian Air Traffic Control Assn.* (1998), 160 F.T.R. 306 (T.D.).

A concurrent application to stay proceedings is a "proceeding in respect of same matter" within the meaning of this subsection. The Trial Division was deprived of jurisdiction where the matter was before the Court of Appeal for judicial review at the time of the application.

*Sark v. Abegweit Band Council*, [2002] 2 C.N.L.R. 289, 212 F.T.R. 90 (F.C.T.D.).

The letter from the Minister's delegate confirming the denial of the request for a separation was in fact subject to judicial review. Under the provision judicial review was not limited to a decision or order, but pursuant to subsec. (3) extended to acts or proceedings of federal boards or other bodies.

#### Section 29

Re-enacted R.S.C. 1985, c. 51 (4th Supp.), s. 12 (brought into force January 1, 1991); repealed 1990, c. 8, s. 8.

#### Sections 30 to 35

Repealed 1990, c. 8, s. 8 (brought into force February 1, 1992 by SI/92-6, *Can. Gaz., Part II*, January 1, 1992).

#### Section 36

Re-enacted 1990, c. 8, s. 9; amended 2002, c. 8, s. 36(1) to (4), as to subsec. (1) by replacing subsec. (1), as to subsec. (2) by replacing that portion of subsec. (2) preceding



para. (a), as to subsec. (3) by replacing subsec. (4)(d), and as to subsec. (4) by replacing subsec. (5):

**36. (1) Except as otherwise provided in any other Act of Parliament, and subject to subsection (2), the laws relating to prejudgment interest in proceedings between subject and subject that are in force in a province apply to any proceedings in the Federal Court of Appeal or the Federal Court in respect of any cause of action arising in that province.**

**(2) A person who is entitled to an order for the payment of money in respect of a cause of action arising outside a province or in respect of causes of action arising in more than one province is entitled to claim and have included in the order an award of interest on the payment at any rate that the Federal Court of Appeal or the Federal Court considers reasonable in the circumstances, calculated**

**(a) where the order is made on a liquidated claim, from the date or dates the cause of action or causes of action arose to the date of the order; or**

**(b) where the order is made on an unliquidated claim, from the date the person entitled gave notice in writing of the claim to the person liable therefor to the date of the order.**

**(3) Where an order referred to in subsection (2) includes an amount for special damages, the interest shall be calculated under that subsection on the balance of special damages incurred as totalled at the end of each six month period following the notice in writing referred to in paragraph (2)(b) and at the date of the order.**

**(4) Interest shall not be awarded under subsection (2)**

**(a) on exemplary or punitive damages;**

**(b) on interest accruing under this section;**

**(c) on an award of costs in the proceeding;**

**(d) on that part of the order that represents pecuniary loss arising after the date of the order and that is identified by a finding of the Federal Court of Appeal or the Federal Court;**

**(e) where the order is made on consent, except by consent of the debtor; or**

**(f) where interest is payable by a right other than under this section.**

**(5) The Federal Court of Appeal or the Federal Court may, if it considers it just to do so, having regard to changes in market interest rates, the conduct of the proceedings or any other relevant consideration, disallow interest or allow interest for a period other than that provided for in subsection (2) in respect of the whole or any part of the amount on which interest is payable under this section.**

**(6) This section applies in respect of the payment of money under judgment delivered on or after the day on which this section comes into force, but no interest shall be awarded for a period before that day.**

**(7) This section does not apply in respect of any case in which a claim for relief is made or a remedy is sought under or by virtue of Canadian maritime law.**

*Sherman v. Canada (Customs Revenue Agency)* (2006), 299 F.T.R. 313, 152 A.C.W.S. (3d) 72 (F.C.).

The applicant alleged that the respondent disobeyed an order by withholding money from retroactive pay owed and by refusing to pay the applicant interest. The respondent withheld the rest to set off the Workplace Safety and Insurance Board ("WSIB") overpayments. The respondent argued that the Independent Third Party Reviewer did

not have authority to order the interest. A motion for contempt was dismissed. The respondent's argument that the court intended "with interest" to mean prejudgment and postjudgment interest was rejected. Sections 36 and 37 of the *Federal Courts Act* applied only to actions, but an order arose in the context of an application for mandamus. The parentheses surrounding the phrase "with interest" made the order ambiguous with respect to the date from which the interest was to be calculated. The finding of contempt was precluded on the ground of interest payment because of ambiguity. The respondent's deduction of WSIB overpayments did not constitute disobedience of the court order.

Subsec. (2)(b) *Apotex Inc. v. Wellcome Foundation Ltd.* (1998), 79 C.P.R. (3d) 193, 145 F.T.R. 161 (F.C.T.D.), appeal allowed in part [2001] 1 F.C. 495, 195 D.L.R. (4th) 641, 10 C.P.R. (4th) 65, 186 F.T.R. 274n, 262 N.R. 137 (F.C.A.), affd [2002] 4 S.C.R. 153, 219 D.L.R. (4th) 660, 21 C.P.R. (4th) 499, 235 F.T.R. 204n, 296 N.R. 130.

Despite not having made a specific claim for interest in its pleadings or at trial, the plaintiff was entitled to claim pre- and post-judgment interest as part of its damages award. The requirement to give notice in writing of the claim for interest under para. 36(2)(b) is satisfied by the issuance of the statement of claim.

### Section 37

Re-enacted 1990, c. 8, s. 9; replaced 2002, c. 8, s. 37:

**37. (1) Except as otherwise provided in any other Act of Parliament and subject to subsection (2), the laws relating to interest on judgments in causes of action between subject and subject that are in force in a province apply to judgments of the Federal Court of Appeal or the Federal Court in respect of any cause of action arising in that province.**

**(2) A judgment of the Federal Court of Appeal or the Federal Court in respect of a cause of action arising outside a province or in respect of causes of action arising in more than one province bears interest at the rate that court considers reasonable in the circumstances, calculated from the time of the giving of the judgment.**

*Beloit Canada Ltd. v. Valmet-Dominion Inc.*, [1997] 3 F.C. 497, 129 F.T.R. 319 n, 73 C.P.R. (3d) 321 *sub nom. Beloit Canada Ltd. v. Valmet-Dominion Inc.*, 214 N.R. 85 (F.C.A.).

Although this section does not expressly provide for discretion, the court has recognized that post-judgment interest is discretionary.

*Sherman v. Canada (Customs Revenue Agency)* (2006), 299 F.T.R. 313, 152 A.C.W.S. (3d) 72 (F.C.), see s. 36, *supra*.

### Section 38

Repealed 1990, c. 8, s. 9.

### Section 39

Subsec. (1) replaced 2002, c. 8, s. 38(1):

**39. (1) Except as expressly provided by any other Act, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings in the Federal Court of Appeal or the Federal Court in respect of any cause of action arising in that province.**

Subsec. (2) replaced 2002, c. 8, s. 38(2):

**(2) A proceeding in the Federal Court of Appeal or the Federal Court in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.**

Subsec. (3) repealed 1990, c. 8, s. 10.

*Canada v. Maritime Group (Canada) Inc.*, [1993] 1 F.C. 131, 58 F.T.R. 253 (T.D.), revd [1995] 3 F.C. 124, 96 F.T.R. 320n, 185 N.R. 104 (C.A.).

The phrase "cause of action" under this section refers to the damage suffered as well as the act that was the cause of the damage. The law of a province will govern only when all of the elements of the cause of action take place in that province; otherwise the limitation of six years, as in subsection 2, will apply.

Subsec. (1) *335114 Alberta Ltd. v. Canada* (1990), 90 D.T.C. 6408, [1990] 2 C.T.C. 150 (F.C.T.D.).

Right to alleged accounting for overpaid income tax deductions arose at the time of deposit, so that a claim in 1987 in respect of payment in 1979 was barred under s. 4(1)(c) of the *Alberta Limitation of Actions Act*, applicable under this provision.

#### Section 40

Re-enacted 1990, c. 8, s. 11; replaced 2002, c. 8, s. 39:

**40. (1) If the Federal Court of Appeal or the Federal Court is satisfied, on application, that a person has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner, it may order that no further proceedings be instituted by the person in that court or that a proceeding previously instituted by the person in that court not be continued, except by leave of that court.**

**(2) An application under subsection (1) may be made only with the consent of the Attorney General of Canada, who is entitled to be heard on the application and on any application made under subsection (3).**

**(3) A person against whom a court has made an order under subsection (1) may apply to the court for rescission of the order or for leave to institute or continue a proceeding.**

**(4) If an application is made to a court under subsection (3) for leave to institute or continue a proceeding, the court may grant leave if it is satisfied that the proceeding is not an abuse of process and that there are reasonable grounds for the proceeding.**

**(5) A decision of the court under subsection (4) is final and is not subject to appeal.**

#### Section 41

Repealed 1990, c. 8, s. 11.

#### Section 43

Subsecs. (1) to (3) replaced 2002, c. 8, s. 40(1):

**43. (1) Subject to subsection (4), the jurisdiction conferred on the Federal Court by section 22 may in all cases be exercised *in personam***

**(2) Subject to subsection (3), the jurisdiction conferred on the Federal Court by section 22 may be exercised in rem against the ship, aircraft or other property that**

is the subject of the action, or against any proceeds from its sale that have been paid into court.

(3) Despite subsection (2), the jurisdiction conferred on the Federal Court by section 22 shall not be exercised *in rem* with respect to a claim mentioned in paragraph 22(2)(e), (f), (g), (h), (i), (k), (m), (n), (p) or (r) unless, at the time of the commencement of the action, the ship, aircraft or other property that is the subject of the action is beneficially owned by the person who was the beneficial owner at the time when the cause of action arose.

Subsec. (4) amended 1996, c. 31, s. 83 by replacing para. (b); amended 2002, c. 8, s. 40(2) by replacing para. (c):

(b) the cause of action arose in Canadian waters; or

(c) the parties have agreed that the Federal Court is to have jurisdiction.

Subsec. (5) replaced 2002, c. 8, s. 40(3):

(5) Subsection (4) does not apply to a counter-claim or an action for a collision, in respect of which another action has already been commenced in the Federal Court.

Subsecs. (8) and (9) enacted 1990, c. 8, s. 12; re-enacted 2002, c. 8, s. 40(4); amended 2009, c. 21, s. 18 by replacing subsec. (8):

(8) The jurisdiction conferred on the Federal Court by section 22 may be exercised *in rem* against any ship that, at the time the action is brought, is owned by the beneficial owner of the ship that is the subject of the action.

(9) In an action for a collision in which a ship, an aircraft or other property of a defendant has been arrested, or security has been given to answer judgment against the defendant, and in which the defendant has instituted a cross-action or counter-claim in which a ship, an aircraft or other property of the plaintiff is liable to arrest but cannot be arrested, the Federal Court may stay the proceedings in the principal action until security has been given to answer judgment in the cross-action or counter-claim.

Subsec. (2) *Paramount Enterprises International, Inc. v. "An Xin Jiang" (The)* (1998), 147 F.T.R. 162 (T.D.), rev'd [2001] 2 F.C. 551, 198 D.L.R. (4th) 719 *sub nom. Paramount Enterprises International Inc. v. Beston Chemical Corp.*; *Paramount Enterprises International Inc. v. "An Xin Jiang" (The)*, 193 F.T.R. 318n, 265 N.R. 354 (F.C.A.).

There was no requirement in this provision that the property in question had to be on board or not, or that maritime or possessory lien had to be in place. Plain meaning of this section meant that the cargo which was the subject-matter of the action was included in the definition of other property.

Subsec. (2) *Phoenix Bulk Carriers Ltd. v. Kremikovtzi Trade*, [2007] 1 S.C.R. 588, 278 D.L.R. (4th) 628, 360 N.R. 171.

Cargo is "subject to the action" if the cargo was designated in the contract of affreightment which it is alleged has been breached.

#### Section 44

Replaced 2002, c. 8, s. 41:

44. In addition to any other relief that the Federal Court of Appeal or the Federal Court may grant or award, a *mandamus*, an injunction or an order for specific performance may be granted or a receiver appointed by that court in all

cases in which it appears to the court to be just or convenient to do so. The order may be made either unconditionally or on any terms and conditions that the court considers just.

*Cook's Ferry Band v. Cook's Ferry Band (Council)*, [1989] 3 F.C. 562, 30 F.T.R. 180, 75 C.B.R. (N.S.) 228, [1989] 4 C.N.L.R. 105 (T.D.).

A receiver/manager may be appointed under this section. The remedy the section provides is not completely separate from nor mutually exclusive of s. 18 of this Act.

*Canada (Human Rights Commission) v. Canadian Liberty Net*, [1992] 3 F.C. 155, 90 D.L.R. (4th) 190, 14 Admin. L.R. 294, 9 C.R.R. (2d) 330, 48 F.T.R. 285 (T.D.), rev'd [1996] 1 F.C. 804, 132 D.L.R. (4th) 95, 38 Admin. L.R. (2d) 27, 26 C.H.R.R. D/242, 108 F.T.R. 79n, 192 N.R. 298 (C.A.), aff'd [1998] 1 S.C.R. 626, 157 D.L.R. (4th) 385, 6 Admin. L.R. (3d) 1, 31 C.H.R.R. D/433, 22 C.P.C. (4th) 1, 50 C.R.R. (2d) 189, 147 F.T.R. 305n, 224 N.R. 241.

This provision, which gives the Federal Court power to issue an injunction "in addition to any other relief", is not limited to other relief granted by the Federal Court, nor is it intended to imply that such order could only be issued on an ancillary basis. The court has jurisdiction to issue an injunction in the context of an investigation by the Canadian Human Rights Commission.

*Canada (Human Rights Commission) v. Winnicki*, [2006] 3 F.C.R. 446, 283 F.T.R. 235.

The motion was unusual in that it was a free-standing motion with no other relief being sought in Federal Court. However, the court had jurisdiction to consider the motion under s. 44 of the Act which permitted the court to grant an injunction where it appeared just and convenient to do so.

#### Section 45

Replaced 2002, c. 8, s. 42:

**45. (1) A judge of the Federal Court of Appeal or the Federal Court who resigns or is appointed to another court or otherwise ceases to hold office may, at the request of the Chief Justice of that court, at any time within eight weeks after that event, give judgment in any cause, action or matter previously tried by or heard before the judge as if he or she had continued in office.**

**(2) If a judge of the Federal Court of Appeal who resigns or is appointed to another court or otherwise ceases to hold office has heard a cause, an action or a matter in the Federal Court of Appeal jointly with other judges of that court, the judge may, at the request of the Chief Justice of the Federal Court of Appeal, at any time within eight weeks after the resignation, appointment or other ceasing to hold office, take part in the giving of judgment by that court as if he or she had continued in office.**

**(3) If a person to whom subsection (2) applies or any other judge by whom a matter in the Federal Court of Appeal has been heard is unable to take part in the giving of judgment or has died, the remaining judges may give judgment and, for that purpose, are deemed to constitute the Federal Court of Appeal.**

#### Section 45.1

Enacted 1990, c. 8, s. 13; amended 2002, c. 8, s. 43(1), (2) as to subsec. (1) by replacing subsec. (1)(a) to (c) and adding para. (b.1), as to subsec. (2) by replacing subsecs. (2) and (3); amended 2006, c. 11, s. 24 by replacing subsec. (1)(b):

**45.1 (1) There shall be a rules committee composed of the following members:**

(a) the Chief Justice of the Federal Court of Appeal and the Chief Justice of the Federal Court;

(b) three judges designated by the Chief Justice of the Federal Court of Appeal, and five judges and one prothonotary designated by the Chief Justice of the Federal Court;

(b.1) the Chief Administrator of the Courts Administration Service;

(c) five members of the bar of any province designated by the Attorney General of Canada, after consultation with the Chief Justice of the Federal Court of Appeal and the Chief Justice of the Federal Court; and; and

(d) the Attorney General of Canada or a representative thereof.

(2) The persons referred to in paragraph (1)(c) should be representative of the different regions of Canada and have experience in fields of law in respect of which the Federal Court of Appeal and the Federal Court have jurisdiction.

(3) The Chief Justice of the Federal Court of Appeal or a member designated by the Chief Justice shall preside over the rules committee.

(4) The persons referred to in paragraphs (1)(b) and (c) shall be designated to serve for a period not exceeding three years.

(5) Each person referred to in paragraphs (1)(c) and (d) is entitled to be paid travel and living expenses incurred in carrying out duties as a member of the rules committee while absent from the person's ordinary place of residence but those expenses shall not exceed the maximum limits authorized by Treasury Board directive for employees of the Government of Canada.

#### Section 46

Subsec. (1) amended 1990, c. 8, s. 14(1) and (2), as to subsec. (1) by replacing that portion preceding para. (a), as to subsec. (2) by re-enacting para. (a)(x); amended 2002, c. 8, s. 44(1) to (7), as to subsec. (1) by replacing that portion of para. (a) preceding subpara. (i), as to subsec. (2) by replacing para. (a)(v), as to subsec. (3) by replacing para. (a)(x), as to subsec. (4) by replacing paras. (c) and (d), as to subsec. (5) by replacing para. (e), as to subsec. (6) by replacing para. (g), as to subsec. (7) by replacing paras. (h) and (i) and adding paras. (j) to (l):

46. (1) Subject to the approval of the Governor in Council and subject also to subsection (4), the rules committee may make general rules and orders

(a) for regulating the practice and procedure in the Federal Court of Appeal and in the Federal Court, including, without restricting the generality of the foregoing,

. . . . .

(v) rules governing the taking of evidence before a judge or any other qualified person, in or outside Canada, before or during trial and on commission or otherwise, of any person at a time either before or after the commencement of proceedings in the Federal Court of Appeal or the Federal Court to enforce the claim or possible claim in respect of which the evidence is required,

(x) rules governing the material to be furnished to the Federal Court of Appeal or the Federal Court by the Tax Court of Canada or any federal board, commission or other tribunal, for the purposes of any appeal, application or reference;

(c) for the effectual execution and working of any Act by or under which jurisdiction is conferred on the Federal Court of Appeal or the Federal Court or on any judge of either court in respect of proceedings in that court and the attainment of the intention and objects of that Act;

(d) for fixing the fees to be paid by a party to the Registry of the Federal Court of Appeal and of the Federal Court for payment into the Consolidated Revenue Fund in respect of proceedings in those courts;

(e) for regulating the duties of officers of the Federal Court of Appeal or the Federal Court;

(g) for awarding and regulating costs in the Federal Court of Appeal or the Federal Court in favour of or against the Crown, as well as the subject;

(h) empowering a prothonotary to exercise any authority or jurisdiction, subject to supervision by the Federal Court, even though the authority or jurisdiction may be of a judicial nature;

(i) permitting a judge or prothonotary to vary a rule or to dispense with compliance with a rule in special circumstances;

(j) despite subsection 28(3), providing for the enforcement of orders of the Federal Court of Appeal in the Federal Court;

(k) designating an act or omission of a person to be in contempt of court, respecting the procedure to be followed in proceedings for contempt and establishing penalties for a finding of contempt; and

(l) dealing with any other matter that any provision of this Act contemplates being the subject of a rule or the Rules.

Subsec. (4) replaced 1990, c. 8, s. 14(4):

(4) Where the rules committee proposes to amend, vary or revoke any rule or order made under this section or to make any rule or order additional to the general rules and orders first made under this section and published together, the committee

(a) shall give notice of the proposal by publishing it in the *Canada Gazette* and shall, in the notice, invite any interested person to make representations to the committee in writing with respect thereto within sixty days after the day of that publication; and

(b) may, after the expiration of the sixty days referred to in paragraph (a) and subject to the approval of the Governor in Council, implement the proposal either as originally published or as revised in such manner as the committee deems advisable having regard to any representations so made to it.

Subsec. (5) replaced 1992, c. 1, s. 68:

(5) A copy of each rule or order and of each amendment, variation or revocation of a rule or order made under this section shall be laid before each House of Parliament on any of the first fifteen days after the approval by the Governor in Council of the making thereof on which that House is sitting.

*Polchies v. Canada* (2003), 238 F.T.R. 254 (T.D.).

Rule 292 of the Federal Court Rules is not *ultra vires* of the rule making powers conferred by s. 46 and does not conflict with s. 48(1).

Subsec. (1) *Iscar Ltd. v. Karl Hertel GmbH* (1989), see s. 13(1), *supra*.

Subsec. (1)(h) *Gupta v. Canada (Minister of Citizenship and Immigration)* (1998), 149 F.T.R. 275, 46 Imm. L.R. (2d) 94 (F.C.T.D.).

Parliament did not intend simply to grant a procedural power to prothonotaries. Parliament granted prothonotaries jurisdiction of a judicial nature.

#### Section 47

Repealed 1990, c. 8, s. 15.

#### Section 48

Replaced 2002, c. 8, s. 45:

**48. (1) A proceeding against the Crown shall be instituted by filing in the Registry of the Federal Court the original and two copies of a document that may be in the form set out in the schedule and by payment of the sum of \$2 as a filing fee.**

**(2) The original and two copies of the originating document may be filed as required by subsection (1) by being forwarded, together with a remittance for the filing fee, by registered mail addressed to "The Registry, The Federal Court, Ottawa, Canada".**

*Charest v. Canada* (1993), 73 F.T.R. 185 (T.D.).

The test for determining whether parties other than Her Majesty the Queen may be added as defendants to actions brought under this section is whether the court would have jurisdiction over an individual action against each defendant taken separately.

Subsec. (1) *Polchies v. Canada* (2003), 238 F.T.R. 254 (T.D.), see s. 46, *supra*.

#### Section 49

Replaced 2002, c. 8, s. 45:

**49. All causes or matters before the Federal Court of Appeal or the Federal Court shall be heard and determined without a jury.**

#### Section 50

Amended 2002, c. 8, s. 46(1) and (2) as to subsec. (1) by replacing that portion preceding para. (a) and as to subsec. (2) by replacing subsecs. (2) and (3):

**50. (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter**

. . . . .

**(2) The Federal Court of Appeal or the Federal Court shall, on application of the Attorney General of Canada, stay proceedings in any cause or matter in respect of a claim against the Crown if it appears that the claimant has an action or a proceeding in respect of the same claim pending in another court against a person who, at the time when the cause of action alleged in the action or proceeding arose, was, in respect of that matter, acting so as to engage the liability of the Crown.**

**(3) A court that orders a stay under this section may subsequently, in its discretion, lift the stay**

*Nanisivik Mines Ltd. v. F.C.R.S. Shipping Ltd.* (1993), 59 F.T.R. 272 (T.D.), *vard* [1994] 2 F.C. 662, 113 D.L.R. (4th) 536, 167 N.R. 294 (C.A.)



Jurisdiction granting court discretion to stay action in this section is abrogated by a private contract provision requiring arbitration once a reference to arbitration has been made.

*Z.I. Pompey Industrie v. Ecu-Line N.V.*, [2003] 1 S.C.R. 450, 224 D.L.R. (4th) 577, 30 C.P.C. (5th) 1, 240 F.T.R. 318n, 303 N.R. 201.

A stay of proceedings pursuant a forum selection clause indicating Antwerp as the appropriate forum was required absent a strong cause being shown. The Prothonotary erred in using tripartite test for refusing the stay on the basis of a fundamental breach of the agreement.

*Ford Aquitaine Industries SAS v. "Canmar Pride" The* (2004), 267 F.T.R. 115, 142 A.C.W.S. (3d) 206, 2005 FC 1437.

Although s. 46 of the *Maritime Liability Act* (Can.), would appear to permit a court to override a choice of forum clause where the port of discharge was in Canada for example, this was an appropriate case to order a stay. The proceedings in Michigan were parallel proceedings in an appropriate forum. F failed to establish that it would have a juridical advantage if permitted to proceed in Canada.

Subsec. (1) *Alberta v. Canada (Minister of Environment)*, [1991] 3 F.C. 114, 46 F.T.R. 60 (T.D.).

When the issue of the applicability of federal environmental guidelines to a provincial river dam project was pending before the Supreme Court of Canada, an adjournment of the application by the province for a review of the terms of reference of a review panel appointed under the guidelines was appropriate pursuant to this section.

### Section 50.1

Enacted 1990, c. 8, s. 16; amended 2002, c. 8, s. 47(1) to (3), as to subsec. (1) by replacing subsec. (1), as to subsec. (2) by replacing subsec. (2) and as to (3) by replacing subsec. (3):

**50.1 (1) The Federal Court shall, on application of the Attorney General of Canada, stay proceedings in any cause or matter in respect of a claim against the Crown where the Crown desires to institute a counter-claim or third-party proceedings in respect of which the Federal Court lacks jurisdiction.**

**(2) If the Federal Court stays proceedings under subsection (1), the party who instituted them may recommence the proceedings in a court constituted or established by or under a law of a province and otherwise having jurisdiction with respect to the subject-matter of the proceedings.**

**(3) If proceedings are recommenced under subsection (2) within 100 days after the proceedings are stayed in the Federal Court, the claim against the Crown in the recommenced proceedings is deemed, for the purposes of any laws relating to prescription and the limitation of actions, to have been instituted on the day the proceedings in the Federal Court were instituted.**

*Bastien v. Canada* (1992), 53 F.T.R. 81 (T.D.).

As this provision, which came into force on February 1, 1992, affects substantive rights of plaintiff and jurisdiction of court and is not a mere change in procedure, it is substantive and does not have retroactive effect.

*Charalambous v. Canada* (2004), 128 A.C.W.S. (3d) 282, 2004 F.C. 4.

The Crown is not entitled to a stay under this section merely by expressing a possible desire to commence third party proceedings. An actual intent to do so should be shown, based on the existence of a *prima facie* case against the proposed third party.

*Stoney Band v. Canada (Minister of Indian and Northern Affairs)*, [2007] 1 F.C.R. 241, 292 F.T.R. 160, 2006 FC 553, 148 A.C.W.S. (3d) 179.

The plaintiffs brought an action against Canada to enforce its *sui generis* fiduciary relationship with the Federal Crown. The cause of action related to an allegation of illegal logging on Aboriginal land in South-western Alberta. Canada brought a third party proceeding against the individuals and companies that participated in the removal and processing of timber. The Federal Court of Appeal found that it lacked jurisdiction over the proceedings initiated by Canada. Canada brought a motion for a stay of action pursuant to this section to be granted. Canada did not lack a legal basis to obtain a stay. This section is not unconstitutional. A motion for stay was granted.

Subsec. (1) *Dobbie v. Canada (Attorney General)* (2006), 291 F.T.R. 271, 148 A.C.W.S. (3d) 245, 2006 FC 552.

The Plaintiffs brought a proposed class action claiming they sustained injurious health effects from the defendants' negligent spraying of harmful chemicals from 1965 to 1983. If the defendants were found liable, the defendants would claim contribution and indemnity from manufacturers of the product sprayed based on the law of negligence and statutory law. The Crown filed a third party claim. The Crown's motion to stay proceedings on the ground that the Crown wanted to institute third party proceedings against the manufacturer in respect of which the Federal Court did not have jurisdiction was granted. The Crown's intent was not less genuine because the parties were certain of the scope of the third parties' liability. It was not appropriate to assess the reasonable likelihood that the claim would succeed. The Crown's desire to institute a third party claim was genuine. The Crown's third party claim was outside the jurisdiction of the Federal Court. A stay was mandatory. Parliament removed the Court's residual discretion not to grant a stay by using "shall" in this section. The purpose of this section is to prevent duplicitous litigation required if a main action proceeded in Federal Court. This section is constitutional. The application of this section is not contrary to the constitutional imperative of "order and fairness" in the national judicial system because the province had the jurisdiction to hear a national class action including a third party claim.

#### Section 51

Replaced 2002, c. 8, s. 48:

**51. If a judge gives reasons for a judgment pronounced by the judge or pronounced by a court of which the judge was a member, the judge shall file a copy of the reasons in the Registry of the court.**

#### Section 52

Heading preceding section replaced 2002, c. 8, s. 49.

Amended 1990, c. 8, s. 17 by adding the word "and" at the end of para. (b), by striking out the word "and" at the end of para. (c) and by repealing para. (d); amended 2002, c. 8, s. 50 by replacing the portion preceding para. (c)(i):

#### JUDGMENTS OF FEDERAL COURT OF APPEAL

**52. The Federal Court of Appeal may**

(a) quash proceedings in cases brought before it in which it has no jurisdiction or whenever those proceedings are not taken in good faith;

(b) in the case of an appeal from the Federal Court,

(i) dismiss the appeal or give the judgment and award the process or other proceedings that the Federal Court should have given or awarded,

- (ii) in its discretion, order a new trial if the ends of justice seem to require it, or
- (iii) make a declaration as to the conclusions that the Federal Court should have reached on the issues decided by it and refer the matter back for a continuance of the trial on the issues that remain to be determined in light of that declaration; and
- (c) in the case of an appeal other than an appeal from the Federal Court,

**Section 53**

Replaced 2002, c. 8, s. 51:

**53. (1)** The evidence of any witness may by order of the Federal Court of Appeal or the Federal Court be taken, subject to any rule or order that may relate to the matter, on commission, on examination or by affidavit.

(2) Evidence that would not otherwise be admissible is admissible, in the discretion of the Federal Court of Appeal or the Federal Court and subject to any rule that may relate to the matter, if it would be admissible in a similar matter in a superior court of a province in accordance with the law in force in any province, even though it is not admissible under section 40 of the *Canada Evidence Act*.

**Section 54**

Replaced 2002, c. 8, s. 51:

**54. (1)** All persons authorized to take and receive affidavits to be used in any of the superior courts of a province may administer oaths and take and receive affidavits, declarations and solemn affirmations to be used in the Federal Court of Appeal or the Federal Court.

(2) The Governor in Council may, by commission, empower any person who the Governor in Council thinks necessary, in or outside Canada, to administer oaths and to take and receive affidavits, declarations and solemn affirmations in or concerning any proceeding had or to be had in the Federal Court of Appeal or the Federal Court.

(3) Every oath, affidavit, declaration or solemn affirmation taken or made under this section is as valid and of the same effect, to all intents, as if it had been administered, taken, sworn, made or affirmed before the Federal Court of Appeal or the Federal Court.

(4) Every commissioner empowered under subsection (2) shall be styled a commissioner for administering oaths in the Federal Court of Appeal and the Federal Court.

**Section 55**

Amended 1996, c. 31, s. 84 by re-enacting subsec. (1); amended 2002, c. 8, s. 52(1), (2), as to subsec. (1) by replacing subsec. (1) and as to subsec. (2) by replacing subssecs. (4) and (5) and by adding subsec. (6):

**55. (1)** The process of the Federal Court of Appeal and of the Federal Court runs throughout Canada and any other place to which legislation enacted by Parliament has been made applicable.

. . . . .

(4) A sheriff or marshal shall execute the process of the Federal Court of Appeal or the Federal Court that is directed to the sheriff or marshal, whether or not it

requires the sheriff or marshal to act outside their geographical jurisdiction, and shall perform all other duties expressly or impliedly assigned to the sheriff or marshal by the Rules.

(5) If there is no sheriff or marshal or a sheriff or marshal is unable or unwilling to act, the process of the Federal Court shall be directed to a deputy sheriff or deputy marshal, or to any other person provided for by the Rules or by a special order of that court made for a particular case, and that person is entitled to take and retain for their own use the fees provided for by the Rules or the special order.

(6) If there is no sheriff or marshal or a sheriff or marshal is unable or unwilling to act, the process of the Federal Court of Appeal shall be directed to a deputy sheriff or deputy marshal, or to any other person provided for by the Rules or by a special order of that court made for a particular case, and that person is entitled to take and retain for their own use the fees provided for by the Rules or the special order.

Subsec. (1) *Standal Estate v. Swecan International Ltée* (1991), 34 C.P.R. (3d) 37, 40 F.T.R. 272 (T.D.).

The Federal court has the jurisdiction to consider an objection to a seizure based on Quebec civil law in the context of the enforcement of its judgment made in an action for patent infringement.

#### Section 56

Amended 1990, c. 8, s. 18 by repealing subsec. (5); amended 2002, c. 8, s. 53(1) to (3), as to subsec. (1) by replacing subsecs. (1) and (2), as to subsec. (2) by replacing subsec. (3) and as to subsec. (3) by replacing subsec. (4):

**56. (1) In addition to any writs of execution or other process that are prescribed by the Rules for enforcement of its judgments or orders, the Federal Court of Appeal or the Federal Court may issue process against the person or the property of any party, of the same tenor and effect as those that may be issued out of any of the superior courts of the province in which a judgment or an order is to be executed, and if, by the law of that province, an order of a judge is required for the issue of a process, a judge of that court may make a similar order with respect to like process to issue out of that court.**

**(2) No person shall be taken into custody under process of execution for debt issued out of the Federal Court of Appeal or the Federal Court.**

**(3) All writs of execution or other process against property, whether prescribed by the Rules or authorized by subsection (1), shall**

**(a) unless otherwise provided by the Rules, be executed, with respect to the property liable to execution and the mode of seizure and sale, as nearly as possible in the same manner as similar writs or process that are issued out of the superior courts of the province in which the property to be seized is situated are, by the law of that province, required to be executed; and**

**(b) bind property in the same manner as similar writs or process issued by the provincial superior courts, and the rights of purchasers under the writs or process are the same as those of purchasers under those similar writs or process.**

**(4) Every claim made by a person to property seized under a writ of execution or other process issued out of the Federal Court of Appeal or the Federal Court, or to the proceeds of its sale, shall, unless otherwise provided by the Rules, be heard and disposed of as nearly as may be according to the procedure applicable to like**

claims to property seized under similar writs or process issued out of the courts of the provinces.

*NFL Enterprises L.P. v. Bridgewater Country Club* (2001), 110 A.C.W.S. (3d) 285 (F.C.T.D.).

This provision does not provide the necessary jurisdiction to allow the Federal Court to give an order to a provincial land registrar to accept a Federal Court order for registration against the title to certain land.

Subsec. (3), (4) *Standal Estate v. Swecan International Lee.*, see s. 55(1), *supra*.

#### Section 57

Re-enacted 1990, c. 8, s. 19; amended 2002, c. 8, s. 54(1) to (4), as to subsec. (1) by replacing subssecs. (1) and (2), as to subsec. (2) by replacing subsec. (3), as to subsec. (3) by replacing subsec. (4) and as to subsec. (4) by replacing subsec. (5):

**57. (1) If the constitutional validity, applicability or operability of an Act of Parliament or of the legislature of a province, or of regulations made under such an Act, is in question before the Federal Court of Appeal or the Federal Court or a federal board, commission or other tribunal, other than a service tribunal within the meaning of the *National Defence Act*, the Act or regulation shall not be judged to be invalid, inapplicable or inoperable unless notice has been served on the Attorney General of Canada and the attorney general of each province in accordance with subsection (2).**

**(2) The notice must be served at least 10 days before the day on which the constitutional question is to be argued, unless the Federal Court of Appeal or the Federal Court or the federal board, commission or other tribunal, as the case may be, orders otherwise.**

**(3) The Attorney General of Canada and the attorney general of each province are entitled to notice of any appeal or application for judicial review made in respect of the constitutional question.**

**(4) The Attorney General of Canada and the attorney general of each province are entitled to adduce evidence and make submissions to the Federal Court of Appeal or the Federal Court or the federal board, commission or other tribunal, as the case may be, in respect of the constitutional question.**

**(5) If the Attorney General of Canada or the attorney general of a province makes submissions, that attorney general is deemed to be a party to the proceedings for the purpose of any appeal in respect of the constitutional question.**

*Singh v. Canada (Minister of Employment and Immigration)* (1993), 41 A.C.W.S. (3d) 243 (F.C.T.D.).

Notice under this section of the Act should not be given where leave to appeal is being sought, even though the argument to be heard on appeal concerns questions of the constitutionality of particular regulations. The issue of constitutionality is not before the court on motion for leave, rather what is being considered is whether or not there is an arguable case to be heard by the court.

Subsec. (1) *Metis Nation of Ontario v. Przybyszewski* (2004), 23 Admin. L.R. (4th) 3, 257 F.T.R. 186, 132 A.C.W.S. (3d) 616, 2004 FC 977 (F.C.).

Notice under this section was required only where the constitutionality of specific legislation was being challenged. The provision indicated only that any declaration of inoperability had no effect in the absence of proper notice.

**Section 57.1**

Enacted 1990, c. 8, s. 19; replaced 2002, c. 8, s. 55:

**57.1** All fees payable in respect of proceedings in the Federal Court of Appeal or the Federal Court shall be paid to the Receiver General unless they are, in accordance with an arrangement made by the Minister of Justice, to be received and dealt with in the same manner as amounts paid as provincial court fees, in which case they shall be dealt with as so provided.

**Section 58**

Amended 2002, c. 8, s. 56 by replacing subsecs. (1) and (2):

**58. (1)** The Minister of Justice shall appoint or designate a fit and proper person to be editor of the official reports of the decisions of the Federal Court of Appeal and the Federal Court and may appoint a committee of not more than five persons to advise the editor.

**(2)** The editor shall include in the reports only the decisions or the parts of them that, in the editor's opinion, are of sufficient significance or importance to warrant publication in the reports.

**Section 59**

Replaced 2002, c. 8, s. 57:

**59.** Any services or assistance in connection with the conduct of the hearings of the Federal Court of Appeal and of the Federal Court, the security of those courts and their premises and of staff of the Courts Administration Service, or in connection with the execution of orders and judgments of those courts, that may, having regard to the circumstances, be found necessary shall be provided, at the request of the Chief Justice of each of those courts, by the Royal Canadian Mounted Police or any other police force that the Governor in Council may designate.

**Schedule**

Replaced 2002, c. 8, s. 58, Sch.

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**FEDERAL LAW-CIVIL LAW HARMONIZATION ACT, NO. 1**

2001, Chap. 4; ss. 1 to 10, 11(2) to (3), (5), 12 to 16, 18, 20 to 22, 24 to 27, 29 to 32, 33(2), (2.1), 34 to 38, 40 to 42, 45, 48, 51(2), 52 to 53, 55 to 59(1), 61 to 65, 67, 68(1), (3), 70(1), (3), 72, 73, 75, 76, 78, 80 to 83, 85, 87 to 95, 99 to 108, 111, 112, 115 to 117, 119 to 121(1), 123 to 125, 126(2) to 129, 130(2) to 132, 133(2), (3), 134 to 146, 147(2), 148, 149, 151 to 156(1), (4), 157 to 172, 174 to 178; ss. 174 to 176 to come into force as provided by these sections; remainder brought into force June 1, 2001 by SI/2001-71,  
*Can. Gaz., Part II*, June 20, 2001

Amended 2005, c. 33, s. 9; in force July 20, 2005

**Generally**

*Schreiber v. Canada (Attorney General)*, [2002] 3 S.C.R. 269, 216 D.L.R. (4th) 513, 167 C.C.C. (3d) 51, 61 O.R. (3d) 160n, 164 O.A.C. 354, 22 C.P.C. (5th) 207, 292 N.R. 250.

The effect of the addition of the term "or bodily" to the phrase "any death or personal injury" was only intended to make reference to the civil law concept and did not carry

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with it the implication that personal injury by itself was broad enough to include damages such as mental distress.

**Section 5**

Replaced 2005, c. 33, s. 9:

**5. Marriage requires the free and enlightened consent of two persons to be the spouse of each other.**

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