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Federal Court of Canada 2000 Report

his is a report on the activities of the Federal Court of Canada for the year ending December 31, 2000. Parts 1 through 3 contain a brief history of the Court, its composition, as well as details of major events and activities which took place during the year. Part 4 contains a summary of statistical information concerning the volume and pace of litigation in both the Court of Appeal and the Trial Division. A summary of Registry activity is included in Part 5. The Registry of the Court publishes full details of its programmes and financial performance in annual Part III Estimates tabled in Parliament. Since the Registry is an integral part of the Court, a summary of the activities of the Registry is included in this report for completeness.

John D. Richard Chief Justice



Federal Court of Canada 2000 Report

# 1.0 OVERVIEW OF THE FEDERAL COURT OF CANADA

#### 1.1 Establishment

The Federal Court of Canada was established in 1971 as successor to the Exchequer Court of Canada, which dates back to 1875<sup>1</sup>. Both courts were established under the authority of section 101 of the *Constitution Act, 1867*, as courts of law, equity and admiralty for the "better Administration of the Laws of Canada." The Court is a superior court of record and has civil and criminal jurisdiction.

The Court is bilingual, offering its services in both official languages of Canada, and bi-jural, administering the two legal systems - common law and civil law. It is also itinerant, in the sense that it sits and transacts business at any place in Canada, to suit, as nearly as may be, the convenience of the parties. It is the objective of the Court to secure the just, most expeditious and least expensive determination of every proceeding on its merits.

# 1.2 Composition of the Court

The Court consists of two divisions: the Federal Court of Appeal and the Federal Court - Trial Division. The judicial complement of the Court consists of a Chief Justice, an Associate Chief Justice, ten judges of the Court of Appeal and nineteen judges of the Trial Division. In addition, the Court is composed of senior judges who have elected supernumerary status under the *Judges Act*.

The Chief Justice is president of the Court and of the Court of Appeal. The Associate Chief Justice is president of the Trial Division. Judges of each division are *ex officio* members of the other division. At least ten of the judges of the Court must be persons who have been judges of the Court of Appeal or Superior Court of Quebec, or have been members of the Quebec bar. At the present time there are eleven such judges.

A list of the judges of the Court as of December 31, 2000, and the details of their appointment and status as regular or supernumerary judges appear at page 4.

### 1.3 Deputy Judges

Under section 10 of the *Federal Court Act*, a judge of a superior, county or district court in Canada, or any such former judge may be designated as a deputy judge of the Federal Court. Designations are made at the request of the Chief Justice with the approval of the Governor in Council pursuant to Privy Council Order 1973-6/1953.

# 1.4 Additional Duties of Judges

In addition to their regular duties, judges of the Court are required to devote time to the work of other courts and tribunals. Judges of the Trial Division sit as Umpires to hear appeals under the *Employment Insurance Act*, under the direction of the Associate Chief Justice who is Chief Umpire.

Similarly, four judges of the Trial Division sit as members of the Competition Tribunal, of which Mr. Justice William P. McKeown is Chairman. On June 10, 2000, Madam Justice Sandra Simpson was appointed a member of the Competition Tribunal for a further term of seven years. As of December 31, 2000, the Associate Chief Justice Allan Lutfy and Mr. Justice Marc Nadon were the other two members.

Judges of both Divisions sit as members of the Court Martial Appeal Court of Canada, of which Mr. Justice Barry L. Strayer is Chief Justice. They may act as commissioners for inquiries conducted under the *Inquiries Act* and the *Corrections and Conditional Release Act*. They may also sit as assessors under other federal statutes. Judges of the Court lecture and write about the law and participate as lecturers, seminar leaders or panelists in continuing education programmes for the benefit both of colleagues on this and other Courts as well as members of the Bar.

#### 1.5 Committees

In order to involve judges in the work of the Court, the Chief Justice established a number of committees, composed of representatives of both Divisions of the Court, to deal with a variety of matters:

<sup>1</sup> While its enabling legislation was passed in 1875, the Court was not fully operational until the following year.

The **Accommodations Committee**, chaired by the Chief Justice, deals with the physical accommodations for the Court in the National Capital Region and in centres where the Court maintains its own local offices.

The **Bench and Bar Liaison Committee**, chaired by the Chief Justice, provides a forum for members of the bar to meet with the judges to discuss informally issues of concern to the bar which do not fall within the mandate of the Rules Committee.

The **Technology Advisory Committee** has the following mandate:

- to advise the Chief Justice, the Associate Chief Justice, the Administrator and the judges of the Court with respect to the introduction and use of computer technology which involves or touches on the work of judges;
- ii) to consider new computer-related developments of relevance to the work of the judges and to propose their adoption where appropriate;
- iii) to provide a bridge between the administration of the Court and the judges by assisting the latter to be more informed about computer use, and to promote support services and training for judges in their use of computers; and
- iv) to serve as a point of contact with the Computer Advisory Committee of the Canadian Judicial Council and similar committees in other superior courts.

This committee is chaired by Mr. Justice Denis Pelletier who succeeded Mr. Justice John M. Evans. The committee was previously chaired by Mr. Justice Barry L. Strayer. Mr. Justice Pelletier is also a member of the Court's Web (Internet) Site Committee.

The **Judicial Education Committee**, chaired by Mr. Justice John M. Evans, organizes the annual meeting of the Court and arranges continuing legal education

seminars for judges. Mr. Justice Evans succeeded Mr. Justice Andrew MacKay, who held office for three years.

The **Law Clerks Committee**, co-chaired by Mr. Justice J. Brian D. Malone and Madam Justice Danièle Tremblay-Lamer, oversees the recruitment and selection of law clerks. Mr. Justice Malone succeeded Mr. Justice Joseph Robertson.

The **Library Committee**, chaired by Madam Justice Karen R. Sharlow, advises the Head Librarian on library objectives, policies, services and collection development. Madam Justice Sharlow succeeded Madam Justice Alice Desjardins who held office for eight years.

The **Communications Committee** was established in 2000 and is chaired by the Chief Justice. The objectives of the Committee are:

- i) to establish guidelines for interaction with the news media;
- ii) to develop and implement a public information plan for the national framework of the Court;
- iii) to develop and implement effective educational initiatives promoting a better understanding of the Court and its operations.

In addition, section 45.1 of the Federal Court Act establishes a Rules Committee composed of the Chief Justice, the Associate Chief Justice, seven other judges of the Court, a representative of the Attorney General of Canada, and five members of the practising bar designated by the Attorney General of Canada after consultation with the Chief Justice. The members of the bar so designated are nominated by the Chief Justice after consultation with the Canadian Bar Association. They are representative of the different regions of Canada and the various areas of practice within the jurisdiction of the Court. The Chief Justice is the statutory Chair of this Committee which was formerly chaired by Madam Justice Donna C. McGillis.

# 1.6 Appointments, Elections of Status of Supernumerary Judge, Retirements and Resignations

# Appointments

The Honourable Edmond P. Blanchard of Campbellton, New Brunswick, was appointed a Judge of the Trial Division on October 5, 2000. He replaced the Honourable W. Andrew MacKay who elected to become a supernumerary judge on June 1, 2000.

# Elections of Status of Supernumerary Judge

The Honourable Allen M. Linden elected supernumerary status effective January 7, 2000.

The Honourable W. Andrew MacKay elected supernumerary status effective June 1, 2000.

The Honourable Max M. Teitelbaum elected supernumerary status effective October 30, 2000.

#### Retirements

The Honourable Louis Marceau retired effective May 1, 2000.

The Honourable Barbara J. Reed retired effective July 22, 2000.

The Honourable Bud Cullen, P.C. retired effective August 31, 2000.

# Resignation

The Honourable Joseph T. Robertson tendered his resignation effective July 27, 2000. He was appointed to the Court of Appeal of New Brunswick.

# Judges of the Federal Court of Canada as of December 31, 2000

### **Chief Justice**

The Honourable John D. Richard August 30, 1994 (Trial Division) June 23, 1998 (Associate Chief Justice) November 4, 1999 (Chief Justice)

#### **Associate Chief Justice**

The Honourable Allan Lutfy August 7, 1996 (Trial Division) December 8, 1999 (Associate Chief Justice)

### **Judges of the Court of Appeal**

The Honourable Arthur J. Stone July 18, 1983 July 18, 1998 (Supernumerary)

The Honourable Barry L. Strayer July 18, 1983 (Trial Division) August 30, 1994 (Court of Appeal) September 1, 1998 (Supernumerary)

The Honourable Alice Desjardins June 29, 1987 August 11, 1999 (Supernumerary)

The Honourable Robert Décary *March 14, 1990* 

The Honourable Allen M. Linden July 5, 1990 January 7, 2000 (Supernumerary)

The Honourable Julius A. Isaac December 24, 1991 September 1, 1999 (Supernumerary)

The Honourable Gilles Létourneau *May 13, 1992* 

The Honourable Marshall E. Rothstein June 24, 1992 (Trial Division) January 21, 1999 (Court of Appeal)

The Honourable Marc Noël June 24, 1992 (Trial Division) June 23, 1998 (Court of Appeal)

The Honourable F. Joseph McDonald April 1, 1993 December 27, 1998 (Supernumerary)

The Honourable J. Edgar Sexton *June 23, 1998* 

The Honourable John M. Evans June 23, 1998 (Trial Division) December 8, 1999 (Court of Appeal)

The Honourable Karen R. Sharlow January 21, 1999 (Trial Division) *November 4, 1999 (Court of Appeal)* 

The Honourable J. Brian D. Malone *November 4*, 1999

#### **Judges of the Trial Division**

The Honourable Jean-Eudes Dubé, P.C. April 9, 1975 November 6, 1991 (Supernumerary)

The Honourable Paul U.C. Rouleau August 5, 1982 July 28, 1996 (Supernumerary)

The Honourable James K. Hugessen July 18, 1983 (Court of Appeal) June 23, 1998 (Trial Division) *July 26, 1998 (Supernumerary)* 

The Honourable Francis C. Muldoon July 18, 1983 November 9, 1998 (Supernumerary)

The Honourable Pierre Denault *June 29, 1984* 

The Honourable Yvon Pinard, P.C. *June 29, 1984* 

The Honourable Max M. Teitelbaum *October 29*, 1985 October 30, 2000 (Supernumerary)

The Honourable W. Andrew MacKay September 2, 1988 June 1, 2000 (Supernumerary)

The Honourable Donna C. McGillis *May 13, 1992* 

The Honourable William P. McKeown *April 1, 1993* 

The Honourable Frederick E. Gibson *April 1, 1993* 

The Honourable Sandra J. Simpson *June 10, 1993* 

4

Federal Court of Canada 2000 Report The Honourable Marc Nadon *June 10, 1993* 

The Honourable Danièle Tremblay- Lamer *June 16, 1993* 

The Honourable Douglas R. Campbell *December 8, 1995* 

The Honourable Pierre Blais, P.C. *June 23, 1998* 

The Honourable François Lemieux *January 21, 1999* 

The Honourable J.D. Denis Pelletier *February 16, 1999* 

The Honourable John A. O'Keefe *June 30, 1999* 

The Honourable Elizabeth Heneghan *November 4, 1999* 

The Honourable Dolores Hansen *December 8, 1999* 

The Honourable Eleanor R. Dawson *December 8, 1999* 

The Honourable Edmond P. Blanchard *October 5, 2000* 

#### 1.7 Prothonotaries

Prothonotaries are barristers or advocates of a province who are appointed to assist the Court in the efficient performance of its work. Their jurisdiction is defined in the *Federal Court Rules*. Upon the coming into force of the *Federal Court Rules*, 1998, the jurisdiction of prothonotaries was enlarged to include:

- the hearing and determination of most interlocutory motions to the Court;
- ii) small claims jurisdiction to hear and determine any action for exclusively monetary relief in which the amount claimed does not exceed \$50,000.00, exclusive of interest and costs. Prothonotaries now also play an important role in case management. They conduct pre- trial conferences, mediations, early neutral evaluations and mini- trials.

As at December 31, 2000, the prothonotaries of the Court were:

Peter A.K. Giles Associate Senior Prothonotary (Toronto) Appointed June 28, 1985

John A. Hargrave Prothonotary (Vancouver) Appointed February 17, 1994

Richard Morneau Prothonotary (Montréal) Appointed November 28, 1995

Roza Aronovitch Prothonotary (Ottawa) Appointed March 15, 1999

Roger R. Lafrenière Prothonotary (Toronto) Appointed April 1, 1999

#### 1.8 Composition of the Registry

The Registry of the Court consists of the principal office in Ottawa and sixteen local offices located across Canada. The Registry is headed by an Administrator, who is accountable to the Chief Justice for all administrative matters pertaining to the operation of the Court and the Registry. The Administrator is also the deputy of the Commissioner for Federal Judicial Affairs for purposes of preparing budgetary submissions for the Court and for making such other administrative arrangements as are necessary to ensure that all reasonable requirements, including those for premises, equipment and other supplies and services for officers, clerks and employees of the Court, and for the performance of its operations, are provided for in accordance with the law.

Registry staff appointed pursuant to the *Public Service Employment Act* carry out the various administrative functions as are required by the *Federal Court Rules, 1998*. Pursuant to section 236 of the *National Defence Act*, Registry staff perform the duties of their respective offices in relation to the Court Martial Appeal Court of Canada as well.

The Registry is organized as follows: Office of the Administrator, Appeal Division, Trial Division, Regional Operations, Judicial Support Services and Administration. A list of principal staff as of December 31, 2000, is found at page 8.

A list of the local offices of the Court is provided at Appendix 1.

### 1.9 Judicial Administration

The Chief Justice is assisted in his management of the Court by an Executive Officer, who is also the media relations officer for the Court and secretary to the statutory Rules Committee. In addition, the Chief Justice and the Associate Chief Justice have designated Judicial Administrators to assist them in the scheduling of sittings and the performance of their non-judicial duties. As of December 31, 2000, the persons carrying out those functions were:

Executive Officer to the Chief Justice *Nancy Bélanger* 

Judicial Administrator (Appeal Division) Suzelle Bazinet

Judicial Administrator (Trial Division) Monique Major

#### 1.10 Law Clerks

Recent graduates of law schools in Canada are invited to apply for positions as law clerks to judges of the Court. Notices regarding the law clerks programme are distributed to Canadian law schools. During 2000 there were 34 law clerks. Under the supervision and direction of the Head of Research - Appeal Division or Head of Research - Trial Division, the law clerks prepare case summaries, research questions of law and prepare detailed memoranda on facts and legal issues as instructed by the judges to whom they are assigned.

# **REGISTRY**

Administrator of the Court Robert Biljan Deputy Administrator - Operations Pierre R. Gaudet Deputy Administrator - Designated Proceedings Paul F. Scott Deputy Administrator - Human Resources Cathryn Taubman Regional Director - Quebec & Atlantic Monique Giroux Regional Director - Ontario Rita Bezuhly Regional Director - Western Charles E. Stinson Senior Financial Advisor Evelyn Burke Gordon Wilkins Director, Policy, Training and Labour Relations Director, Informatics Gary Pinder Head Librarian Rosalie Fox Director, Administrative and Judicial Services Pat Levac Manager, Real Property Services James Strader Head, Research & Law Clerks - Appeal Division Marc Reinhardt Head, Research & Law Clerks - Trial Division Christine Ball

# 2.0 JURISDICTION AND PROCEDURE

#### 2.1 Jurisdiction

The Federal Court exercises a specialized jurisdiction, including a limited criminal jurisdiction, in areas governed by federal law. For example, the Court exercises jurisdiction in admiralty, intellectual property, proceedings by or against the Crown in right of Canada, and the supervision of federal boards, commissions and other tribunals either by way of statutory appeal or judicial review. The Canada Evidence Act, the Canadian Security Intelligence Service Act and the *Immigration Act* require judges of the Court to conduct in camera or public hearings to determine issues related to national defence and security. The Competition Act gives the Federal Court - Trial Division all of the powers and jurisdiction of a superior court of criminal jurisdiction in respect of the prosecution of certain offences under that legislation.

The jurisdiction of the Federal Court, like that of the Exchequer Court, has evolved with the legislative responses by Parliament to the changing needs of Canadians and embraces a broad range of subject matter. A list of some of the federal statutes under which the Federal Court may exercise jurisdiction appears at Appendix 2.

#### 2.2 Procedure

The general rules governing practice and procedure in the Court are made by the Rules Committee, established under section 45.1 of the *Federal Court Act*, as amended by S.C. 1990, c. 8. The work of the Rules Committee during 2000 is reported in Part 2.3.

The rules governing the practice and procedure to be followed in applications for leave to commence an application for judicial review, applications for judicial review and appeals from such applications pursuant to the *Immigration Act* are governed by the *Federal Court Immigration Rules*, 1993. These rules are made by the Chief Justice pursuant to section 84 of the *Immigration Act*.

#### 2.3 Rules Committee

During the 1990's, a comprehensive revision to the Federal Court Rules was carried out by the Rules Committee. That revision culminated in the *Federal Court Rules*, 1998, which came into force on April 25, 1998. As part of that revision, consideration was given to enacting a rule for expanded class proceedings in the Federal Court. Because of the substantial work involved with the comprehensive revision and the complexities regarding class proceedings, the Committee determined that class proceedings would be addressed separately.

In 2000, the Rules Committee continued its work on developing a class proceedings rule and released a Discussion Paper on that subject in June 2000. The Rules Committee is now in the process of drafting a class proceedings rule.

# 2.4 Video-conferencing and teleconferencing

In 1996, the Court introduced pilot procedures by which parties may request that motions, case scheduling conferences, pre-trial conferences or other conference hearings proceed by way of video-conference. The objectives of offering video-conferencing facilities to litigants are:

- to provide an alternative means of access to Court hearings in order to facilitate the advancement of cases, including access on urgent matters and across long distances, and
- ii) to save costs in time and travel for litigants, judges and Registry staff.

Tele-conferencing is another procedure available for hearings. It provides expedient and inexpensive access to the Court and, as such, is frequently a convenient procedure of choice by litigants and their legal representatives. A total of 1591 tele-conferences were conducted during 2000.

# 3.0 COURT ACTIVITIES

### 3.1 Annual Meeting of the Court

In 1992, the Court instituted the practice of holding an annual meeting of all judges to discuss the business of the Court and for professional development. The 2000 annual meeting was held September 21 through 23 at Montebello, Québec.

On September 21, 2000, The Right Honourable Beverley McLachlin, Chief Justice of Canada, addressed her role, including the responsibilities and challenges, as Chief Justice. The Honourable René Dussault of the Québec Court of Appeal, reflected on his experience at the Royal Commission on Aboriginal Peoples. Dr. Neil McDonald spoke on "Diversity: A National Challenge."

On September 22, 2000, the Court of Appeal and the Trial Division held separate sessions to discuss topics affecting their respective Divisions. In addition, The Honourable Donald Bowman, Associate Chief Judge of the Tax Court of Canada, spoke to the members of the Court of Appeal while The Honourable Robert Sharpe of the Ontario Court of Appeal addressed the law of injunctions to members of the Trial Division.

On September 23, 2000, reports of court committees were received at a full meeting of the Court. The Honourable John Evans of the Court of Appeal presented an overview of recent developments in administrative law. Professor William Bogart, Director of Research for the Rules Committee, led a discussion on a class proceedings rule.

#### 3.2 Judicial Education

Consistent with the Standards for Judicial Education in Canada, approved by the Board of Governors of the National Judicial Institute in October 1992, and in cooperation with the Canadian Institute for the Administration of Justice and the Canadian Institute for Advanced Legal Studies, the Judicial Education Committee was established to develop continuing education programmes for judges of the Court. In 2000, in addition to the annual meeting of the Court mentioned in Part 3.1, the Committee organized, in collaboration with the National Judicial Institute and the Canadian Maritime Law Association, a Maritime Law seminar on April 28, 2000. Judges of the Court also attended other conferences authorized by the Canadian Judicial Council under the Judges Act.

# 3.3 Regionalization of Administrative Services

On June 25, 1998, the Minister of Justice announced proposed structural reforms in respect of the Federal Court of Canada and the Tax Court of Canada:

"Proposals include the consolidation of the current administrative services of the two courts into a single Courts Administration Service, the creation of a separate Federal Court of Appeal and an increase in the status of the Tax Court to that of a Superior Court.

These proposals are responsive in part to a 1997 Auditor General's *Report on the Federal Court of Canada and Tax Court of Canada*, which was conducted as a result of an order in council requested by then Minister of Justice, Allan Rock. Serious consideration was given to all of the Report's recommendations. Together, the three proposed reforms will contribute to the achievement of the objectives of the Auditor General's recommendations by improving the efficiency of the Federal Court of Canada and the Tax Court of Canada, while enhancing their effectiveness and fully respecting their independence.

'The current overall structure of the Federal Court and the Tax Court is essentially sound. The proposals are in keeping with recommendations made by the Auditor General in his 1997 report that called for improved coordination in the administrative management of the Federal and Tax Courts. Our goal is to achieve substantial efficiencies through administrative consolidation,' said the Minister."

On June 15, 2000, the Minister of Justice and Attorney General of Canada tabled Bill C-40 in the House of Commons, *An Act to establish a body that provides* 

administrative services to the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court and the Tax Court of Canada, to amend the Federal Court Act, the Tax Court of Canada Act and the Judges Act, and to make related and consequential amendments to other Acts. The Bill only received First reading prior to the Fall federal elections. At the time of publication, the Bill had not been re-introduced.

#### 3.4 Visitors to the Court

The Court received official visitors throughout the year, including a delegation of judges and officials from Taiwan, a delegation of Croatian judges, a delegation of judges and officials from Wales, a delegation of judges and officials from China, a judge of the Federal Court of Australia, the High Commissioner for the Commonwealth of The Bahamas and a senior official from the Department for Courts of New Zealand.

# 4.0 VOLUME AND PACE OF LITIGATION

# 4.1 Delay Reduction Programme Update

In 1992, the Court established a Delay Reduction Programme (DRP) consistent with recommendations made by the Canadian Judicial Council in its report released in August of that year. As a first step, a computer accessible inventory of all litigation pending in the Court was created.

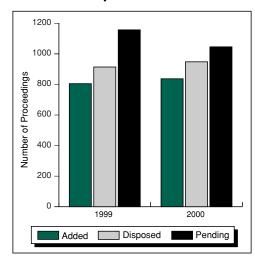
By August 31, 1997 the review was complete. Parties had discontinued over 5,000 proceedings. Over 10,500 proceedings were in the process of being dismissed for want of prosecution. Each of these proceedings was then removed from the inventory upon the recording of its date of final disposition.

The second step of the Delay Reduction Programme was the introduction of case management principles, including time standards into the Federal Court Rules. As was mentioned in Part 3, the Rules Committee began a comprehensive review of the Federal Court Rules in 1992. In 1995, the Canadian Judicial Council approved targeted time standards for superior trial courts and courts of appeal as a statement of goals for the pace of litigation, subject to the availability of human and physical resources. As part of its Delay Reduction Programme, the Court ensured that standards in the Federal Court Rules, 1998, which came into effect on April 25, 1998, were consistent with the standards adopted by the Canadian Judicial Council.

# 4.2 Volume of Litigation in the Court of Appeal

Figure 1 illustrates the size of the inventory of proceedings pending in the Court of Appeal at the end of 1999 and 2000, together with the number of proceedings added to the inventory and disposed of each year.

Figure 1: Court of Appeal Proceedings added to/disposed of from Inventory



There were 1,157 proceedings pending in the Court of Appeal on December 31, 1999. 837 proceedings were added to the inventory during 2000 and the Court disposed of 948 proceedings, leaving 1,046 proceedings pending at the end of 2000.

Figure 2: Court of Appeal Profile of Proceedings Pending on December 31, 2000

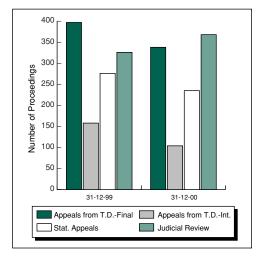


Figure 2 profiles, by major subject area, the proceedings pending in the inventory at the end of 1999 and 2000. As of December 31, 2000, the inventory comprised 442 appeals from the Trial Division: 338 were from final orders, and 104 appeals were from interlocutory orders. The remainder of the inventory consisted of 368 applications for judicial review, and 235 statutory appeals.

# 4.3 Pace of Litigation in the Court of Appeal

#### **Commencement to Judgment**

In 2000 the median time for all proceedings from commencement to judgment was 18.9 months, down considerably from 21.5 months in 1994, the first year for the Delay Reduction Programme measurement as described in Part 4.1.

The median time periods in 2000 by subject area were as follows:

Appeals from Trial Division - Final Orders 19.0 months

Appeals from Trial Division - Interlocutory Orders

14.4 months
Statutory Appeals
20.9 months
Applications for Judicial Review
17.9 months

### **Status of Pending Inventory**

Figure 3: Federal Court of Appeal Status of Pending Inventory as of December 31, 2000

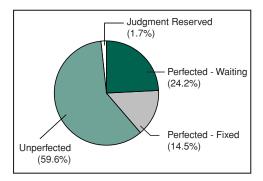
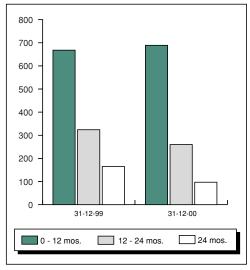


Figure 3 shows the status of the pending inventory on December 31, 2000. Of the 1,046 cases pending, 404 (38.6%) had been perfected for hearing. Of these, 151 had been assigned fixed hearing dates, leaving 253 to be fixed for hearing. 18 judgments (1.7% of all cases) were under reserve. 554 cases (59.6%) remained unperfected at the end of the year.

The number of cases which were ready for hearing but for which a hearing date had not been assigned by December 31, 2000 was 253, down from 373 on December 31, 1999.

# **Age of Pending Inventory**

Figure 4: Court of Appeal Distribution of Inventory by Age



The age of the pending inventory at the end of 1999 and 2000 is illustrated in Figure 4. The number of pending cases over two years old is down, from 165 (14% of the pending inventory) on December 31, 1999 to 97 (9.2% of the pending inventory) on December 31, 2000. This is a dramatic improvement since December 31, 1994 when 1,138 cases (57% of the inventory) were over two years old.

# 4.4 Volume of Litigation in the Trial Division

#### **New Proceedings Commenced**

Proceedings in the Trial Division comprise two major categories: litigation and administrative proceedings. Litigation forms the main workload. It has been categorized according to seven broad subject areas; Admiralty, Aboriginal Law, Crown Litigation, Judicial Review, Intellectual Property and Statutory Appeals/Applications form the six main "Non-Immigration" subject areas; Immigration proceedings form the seventh category.

The second category - administrative proceedings - arises from provisions in a number of federal statutes which provide for the filing of certificates, decisions or orders of federal boards, commissions or

other tribunals, giving them the same force and effect as judgments of the Federal Court - Trial Division. These are mainly dealt with by Registry Officers and are reported in Part 5.

Figure 5: Trial Division Proceedings added to/disposed of from Inventory

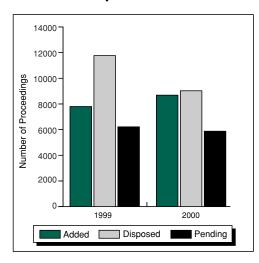


Figure 5 shows there were 6,217 proceedings pending in the Trial Division as of December 31, 1999. 8,686 proceedings were added to the inventory during 2000 and the Trial Division disposed of 9,027 proceedings, leaving 5,876 proceedings pending at the end of 2000.

In 1999, the Non-Immigration component of the pending inventory was 3645. The Non-Immigration pending inventory decreased by 422 proceedings in 2000 to 3223.

The Immigration component of the 1999 pending inventory was 2,572. In 2000, that number rose slightly to 2,653.

Figure 6: Trial Division New Proceedings Commenced

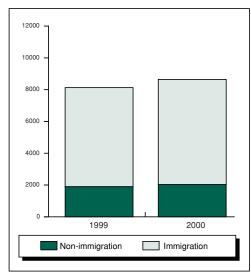


Figure 6 illustrates the number of new proceedings commenced in 1999 and 2000, with Immigration proceedings shown separately from all other proceedings.

In the Non-Immigration subject areas, the number of new proceedings continued a slight downward trend from 1993 (2,993). New Non-Immigration proceedings were 1,895 in 1999 and 2,025 in 2000.

The Immigration component has continued to rise since 1995. In that year 3,631 new Immigration proceedings were commenced. That number was 6,312 in 1999, and rose to 6,619 in 2000.

A factor of particular note in the overall increase of the Immigration workload since 1995 is the rise in judicial review applications challenging visa officer decisions. Unlike the leave application procedure in Immigration cases, which are paper application procedures and which themselves rose from 3,474 in 1995 to 5,724 in 2000, judicial review applications against visa officer decisions require a full hearing. The number of visa officer judicial reviews commenced in 1995 was 149. In 2000, that number rose to 890.

Figure 7: Trial Division Profile of Pending Inventory

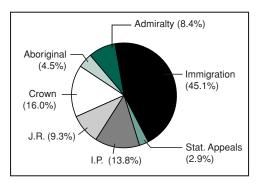


Figure 7 profiles the December 31, 2000 pending inventory by major subject area:

Admiralty	496	(8.4%)
Aboriginal Law	264	(4.5%)
Crown Litigation	944	(16.0%)
Judicial Review	552	(9.3%)
Intellectual Property	816	(13.8%)
Statutory Appeals	151	(2.9%)
and Applications		
Immigration	2,653	(45.1%)

# 4.5 Pace of Litigation in the Trial Division

# Commencement to Judgment

Figure 8: Trial Division
Percentage of dispositions within 12
months of commencement
(Excluding Immigration)

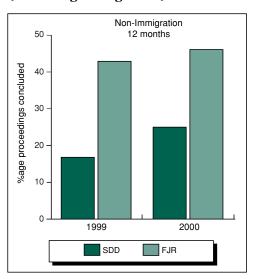
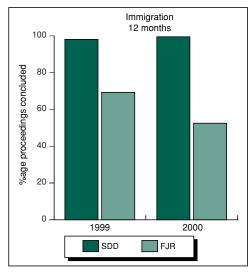


Figure 9: Trial Division Percentage of dispositions within 12 months of commencement (Immigration)



Figures 8 and 9 sample the cases in which dispositions were recorded in 1999 and 2000 and set out the percentage of these dispositions which occurred within 12 months of commencement. Figure 8 samples the dispositions in Non-Immigration proceedings, while Figure 9 samples dispositions in Immigration proceedings only. Each chart distinguishes between the percentage of proceedings concluded by final judgment after a full hearing (FJR) and those concluded by settlement, discontinuance, dismissal for delay or the refusal of the Court for leave to commence a proceeding (SDD).

Figure 10: Trial Division Percentage of dispositions within 18 months of commencement (Excluding Immigration)

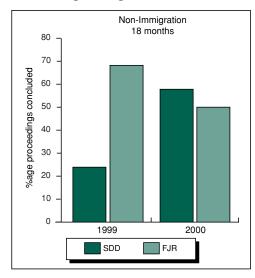
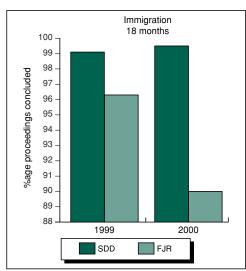


Figure 11: Trial Division Percentage of dispositions within 18 months of commencement (Immigration)



Figures 10 and 11 compare the percentage of dispositions which occurred within 18 months of commencement.

Figure 12: Trial Division Percentage of dispositions within 24 months of commencement (Excluding Immigration)

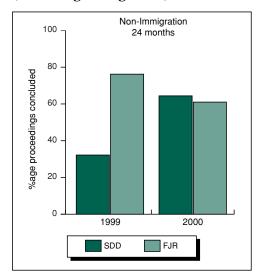
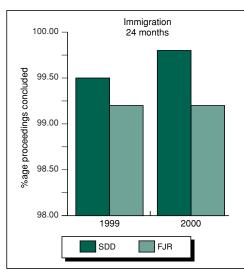


Figure 13: Trial Division Percentage of dispositions within 24 months of commencement (Immigration)



Figures 12 and 13 compare the results of dispositions in the Court within 24 months of commencement.

As figures 9, 11 and 13 illustrate, in Immigration proceedings where leave is granted, or in Immigration proceedings for which leave is not required, 52.5% were concluded within 12 months of commencement in 2000. This percentage increased to 90% within 18 months of commencement and 99.2 % within 24 months of commencement.

Figures 8, 10 and 12 illustrate that the dispositions in Non-Immigration proceedings by judgment of the Court after hearing have been considerably more timely than other forms of dispositions; settlement, discontinuance, dismissal for delay.

#### **Status of Pending Inventory**

Figure 14: Trial Division Status of Pending Inventory as of December 31, 2000 (Excluding Immigration)

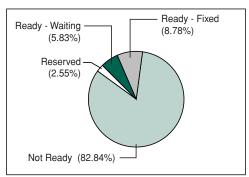


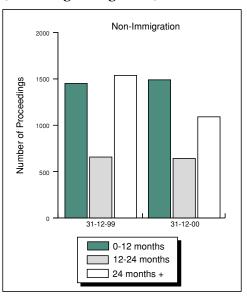
Figure 14 shows the status of the inventory of Non-Immigration proceedings pending as of December 31, 2000. 82 (2.5%) judgments were under reserve at year end, and 471 (14.6%) cases were ready but not yet heard. Of these, 283 had been assigned fixed hearing dates, leaving 188 to be fixed. 2,670 of the 3,223 cases in the inventory were not ready for hearing.

On December 31, 2000, the inventory of Immigration proceedings pending in the Trial Division stood at 2,653, of which 2,089 were applications for leave and for judicial review. 102 judgments (3.8%) were under reserve. 379 proceedings were ready but not yet heard. Of these, 226 were fixed for hearing and 153 were still to be fixed. 499 leave applications were awaiting their leave determination. 1,673 proceedings, including 1,324 applications for leave and for judicial review, were not ready for hearing.

### **Age of Pending Inventory**

Figure 15 illustrates the age of the pending inventory of Non-Immigration proceedings on December 31 of 1999 and 2000.

Figure 15: Trial Division Age of Pending Inventory (Excluding Immigration)



52% of proceedings in the pending inventory (4,381 proceedings) were over two years old on December 31, 1993. This number had increased to 72% (6,602 proceedings) by December 31, 1997. With the coming into force of the Federal Court Rules, 1998, status reviews were conducted to identify which of these older proceedings were still active and to issue orders dismissing those which were not. As a result of the status review procedure, the number of pending proceedings over two vears old was reduced to 4,406 (60%) as at December 31, 1998. The number of pending proceedings over two years old was reduced dramatically again in 2000 to 1,091 (34%) as of December 31.

Figure 16: Trial Division Age of Pending Inventory as of December 31, 2000 Immigration Proceedings Only

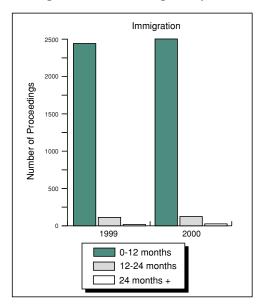


Figure 16 shows that the vast majority of Immigration proceedings pending on December 31 of 1999 and 2000 were less than 12 months old.

### 5.0 REGISTRY ACTIVITY

#### 5.1 Overview

The Registry provides the support necessary for the resolution of Court proceedings and the enforcement of decisions. The Registry strives to ensure that all persons have access to justice without undue hardship, delay or inconvenience. This follows from the statement in Rule 3 that the *Federal Court Rules*, 1998 "be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits".

Principal responsibilities of the Registry are outlined in Part 2 of the Rules relating to administration of the Court: the requirements for offices of the Court; the maintenance of records and filing of documents; arrangements for and conduct of Court sittings; and the provision of public access to the Court's records.

All activities and communications between the Court and litigants, or their counsel, flow through the Registry. Designated officers of the Registry perform such quasijudicial functions as the assessment of costs, assessment of damages, arrests of ships, cargo and freight in admiralty cases, and the preparation of schemes of collocation in accordance with the *Civil Code of Quebec*. Staff of the Registry have similar responsibilities in relation to the Court Martial Appeal Court of Canada.

#### 5.2 Accommodations

### **Ottawa Principal Office**

The need for suitable accommodations for the Court in Ottawa continues to be an increasingly pressing issue as growth of the organization continues to crowd existing accommodations. Judges of the Appeal and Trial Divisions have their offices in separate buildings and staff must work from pockets of accommodations in several different locations. Plans for a building to house the Federal Court received preliminary project approval from Treasury Board Ministers in February 1990. At this time, Public Works Government Services Canada is studying options to accommodate the Federal Court in one location in Ottawa. It is more essential than ever that the Court's accommodations be consolidated within a common building to alleviate overcrowding and to provide adequate space for optimum use of resources.

#### **Vancouver Local Office**

Re-location and consolidation of the accommodations of the Federal Court of Canada and the Tax Court of Canada into one building, 701 West Georgia Street, was successfully completed.

#### **Toronto Local Office**

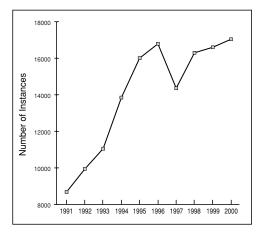
The determination of long-term requirements continues with assistance from Public Works and Government Services Canada to evaluate market conditions for accommodations in downtown Toronto and to provide solutions for meeting the Court's requirements in anticipation of the expiry of the Toronto office's present lease.

### 5.3 Administrative Proceedings

Provision is made in federal statutes for the filing of certificates, decisions or orders of federal boards, commissions or other tribunals in the Federal Court (Trial Division). Once deposited with the Registry, these "administrative proceedings" have the force and effect of a judgment of this Court. Because they are dealt with principally by the Registry, they do not form part of the Court's Delay Reduction Programme (DRP) inventory.

Figure 17 shows that institutions of these proceedings, which began an upward trend in 1991 with 8,610 cases, has increased from a single year decrease in 1997 to 16,298 cases in 1998, to 16,682 in 1999 and then again to 17,039 in 2000.

Figure 17: Administrative Proceedings Commenced



### 5.4 Case Management

Case management, which was incorporated into the new *Federal Court Rules, 1998* on April 25, 1998, is the coordination of Court processes and resources intended to move cases in a timely manner from commencement to disposition, regardless of the type of disposition. It involves the active supervision by the Court of the progress of cases and introduces new supervisory activities such as status reviews, dispute resolution services, trial management conferences and specially managed proceedings.

Since 1998, the Registry has utilized an integrated system of advanced technological components and support services which combine to provide the Court with a comprehensive, automated case management system. This system includes a computerized case inventory package (called the Delay Reduction Programme - DRP) to measure and report on elapsed time between events in the litigation process; an automated scheduling system (called the Case Scheduling Module - CSM) for assignment of cases, judges, court facilities and personnel; an automated docket recording system (called the Proceedings Management System) with enhancement for inclusion of preautomated records; teleconference and video-conference facilities; remote document filing by fax; a statistical retrieval package; and an electronic communication software (Groupwise).

These integrated systems place the Registry at the forefront of the automated case management field. They enable the Court to meet its goals and objectives of case management, and assist the Registry in optimizing limited resources to meet increasing demands for its services.

### 5.5 Technology Initiatives

#### **Electronic Filing**

The Federal Court of Canada is embarking on undoubtedly the most ambitious Information Technology project in its history - Electronic Filing. Requirements of the Federal Court's electronic filing system include being fully bilingual, internet-based and user friendly, and being built on open standards so that it will be accessible by as many litigants as possible.

The major challenge of this project will not be in finding the technologies to build a system, but rather in documenting and changing the business practices surrounding filing documents at the Federal Court of Canada. This will be accomplished by forming working groups with representatives of the legal community, the Court and the Registry. We will also be working with organizations that have already implemented electronic filing systems to determine "lessons learned" and best practices.

The Registry is currently contacting stakeholders to work together as part of the E-Filing Advisory Project Committee to develop electronic legal documents standards using XML as phase I of this project. Please contact Gary Pinder - Director, Informatics Services for more information. He can be reached by e-mail via gary.pinder@fct-cf.gc.ca.

# **Internet Web Sites**

#### i) Federal Court of Canada Web Site

The Registry has recently developed and implemented a Web Site for the Federal Court of Canada. This initiative was given high priority in 2000 and was opened to the public on schedule September 1, 2000. Phase I of this project includes information about the Court itself, its judges and

prothonotaries, the court's jurisdiction, contact and location information for offices of the Registry, sitting dates for the Court of Appeal and motion days in the Trial Division, hearing lists. There are also links to the Federal Court Act, the Federal Court Rules. 1998 and the Federal Court Immigration Rules, 1993, through the Department of Justice site, and a link to the Federal Court decisions through the Commissioner for Federal Judicial Affairs site.<sup>2</sup> The site also includes various reports, such as the Annual Report, Notices to the Profession, and the Court's decisions in proceedings that have generated public or media interest. The site can be found at http://www.fct-cf.gc.ca.

The site will continue to evolve over time. Items being considered for future phases of the site include viewing of case dockets, subscription services to notices and current information, and dynamic hearing information with search capability for hearings by location and date.

# ii) Court Martial Appeal Court

The Registry is currently working with the Chief Justice of the Court Martial Appeal Court in the development of a Court Martial Appeal Court web site. It will be similar in architectural design to the Federal Court web site but distinctive in content and appearance. Phase I of this project includes an "About the Court" section which will list the designated judges, provide some history and jurisdictional information as well as a listing of the principal and regional offices. Another section, "Business", will provide CMAC decisions, its rules and information about Legal Aid and Military Law in general. There will be an area of useful links and FAQs, a "Bulletin" section, a "What's New" area and posting of any newsworthy notices. Site visitors will also have access to a list of general CMAC contacts.3

#### **Virtual Private Network**

Current bandwidth demands on the Registry's Wide Area Network have dictated that the Information Technology department within the Registry find a solution in order to avoid network congestion. Therefore Informatics Services is currently reviewing Virtual Private Network (VPN) and other technologies which will be used to replace the existing Frame Relay links to remote locations.

# 5.6 Registry Officer Development Programme

Significant amendments to the Federal Court Rules and implementation of case management in 1998 required consequential revisions and further development of the Registry Officer Development Programme throughout 1999. The completed programme includes several training modules covering subjects ranging from operational procedures to responsibilities and mandate of the Registry.

The programme is delivered to staff of the Registry across Canada. It was introduced again in the spring/summer of 2000 as a two-year program consisting of a combination of practical and theoretical training with comprehensive instruction in the technical, interpersonal and conceptual skills required of Registry Officers. The programme is offered as well to select students who are registered in the Court and Tribunal Administration Program at Seneca College in Toronto, the "Techniques Juridiques" programme at Ahuntsic College in Montreal, the Law Clerk Program at Algonquin College in Ottawa and the Legal Assistant Program at Vancouver Community College in Vancouver.

The Registry is in the process of converting this programme to computer-based training, which will be available via the Court's Canada- wide Intranet site.

<sup>2</sup> At the time of publication, the Federal Court of Canada web-site provides full access to the decisions without use of the link.

# 5.7 Financial Management

Details of the programmes and financial performance of the Registry are published in Main Estimates tabled in Parliament and in the Registry's annual Performance Report to the Treasury Board Secretariat. Copies of the Estimates are available from the Canada Communications Group or from Associated Bookstores. The following is a summary:

(thousands of dollars)	Main Estimates 2001-02	Main Estimates 2000-01	Actual 1999-00
Personnel			
Salaries and wages	20,334	18,411	19,744
Contributions to employee benefit plans	<b>3,965</b>	3,591	4,167
Sub-total	24,299	22,002	23,911
Goods and Services			
Transportation and communications	1,787	1,698	1,843
Information	97	94	118
Professional and special services	4,069	3,774	4,049
Rentals	298	283	353
Purchased repair and upkeep	397	472	382
Utilities, materials and supplies	1,390	1,038	1,373
Minor capital*	1,886	2,075	1,866
Other subsidies and payments			4
Sub-total	9,924	9,434	9,988
Total Requirements	34,223	31,436	33,899

<sup>\*</sup>Minor capital is the residual after the amount of controlled capital has been established. In accordance with the Operating Budget principles, these resources would be interchangeable with Personnel and Goods and Services expenditures.

### 5.8 Registry Staff

The Universal Classification Standard (UCS) was launched by the Treasury Board in 1998 to incorporate principles of universality, gender neutrality and simplicity in the description and evaluation of work performed in the Public Service of Canada. Conversion to the new Standard, which includes the Registry of the Federal Court, has been targeted by the Board to take effect in 2000.

The management of a project steering committee, an implementation team and extensive participation at all levels of the Registry have been instrumental in achieving success in meeting the UCS project objectives imposed by the Board.

The UCS project has had a dramatic impact on the Registry's resources, and the extremely short time-frames and large-scale nature of the project have created serious challenges for other Registry projects and areas of ongoing work. The Registry is, nevertheless, making every possible effort to minimize the resource and operational impacts of this project and has undertaken to assist Treasury Board in every way possible.

#### 5.9 Employment Equity

The Registry of the Federal Court of Canada continues to strive towards achieving a workforce reflective of the diversity of the population it serves.

As of March 31, 2000, the Registry's staff was comprised of:

- 277 women (65.5% of employees);
- 24 persons self-identified with disabilities (5.7% of employees);
- 24 employees self-identified as visible minorities (5.7% of employees); and
- 6 self-identified persons of the aboriginal group (1.4% of 423 employees).

The Registry continues its efforts to recruit members of all designated groups, both from within and outside of the public service. The Human Resources Division continues to review existing Statements of Qualifications and rating material in an effort to identify and remove any possible/perceived barriers. We continue to update assessment tools to ensure equitable access to promotional/developmental opportunities.

The Registry has participated in several succession planning and career development initiatives. For the Career Assignment Program, the Registry committed to the intake of six assignments, one of which is an Aboriginal CAP assignment. Out of six successful candidates, three were women. The Registry also participated in the CS Bridging Program. The Registry was also successful in hiring through the Management Trainee Program. All posters include a paragraph encouraging members of the designated groups to apply.

In preparation for a lengthy aboriginal land claims trial, the Registry hired a consultant to provide a one-day Aboriginal Awareness session to sensitize Registry managers and court staff on aboriginal cultural issues. For the first time in the Court's history, the trial took place for several weeks, on the site of a Reserve in Alberta, where evidence was given by elders of the community.

In partnership with Health Canada, the Registry continues to offer diversity training to employees as well as awareness workshops about Aboriginal and Inuit cultures. The Registry maintains its agreement with various colleges, namely, Seneca College in Toronto, Ahuntsic College in Montreal, Vancouver Community College, and Algonquin College in Ottawa, to provide training to students who are enrolled in Court and Tribunal Administration Programs or Paralegal programs. The training we provide allows practical work experience in the Registry, which broadens the selection pool for eventual recruitment.

All buildings accommodating the offices of the Federal Court of Canada are wheelchair accessible. Braille coding and audible floor indicators have been installed in most elevators. Parking is available for persons with disabilities at the principal office in Ottawa as well as at federally-staffed offices across Canada. In addition, washrooms, ramps, coat closets and water fountains are accessible.

Telephone volume amplifiers, telecommunication devices for hearing and speech impaired (TDD and TYY) and enhanced computer equipment have been provided for employees and judges requiring these special assistive devices. Hearing and speech impaired clients communicate with the Registry through TDD access in the National Capital Region and in all federally-staffed local offices.

Workstation ergonomic assessments were performed for employees experiencing any discomfort resulting from workplace setup. Material such as foot rests, document holders, wrist bands, back belts and orthopaedic chairs were ordered and workspace re-configurations were also completed.

The Registry of the Federal Court encourages its employees to access the Enabling Resource Centre at the Public Service Commission to view the available equipment to assist employees with disabilities.

# Appendix 1

#### OFFICES OF THE FEDERAL COURT OF CANADA

#### PRINCIPAL OFFICE - OTTAWA

Ottawa, Ontario K1A 0H9 http://www.fct-cf.gc.ca

Appeal Division Trial Division

Telephone: (613) 996-6795 Telephone: (613) 992-4238 Facsimile: (613) 952-7226 Facsimile: (613) 952-3653

#### LOCAL OFFICES

ALBERTA - CALGARY

Dan Buell

District Administrator

3rd Floor

Gas Eighth Avenue S.W.

Calgary, Alberta

T2P 3M3

ALBERTA - EDMONTON

Michael D. Holt

District Administrator

Tower 1, Suite 530

Scotia Place, P.O. Box 51

10060 Jasper Avenue

Edmonton, Alberta T5J 3R8

Telephone: (403) 292-5920 Telephone: (780) 495-4651 Facsimile: (403) 292-5329 Facsimile: (780) 495-4681

Facsimile: (403) 292-5329 Facsimile: (/80) 495-468.

BRITISH COLUMBIA - VANCOUVER

Charles E. Stinson

Regional Director, Western

Pacific Centre. P.O. Box 10065

MANITOBA - WINNIPEG

Terry Johnston

District Administrator

4th Floor

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Facsimile: (902) 426-5514

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1815 Upper Water Street Halifax, Nova Scotia B3J 1S7

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**CHARLOTTETOWN** E. Dorothy Kitson

District Administrator

Sir Henry Louis Davies Law Courts 42 Water Street, P.O. Box 2000

Charlottetown, P.E.I. C1A 8B9

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Facsimile: (902) 368-0266

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# Appendix 2

#### Some statutes under which the Federal Court exercises jurisdiction

Access to Information Act

Agriculture and Agri-Food Administrative

Monetary Penalties Act Atomic Energy Control Act

Bank Act

Bankruptcy and Insolvency Act

Broadcasting Act

Budget Implementation Act, 1998 Canada Agricultural Products Act

Canada Deposit Insurance Corporation Act

Canada Evidence Act Canada Grain Act Canada Labour Code Canada Marine Act

Canada Oil and Gas Operations Act

Canada Pension Plan

Canada Petroleum Resources Act

Canada Shipping Act Canada Transportation Act

Canadian Environmental Protection Act

Canadian Human Rights Act

Canadian International Trade Tribunal Act

Canadian National Railways Act Canadian Ownership and Control

Determination Act

Canadian Security Intelligence Service Act

Canadian Space Agency Act

Cape Breton Development Corporation Act

Citizenship Act Coasting Trade Act

Commercial Arbitration Act

Competition Act

Competition Tribunal Act

Cooperative Credit Associations Act

Copyright Act

Corrections and Conditional Release Act

Criminal Code

Crown Liability and Proceedings Act Cultural Property Export and Import Act

Customs Act

Defence Production Act

Divorce Act

Dominion Water Power Act

Emergencies Act
Employment Equity Act
Employment Insurance Act
Energy Supplies Emergency Act

Escheats Act Excise Act Excise Tax Act Expropriation Act

Farm Credit Corporation Act

Fisheries Act

Foreign Enlistment Act

Hazardous Materials Information Review Act

Immigration Act Income Tax Act Indian Act

Industrial Design Act Insurance Companies Act

Integrated Circuit Topography Act

International Boundary Waters Treaty Act International Sale of Goods Contracts

Convention Act

Labour Adjustment Benefits Act

Land Titles Act

Motor Vehicle Safety Act National Energy Board Act National Training Act

North American Free Trade Agreement

Implementation Act Northern Pipeline Act

Northwest Territories Waters Act

Official Languages Act

Patent Act

Payment Clearing and Settlement Act Pension Benefits Standards Act Petroleum and Gas Revenue Tax Act Petroleum Incentives Program Act

Plant Breeders' Rights Act

Postal Services Interruption Relief Act

Privacy Act

Public Servants Inventions Act Public Service Employment Act Radiocommunication Act

Railway Safety Act

Royal Canadian Mounted Police Act

Special Import Measures Act
Status of the Artist Act
Supreme Court Act
Tax Court of Canada Act
Telecommunications Act
Timber Marking Act
Trade Marks Act

Trust and Loan Companies Act

United Nations Foreign Arbitral Awards

Convention Act

Yukon Surface Rights Board Act

Yukon Waters Act

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