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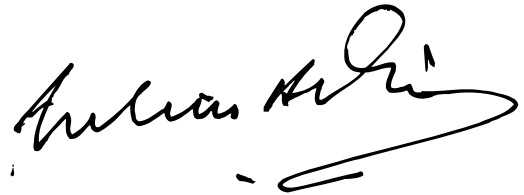
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**T**his is a report on the activities of the Federal Court of Canada for the year ending December 31, 1998. Parts 1 through 3 contain a brief history of the Court, its composition, as well as details of major events and activities which took place 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, but because the Registry is an integral part of the Court, a summary of the activities of the Registry is included in this report for completeness.



*Julius A. Isaac*



## 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 1876<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 the nation, 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. Unlike most courts in Canada, the Federal Court travels to the venue most convenient to litigants.

### 1.2 Objectives of the Court

The objectives of the Court are to:

- Do justice and be seen to do justice in individual cases
- Resolve disputes according to law in a timely manner
- Protect individuals from the arbitrary use of government power
- Maintain a formal record of legal proceedings and their disposition

### 1.3 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 *Act* provides that a judge who has either attained the age of sixty-five years and has continued in judicial office for at least fifteen years, or has attained the age of seventy years and has continued in judicial office for at least ten years may elect supernumerary status.

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. Five judges of the Court of Appeal, including the Chief Justice, and two judges of the Trial Division have been appointed directly from provincial superior courts.

In order to qualify for appointment as a judge of the Court, a candidate must be or have 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, or a person who has, for an aggregate of at least ten years been a barrister or advocate of the bar of any province and, 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 pursuant to a law of Canada or a province. 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 thirteen such judges.

A list of the judges of the Court as of December 31, 1998, and the details of their appointment and status as regular or supernumerary judges appear at page 5.

### 1.4 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 by the Governor in Council at the request of the Chief Justice. In 1998, the Chief Justice requested that the following former superior court judges act as deputy judges of the Court for limited periods on an *ad hoc* basis:

The Honourable François Chevalier, Q.C.  
The Honourable Wesley Gibson Gray, Q.C.  
The Honourable Darrel V. Heald, Q.C.  
The Honourable David Howard Woodhouse Henry, Q.C.

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

### 1.5 Additional Duties of Judges

In addition to their normal duties, judges of the Court are required to devote considerable 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 leadership 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.

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 act as commissioners for inquiries conducted under the *Immigration Act*, the *Inquiries Act*, and the *Corrections and Conditional Release Act*. They sit as assessors under the *Emergencies Act* and the *Energy Supplies Emergency Act*. Judges appointed to the Court before February 1, 1992 sit as assessors under the *Health of Animals Act*, the *Pesticide Residue Compensation Act*, and the *Plant Protection Act*. They also lecture and write about the law and participate as lecturers, seminar leaders or panelists in continuing education programmes for the benefit of both colleagues on this and other Courts and of members of the Bar.

### 1.6 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 discrete operational matters:

The **Accommodations Committee**, chaired by the Associate 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 Associate Chief Justice, succeeded the Chief Justice, who resigned as Chair after holding that office for four years.

The **Auditor General's Committee** was established in 1997 to examine and make recommendations with respect to issues arising from the report of the Auditor

General tabled in the House of Commons on April 22, 1997. It is chaired by the Chief Justice.

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 Chief Justice has succeeded the late Mr. Justice Mark R. MacGuigan, who had held the office for five years.

The **Committee for the Enhancement of Access to the Court in the Province of Québec** was established in 1998, at the instance of the Chief Justice. The committee is chaired by Mr. Justice Gilles Létourneau.

The **Committee on Cameras in the Courtroom**, chaired by the Chief Justice, has responsibility for supervising a pilot project on access by electronic media to proceedings in the Court of Appeal, in accordance with guidelines approved by the Court. The Chief Justice has succeeded the late Mr. Justice Mark R. MacGuigan, who had held the office for four years.

The **Computer Advisory Committee** was established in 1998. Its mandate is:

- i) 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 new committee is chaired by Mr. Justice Barry L. Strayer.

The **Judicial Education Committee**, chaired by Mr. Justice Andrew MacKay, organizes the Annual Meetings of the Court and arranges continuing legal education seminars for judges. Mr. Justice MacKay succeeded Madam Justice Donna C. McGillis, who resigned as Chair after holding that office for three years.

The **Law Clerks Committee** co-chaired by Mr. Justice Joseph Robertson and Madam Justice Danièle Tremblay-Lamer oversees the recruitment and selection of law clerks. Mr. Justice Robertson succeeded the late Mr. Justice Mark R. MacGuigan, who had co-chaired the Committee for five years.

The **Library Committee**, chaired by Madam Justice Alice Desjardins, advises the Head Librarian on library objectives, policies, services and collection development.

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, but he had delegated this function, first, to Mr. Justice James K. Hugessen, who served in this office for five years and, on May 1, 1998 to Madam Justice Donna C. McGillis to replace Mr. Justice Hugessen who had resigned.

### **1.7 In Memoriam**

The Honourable Mark R. MacGuigan, a judge of the Court of Appeal from 1984 to 1998, died in Oklahoma City on January 12, 1998.

## **1.8 Transfers, Retirements, Elections of Status of Supernumerary Judge and Appointments**

### **Transfers**

The Honourable James K. Hugessen transferred from the Court of Appeal to the Trial Division effective June 23, 1998.

### **Retirements**

The Honourable James A. Jerome, P.C., retired March 4, 1998. He graduated from the University of Toronto in 1954 and Osgoode Hall Law School in 1958. He practised law in Sudbury from 1958 until 1966 when he was elected Alderman of the City of Sudbury. He was first elected to the House of Commons in 1968 and re-elected in 1972, 1974 and 1979. He was appointed Parliamentary Secretary to the President of the Privy Council in 1970 and a member of the Canadian Delegation to N.A.T.O in 1972. In 1974 he was elected Speaker of the House of Commons and continued in that capacity until 1979. In 1976 he was appointed Queen's Counsel and elected President of the Commonwealth Parliamentary Association. He was appointed Associate Chief Justice of the Court on February 18, 1980 and served with distinction in that office for over 18 years.

The Honourable Louis Pratte and the Honourable L. Marcel Joyal both retired effective December 31, 1998.

### **Appointments**

On June 23, 1998 the Honourable John D. Richard, a judge of the Trial Division, was appointed Associate Chief Justice and Chief Umpire to succeed the Honourable James A. Jerome who retired on March 4, 1998. The Associate Chief Justice graduated from Osgoode Hall Law School in 1959. He also received a *licentiate* in political and social sciences in 1960 from Louvain University in Belgium. Called to the Ontario Bar in 1959, he practised law in Ottawa with the firm Gowling & Henderson from 1960 until 1988, when he joined the firm Lang Michener as a partner. He was appointed Queen's Counsel in 1976. His areas of practice included public law, civil litigation, intellectual property, labour and employment law. He is a member, as well

as a past President, of l'Association des juristes d'expression française de l'Ontario. He is a fellow of the American College of Trial Lawyers, as well as a member of the Advocates Society and the Patent and Trademark Institute of Canada. He is also the author of books and articles on a variety of legal subjects.

The Honourable J. Edgar Sexton was appointed a judge of the Court of Appeal on June 23, 1998. He replaced the late Mark R. MacGuigan.

The Honourable Marc Noël, a judge of the Trial Division was appointed to the Court of Appeal on June 23, 1998. He replaced the Honourable James K. Hugessen, who transferred to the Trial Division.

The Honourable Pierre Blais, P.C. was appointed a judge of the Trial Division on June 23, 1998. He replaced the Honourable Bud Cullen, who had elected supernumerary status April 20, 1997.

The Honourable John M. Evans was appointed a judge of the Trial Division on June 23, 1998. He replaced the Honourable John D. Richard.

### ***Elections of Status of Supernumerary Judge***

The Honourable Arthur J. Stone elected supernumerary status effective July 18, 1998.

The Honourable James K. Hugessen elected supernumerary status effective July 26, 1998.

The Honourable Barry L. Strayer elected supernumerary status effective September 1, 1998.

The Honourable Francis C. Muldoon elected supernumerary status effective November 9, 1998.

The Honourable F. Joseph McDonald elected supernumerary status effective December 27, 1998.

As a result of these judges electing supernumerary status on the dates specified, there were 5 vacancies on the Court; 3 in the Court of Appeal and 2 in the Trial Division, as of December 31, 1998.

*On November 27, 1998, the Chief Justice advised the Minister of Justice that the sitting schedule for the Court of Appeal for the period January 11, 1999 to March 31, 1999 had been prepared on the understanding that the replacements for Mr. Justice Stone and Mr. Justice Strayer would be appointed and available to sit. He advised further that unless the vacancies were filled such that the judges could be sworn in before December 31, 1998, he would be obliged to cancel selected scheduled sittings of the Court of Appeal. At year's end no such appointments were made, and the Chief Justice adjusted the sitting schedule accordingly: six weeks of sittings scheduled for Toronto, Montreal and Vancouver had to be cancelled.*

## Judges of the Federal Court of Canada

### Chief Justice

The Hon. Julius A. Isaac  
*December 24, 1991*

### Associate Chief Justice

The Hon. John D. Richard  
*August 30, 1994 (Trial Division)*  
*June 23, 1998 (Associate Chief Justice)*

### Judges of the Court of Appeal

The Hon. Louis Pratte  
*June 10, 1971 (Trial Division)*  
*January 25, 1973 (Court of Appeal)*  
*November 29, 1991 (Supernumerary)*

The Hon. Louis Marceau  
*December 23, 1975 (Trial Division)*  
*July 18, 1983 (Court of Appeal)*  
*February 6, 1992 (Supernumerary)*

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

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

The Hon. Alice Desjardins  
*June 29, 1987*

The Hon. Robert Décarv  
*March 14, 1990*

The Hon. Allen M. Linden  
*July 5, 1990*

The Hon. Gilles Létourneau  
*May 13, 1992*

The Hon. Joseph T. Robertson  
*May 13, 1992*

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

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

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

### Judges of the Trial Division

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

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

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

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

The Hon. Barbara J. Reed  
*November 17, 1983*

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

The Hon. Bud Cullen, P.C.  
*July 26, 1984*  
*April 20, 1997 (Supernumerary)*

The Hon. Max M. Teitelbaum  
*October 29, 1985*

The Hon. W. Andrew MacKay  
*September 2, 1988*

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

The Hon. Marshall E. Rothstein  
*June 24, 1992*

The Hon. William McKeown  
*April 1, 1993*

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

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

The Hon. Marc Nadon  
*June 10, 1993*

The Hon. Howard I. Wetston  
*June 16, 1993*

The Hon. Danièle Tremblay-Lamer  
*June 16, 1993*

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

The Hon. Allan Lutfy  
*August 7, 1996*

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

The Hon. John M. Evans  
*June 23, 1998*

## 1.9 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 assigned to them by 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, as well as a “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. As well, prothonotaries now play an important role in case management: they conduct pre-trial conferences, mediations, early neutral evaluations and “mini-trials”. Upon receiving approval to create two more positions, the Court advertised for and interviewed candidates in December of 1998. The Court’s recommendations with respect to appointments were made to Privy Council Office and appointments are expected in early 1999.

In 1998, the prothonotaries of the Court were:

Peter A.K. Giles Associate Senior Prothonotary	Toronto Appointed 1985
John A. Hargrave Prothonotary	Vancouver Appointed 1994
Richard Morneau Prothonotary	Montréal Appointed 1995

### 1.10 Composition of the Registry

The Registry of the Court consists of the principal office in Ottawa and 16 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 Registry. The Administrator is also the deputy of the Commissioner for Federal Judicial Affairs for purposes of preparing the 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 Federal Court for the performance of its operations, are provided for in accordance with law.

Registry staff appointed under 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.

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, 1998, is found at page 8.

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

### 1.11 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 1998 the position of Executive Officer to the Associate Chief Justice was created. In addition, the Chief Justice and the Associate Chief Justice have designated Judicial Administrators to assist them in the scheduling of sittings of the Court and the performance of their non-judicial duties. In 1998 the incumbents were:

Executive Officer to the Chief Justice  
*Allison L. Small*

Executive Officer to the Associate Chief Justice  
*Katherine Davie*

Judicial Administrator (Appeal Division)  
*Allison L. Small*

Judicial Administrator (Trial Division)  
*Monique Major*



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### **1.12 Law Clerks**

Recent graduates of all 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 1998 there were 33 law clerks. The law clerks are supervised by the Head of

Research - Appeal Division or Head of Research - Trial Division. Under the general direction of either the Head of Research - Appeal Division or the Head of Research - Trial Division, 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.

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## REGISTRY

Administrator of the Court	Robert Biljan
Deputy Administrator - Appeal and Trial Divisions	Pierre R. Gaudet
Deputy Administrator - Special Projects	Paul F. Scott
Regional Director - Quebec	Monique Giroux
Regional Director - Ontario	Peter P. Pace
Regional Director - Western	Charles E. Stinson
Senior Financial Advisor	Evelyn Burke
Director, Human Resources	Cathryn Taubman
Director, Policy, Training and Labour Relations	Gordon Wilkins
Director, Informatics	Gary Pinder
Head Librarian	Rosalie Fox
Executive Assistant to the Administrator	Pat Levac
Manager, Real Property & Security 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 Act.

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 1998 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

In 1993, the Federal Court Rules Committee began a comprehensive review of the *Federal Court Rules*. This project was undertaken with a view to harmonizing the Rules with those of provincial superior courts, and making them more readily understandable, in order to enhance efficiency in the conduct of litigation in the Court.

After extensive consultation with all interested parties, the final text of the Rules was approved by the Rules Committee at a meeting in January, 1998 and the Rules were approved by the Governor-in-Council and registered as SOR/98-106 on February 5, 1998. They came into force on April 25, 1998.

Under the new *Federal Court Rules, 1998* and subject to the transition provisions described later, every proceeding before the Court is subject to case management. Case management is the coordination of Court processes and resources 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 all cases filed, to ensure that each case receives the type and amount of Court attention required by its nature and complexity. Under the former *Federal Court Rules* governing ordinary actions, the litigants and counsel had exclusive control over the time taken to prepare a case for disposition by the Court.

In most cases, the parties will continue to control the pace of their litigation within the time limits fixed by the Rules or extended on consent within the limits authorized by the Rules.

Parties who believe that the time limits fixed by the Rules are unsuitable (either too short or too long) for their proceeding may request that it be specially managed by a case management judge, who will fix a timetable appropriate to the individual proceeding. Specially managed proceedings are simply those which have been exempted from the operation of the time limits in the Rules.

Independent intervention by the Court is limited to ensuring compliance with one or two "major milestones" identified in Rule 380 for each type of proceeding.

There are two milestones in actions: pleadings are to be closed within 180 days and a requisition for a pre-trial conference filed within 360 days after commencement of the action. In applications and appeals there is a single milestone: a requisition for a hearing date is to be filed within 180 days of commencement. These milestones are consistent with time standards adopted by the Canadian Judicial Council and the Canadian Bar Association.

Registry staff monitors compliance with the time limits for the major milestones. When a major milestone is missed, the file is referred to the Court, which fixes the date for a status review. The Administrator sends a notice of status review (normally by fax) to the parties at least 10 days before the date fixed for the status review. Unless the Court directs otherwise, a status review is conducted in writing.

To assist in the orderly transition from the old rules to the new rules upon the coming into force of the latter, the Chief Justice and Associate Chief Justice ordered, *inter alia*, that there would be no status reviews prior to June 1, 1998 and thereafter they would be introduced gradually, starting with the oldest files in the inventory. Complete transition to the new rules would be completed in the Court of Appeal on January 1, 1999 and in the Trial Division on May 1, 1999.

A status review is conducted by a judge or prothonotary specifically assigned for that purpose, who may

- a) require the plaintiff/applicant/appellant to show cause why the proceeding should not be dismissed for delay, and if not satisfied that the proceeding should continue, dismiss it for delay;
- b) require a defendant/respondent to show cause why default judgment should not be entered, and if not satisfied, grant judgment in favour of a plaintiff/applicant/appellant or order that the plaintiff/applicant/appellant proceed to prove entitlement to the judgment claimed;

c) if satisfied that the proceeding should continue, order the proceeding continue as a specially managed proceeding and make an order under Rule 385.

d) make any such other order as is just.

As a part of its case management system, the Court has incorporated certain dispute resolution mechanisms into the new Rules. Case management judges and prothonotaries are available to assist parties in resolving their disputes without a formal trial or hearing by conducting Court-annexed mediations, early neutral evaluations or mini-trials. These sessions are available at the request of a party or the Court may order parties to attend.

The discussions are confidential and the results are binding only to the extent that they result in an agreement between the parties. This is reduced to writing and a notice of settlement filed with the Court.

There is no additional charge contemplated for the Court-annexed services provided by case management judges and prothonotaries. The Rules provide, however, that parties may choose to go to an outside service provider. Proceedings in Court may be stayed for up to six months at a time to facilitate this process.

#### **2.4 Video-conferencing**

In 1996 the Court introduced pilot procedures by which parties may request that any motion, case scheduling conference, pre-trial conference or other conference hearing proceed by way of video-conference. In offering video-conferencing facilities to litigants the Court expects to achieve the following objectives:

- 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
- to save costs in time and travel for litigants, judges and Registry staff.

Twelve video-conferences were arranged during 1998.

## 3.0 COURT ACTIVITIES

### 3.1 Annual Meeting of the Court

In 1992, the Court instituted the practice of convening an Annual Meeting of all judges to discuss the business of the Court and for professional development. The 1998 the annual meeting was held October 1 to 3 at Sainte Adèle Québec.

Mr. Roderick A. Macdonald, President of the Law Commission of Canada, discussed the role of the Commission and how it goes about fulfilling its mandate. In the third of a series of sessions planned around social context education, Professor Juanita Westmoreland-Traoré, Dean of the Faculty of Law of the University of Windsor and Toronto lawyer Ms. Susan Eng, former Chair of the Metropolitan Toronto Police Services Board and lecturer on Law and Social Change, Osgoode Hall, York University, addressed significant legal issues related to visible minorities. Professor Beth Bilson of the University of Saskatchewan and Professor Yves Ouellette of the University of Montreal presented an overview of recent developments in administrative law. Madam Justice McGillis, Mr. Justice Hugessen and Mr. Justice Décarý led a discussion about the *Federal Court Rules, 1998*, which came into force April 25, 1998.

### 3.2 Cameras in the Courtroom

As a result of a request in 1993 by the Radio-Television News Directors Association for a pilot project to permit electronic media coverage of Federal Court proceedings, the Committee on Cameras in the Courtroom developed guidelines for a two-year pilot project which was conducted in the Court of Appeal between January 1, 1995 and December 31, 1996.

The Court received four requests during the course of the pilot project; one in 1995 and three in 1996. All four requests were granted.

The Committee on Cameras in the Courtroom met in 1997 to evaluate the pilot project, and recommended to the Chief Justice, who agreed, that the pilot project be extended until December 31, 1998. No further requests to televise proceedings were received during the two-year extension of the pilot project, and it is

expected that the project will be cancelled due to lack of interest.

### 3.3 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, the Judicial Education Committee was established to develop continuing education programmes for judges of the Court. In 1998, in addition to the Annual Meeting of the Court mentioned in Part 3.1, the Committee organized an “in-house” seminar on the Federal Court Rules, 1998 in March.

### 3.4 Regionalization and Merger

On October 28, 1994 the Minister of Justice announced that a review would be conducted to consider whether legislative amendments could improve the effectiveness, accessibility and cost-efficiency of the Federal Court and the Tax Court of Canada. A working group led by the Department of Justice with the participation of the Commissioner for Federal Judicial Affairs and the cooperation of the two courts was struck to gather information to determine, in the interest of effectiveness, accessibility and cost-effectiveness, whether some judges should be located outside Ottawa. At the same time, it would consider what benefits might be derived from merging the Trial Division of the Federal Court and the Tax Court. A further part of the review involved consideration as to whether savings could be achieved by consolidating the administrative support services of the two courts.

On January 27, 1995, the full Court met to discuss the matter and on May 30, 1995, responsibility for the review was given, by Order-in-Council, to the Office of the Auditor General. Pursuant to section 11 of the *Auditor General Act* the Governor General in Council, on the recommendation of the Attorney General of Canada, requested the Auditor General of Canada to inquire into two matters:

- 1) the possible merger and regionalization of the Trial Division of the Federal Court of Canada and of the Tax Court of Canada; and

2) the possible consolidation of the administrative support services of the merged Federal Court - Trial Division and the Tax Court.

The report of the Auditor General was tabled in the House of Commons on April 22, 1997.

It concluded, among other things, that

“the needed improvements in accountability and cost effectiveness are likely to be achievable only if the two registries are consolidated.”

These savings included:

Consolidation of corporate functions  
\$600,000 annually

Sharing of facilities  
\$1,000,000 annually

Consolidation of information technology  
\$500,000 annually<sup>2</sup>

The same day, the former Minister of Justice, The Honourable Allan Rock, announced publicly that he had

“asked the Commissioner for Federal Judicial Affairs to work with the Courts to find ways of achieving administrative efficiencies *within the current institutional structure*, without the need for legislative change.”

The Federal Court took steps to achieve certain administrative efficiencies internally, and both Courts met with the Commissioner to discuss how the “consolidation” of the two registries could be achieved within the existing institutional structures, in order to realize the efficiencies identified in the Auditor General’s report.

Efforts to discharge the mandate failed. At the suggestion of Mr. George Thomson, the former Deputy Minister of Justice, representatives of the two courts met with a mediator on February 14, 1998. As a result, by a memorandum of agreement entered into on March 6, 1998 the two Courts agreed in principle *inter alia* that the corporate, administrative and financial services of both Courts would be “blended” and that the Courts would continue to work

“within existing institutional structures to achieve all administrative efficiencies, to enhance the quality of each Court’s performance and to promote greater access to justice throughout Canada.”

On May 28, 1998 the former Deputy Minister of Justice confirmed that the Minister of Justice had asked to be advised “before the end of June both on the outcome of the Courts’ efforts and on the range of issues and options considered by the Auditor General, including possible structural and other changes that would require legislative change.”

Following a meeting with the Minister of Justice on June 10, 1998 the Chief Justice convened a meeting of the full Court on June 19, 1998 to consider and advise the Minister of their views on two questions:

1. Whether the Federal Court should, in law, be divided and become two Courts, a Court of Appeal and a Trial Court; and
2. Whether the Tax Court should be a division of the new Trial Court.

The judges also considered a proposal for the consolidation of the corporate, administrative and other support services of the Federal Court and the Tax Court of Canada which had been presented by former Deputy Minister of Justice.

On June 22, 1998 the Chief Justice advised the Minister of Justice that the majority of the judges had “no objection” to the proposed division of the Federal Court into two separate courts, and favoured merger with the Tax Court. The same day, he advised the former Deputy Minister of Justice:

We were unanimous that any consolidation (of the registries of the Federal Court and the Tax Court) should be informed by the following principles, which, we agree, emerge from the Whitehall model of Courts administration:

3. the judiciary is and must remain institutionally independent of the executive, as explained in recent jurisprudence of the Supreme Court of Canada, including *Reference re Remuneration of Judges*, [1997] 3 S.C.R.3.

<sup>2</sup> Total estimated savings were \$5 million over 10 years.

4. the executive, for its part, has a duty to provide the judiciary with support services necessary for the discharge of their responsibilities;
5. in order to maintain these objectives, the Minister of Justice must, to the degree possible, separate him or herself from the administration of the Courts; but, ultimately has carriage of the budget of the Courts before Parliament: in this respect, I refer to Martin Friedland's report to the Canadian Judicial Council entitled "*A Place Apart*" in which he states at page 220:

Estimates should be prepared initially by the judiciary. Many would like the budget to then go to the Legislature or, alternatively, to the Legislature via the Treasury Board. In my view, it would be a mistake to eliminate the Attorney General or Minister of Justice from the process. An Attorney General can usually appreciate the needs of the judiciary better than a legislative committee. The Minister has a strong stake in the justice system and can usually effectively argue the case for resources in competition with all the other demands on government resources, including lowering the deficit and reducing taxes.;

6. the Minister is answerable to Parliament for the operations of the Courts, including the expenditures necessarily made in carrying out those operations;
7. that in the allocation of resources and facilities, the hierarchy of Courts must be respected, i.e., appellate courts take precedence, followed by superior courts and by others.

On June 25, 1998, the Minister of Justice announced publicly proposed structural reforms of the two courts:

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. The Minister said she would introduce legislation in the fall.

These proposals are responsive in part to the Auditor General's 1997 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.

Further discussions between members of the Court and representatives of the Minister of Justice ensued in October, when the Minister's representative promised a draft bill. As of December 31, 1998, no draft bill had been received by the Court.

### **3.5 Visitors to the Court**

The Court received the following official visitors throughout the year:

- Inger Iwassa  
*Calgary, Alberta*
- Her Excellency June Clarke  
*High Commissioner of Barbados*
- Mr. Warwick Soden  
*Registrar, Federal Court of Australia*
- Mr. André Panzo  
*Chargé d'affaires, Republic of Angola*
- His Excellency Oliver Lawluui  
*High Commissioner of Ghana*
- Her Excellency Maxine Roberts  
*High Commissioner of Jamaica*
- Ms. Anestine Sealey,  
*Principal, Hugh Wooding Law School  
Trinidad & Tobago*

Master Christie-Anne Morris-Alleyne  
*Supreme Court of Trinidad & Tobago*

Mr. Michael Theodore  
*Tutor, Hugh Wooding Law School  
Trinidad & Tobago*

Mr. Fitzgerald Alleyne  
*Tutor, Hugh Wooding Law School  
Trinidad & Tobago*

His Excellency Raymond O. Wolfe  
*High Commissioner of Jamaica*

Ms. Indra Hariprashad-Charles  
*Chief Registrar  
Eastern Caribbean Supreme Court  
St. Lucia*

Ms. Janice Modeste  
*Librarian  
Eastern Caribbean Supreme Court  
St. Lucia*

Ms. Ginette Souigny  
*Counsel  
Office of the Commissioner for Federal  
Judicial Affairs, Ottawa*

The Honourable Dr. Peter Phillips  
*Minister of Transport and Works  
Leader of Government Business in the  
House of Representatives, Jamaica*

The Honourable Dennis Byron  
*Chief Justice (Ag)  
Eastern Caribbean Supreme Court  
St. Lucia*

His Excellency George Bullen  
*High Commissioner for the Organization  
of Eastern Caribbean States, Ottawa*

Mr. Jingfei Wang  
*Judge, Shaanxi Provincial High Court  
China*

Mr. Miansu Tian  
*Judge, Shaanxi Provincial High Court  
China*

Mr. Cunzhu Yin  
*Judge, Shaanxi Shandluo Middle Court  
China*

Mr. Bo Gao  
*Judge, Shaanxi Ya'an Middle Court  
China*

Mr. Baoqi Kang  
*Judge, Shaanxi Xianyang Middle Court  
China*

Mr. Houpei Chen  
*Judge, Shaanxi Ankang Middle Court*

*China*

Mr. Hongcai Yuan  
*Judge, Shaanxi Hanzhong Middle Court  
China*

Mr. Shijun Zhao  
*Judge, Shaanxi Tongchuan Middle Court  
China*

Mr. Zhengyi Yao  
*Judge, Shaanxi Baoji Middle Court  
China*

Mr. Youhai Wang  
*Judge, Shaanxi Xianyang Weicheng Court  
China*

Mr. Sirang Ma  
*Judge, Shaanxi Provincial High Court  
China*

Mr. Xinsheng Li  
*Judge, High People's Court of Beijing  
China*

Mr. Luohong Ji  
*Judge, High People's Court of Beijing  
China*

Ms. Xioling Gao  
*Judge, High People's Court of Beijing  
China*

Ms. Jianxin Ni  
*Judge  
Chaoyang District People's Court of Beijing  
China*

Mr. Bingxu Li  
*Judge  
Chaoyang District People's Court of Beijing  
China*

Mr. Yan Wang  
*Judge  
Xuaowu District People's Court of Beijing*

Mr. Zhenfeng Wang  
*Judge  
Haidian District People's Court of Beijing  
China*

Mr. Fanrong Kong  
*Vice Chief  
Office for Legal Affairs of Beijing  
Municipality, China*

Ms. Zihua Zhang  
*Vice Chief, Office for Legal Affairs of Beijing  
Municipality, China*

Mr. Liansheng Song  
*Director, Office for Legal Affairs of  
Xiacheng District*



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*People's Government, Beijing, China*  
Ms. Fengying Diao  
*Director, Office for Legal Affairs of Xicheng District*  
*People's Government, Beijing, China*  
Mr. Benyi Liu  
*Director, Office for Legal Affairs of Haidian District*  
*People's Government, Beijing, China*  
Ms. Shugeng Wang  
*Director, Office for Legal Affairs of Shunyi Country*  
*People's Government, Beijing, China*

Mr. Zhanchuan Liu  
*Deputy Director, Officer for Legal Affairs of Beijing Municipal Public Security Bureau*  
*China*  
Ms. Nijolė Matuleviciene  
*Head, Copyright Division*  
*Ministry of Culture, Republic of Lithuania*  
Ms. Lina Mickienė  
*Head, Legal Division*  
*State Patent Bureau, Republic of Lithuania*

## 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. The inventory for the Court of Appeal was completed as of December 31, 1993, and that of the Trial Division was completed as of August 31, 1997.

The initiative to complete the computerized inventory for the Trial Division began in 1995 when Registry personnel reviewed over 50,000 files and closed all those containing final judgments or notices of discontinuance. They identified over 16,000 files in which no activity had been recorded since October 15, 1990, when a computerized record-keeping system was initiated, and for which no final disposition had been recorded.

By Notice to the Profession dated February 1, 1996, the former Associate Chief Justice asked lawyers to review their files and to notify the Court of all proceedings which had been concluded, failing which solicitors of record would receive a formal notice with directions from the Court. Beginning March 1, 1996 parties who commenced proceedings received notices requiring them to take a step to advance the matter within sixty days or risk dismissal for want of prosecution. Each proceeding in respect of which a notice was issued was “reactivated” by an entry in the computerized inventory.

By August 31, 1997 the review was complete. Parties had discontinued over 5,000 proceedings. Over 10,500 proceedings had been or were about to be 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 the time 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.

The targets applicable to the Federal Court<sup>3</sup> are as follows:

#### **Trial Division:**

- 90 per cent of all civil cases should be settled, tried or otherwise concluded within six months of filing of readiness and 12 months of the date of commencement;
- 98 per cent of such cases should be concluded within nine months of readiness and 18 months of commencement;
- 100 per cent should be concluded within 12 months of readiness and 24 months of commencement.

These targets are to apply except where the court decides that there are exceptional circumstances, and that, in those cases, there should be a continuing review.<sup>4</sup>

#### **Court of Appeal:**

- 280 days (9.3 months) is the appropriate median time standard for the processing, hearing and disposition of appeals.

It was recognized that this time standard cannot be attained without suitable resources including support services, appropriate rule changes and the timely filing of appeal papers.

<sup>3</sup> Separate standards for criminal, domestic and other matters not within the specialized jurisdiction of the Federal Court were also adopted.

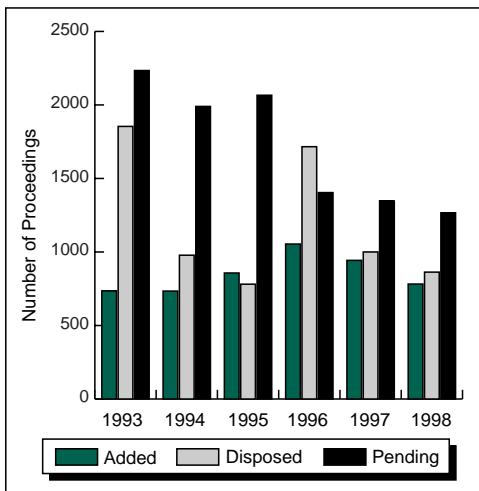
<sup>4</sup> These time standards for Trial Courts also form part of Resolution 97-03-A, which was adopted by the Canadian Bar Association at its 1997 Annual Meeting.

An important feature of the DRP is its ability to measure and report the elapsed time between events in the litigation process. This chapter summarizes the information available concerning the volume and pace of litigation in the Court in 1998, and permits the reader to compare the “performance” of the Court against the time standards approved 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 each reported year, together with the number of proceedings added to the inventory and disposed of each year.<sup>5</sup>

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



There were 1,347 proceedings pending in the Court of Appeal on December 31, 1997. 782 proceedings were added to the inventory during 1998 and the Court disposed of 863 proceedings, leaving 1,266 proceedings pending at the end of 1998.

<sup>5</sup> In 1993, jurisdiction under the *Immigration Act* was transferred from the Court of Appeal to the Trial Division. The 1,854 dispositions reported in 1993 include 1,212 applications for leave under the *Immigration Act* by judges of the Court of Appeal in their capacity as *ex officio* judges of the Trial Division. The remaining 642 dispositions involved matters within the jurisdiction of the Court of Appeal.

**Figure 2: Court of Appeal Profile of Proceedings Pending on December 31, 1998**

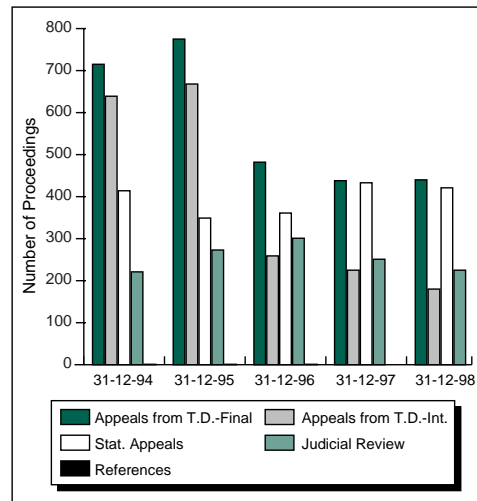


Figure 2 profiles, by major subject area, the 1,266 proceedings pending in the inventory at the end of the year. As of December 31, 1998, the inventory comprised 620 appeals from the Trial Division: 440 were from final orders, and 180 appeals were from interlocutory orders. The remainder of the inventory consisted of 225 applications for judicial review, and 421 statutory appeals.

#### 4.3 Pace of Litigation in the Court of Appeal

##### Commencement to Judgment

**Figure 3: Federal Court of Appeal Median Time (in Months) Commencement to Judgment**

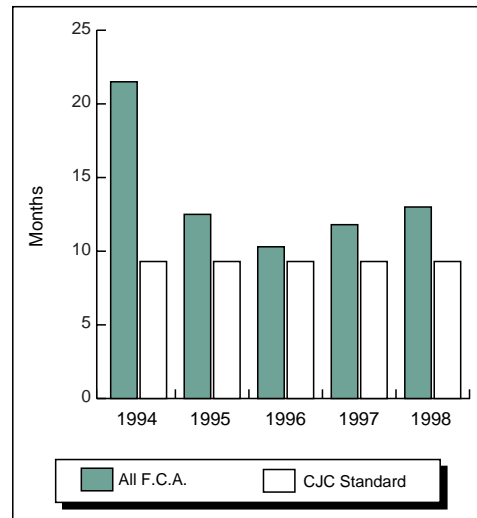


Figure 3 samples the proceedings disposed of by judgment after full hearing each year since 1994, and compares the median elapsed time from commencement to judgment to the Canadian Judicial Council's approved standard of 9.3 months. As shown, in 1998 the median time for all proceedings from commencement to judgment was 13.0 months, down from 21.5 months in 1994, but up slightly from 10.3 months in 1996 and 11.8 months in 1997.

The median time periods by subject area were as follows:

- Appeals from Trial Division - Final Orders  
*19.1 months*
- Appeals from Trial Division - Interlocutory Orders  
*8.4 months*
- Statutory Appeals  
*26.7 months*
- Applications for Judicial Review  
*10.2 months*

As was mentioned in Part 2.3, the transition to the new case management system was not to be completed until January 1, 1999. It is expected that once the *Federal Court Rules, 1998* become fully operational, and assuming that the vacancies in the Court of Appeal are filled promptly, the overall timeliness of proceedings should continue to improve.

#### Status of Pending Inventory

**Figure 4: Federal Court of Appeal Status of Pending Inventory as of December 31, 1998**

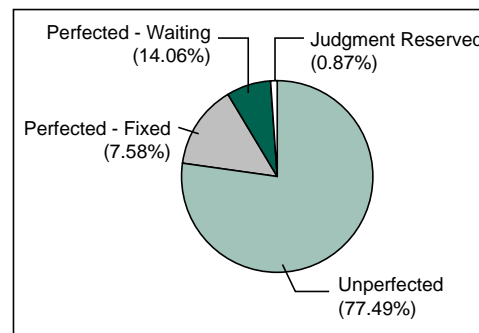
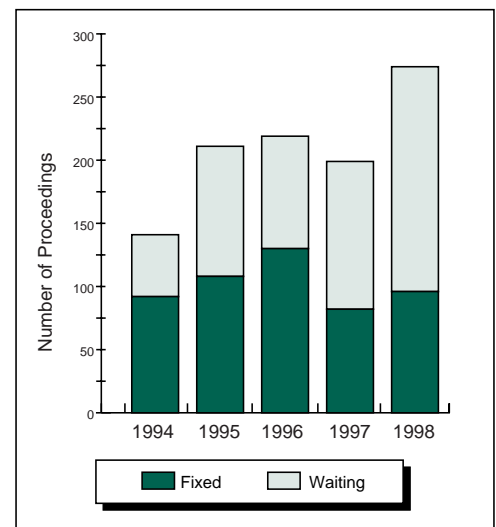


Figure 5 shows the status of the pending inventory on December 31, 1998. Of the 1,266 cases pending, 274 (21.6%) had been perfected for hearing. Of these, 96 had been assigned fixed hearing dates, leaving 178 to be fixed for hearing. 11 judgments (0.9% of all cases) were under reserve. 981 cases (77.5%) remained unperfected at the end of the year.

#### Status of Perfected Proceedings

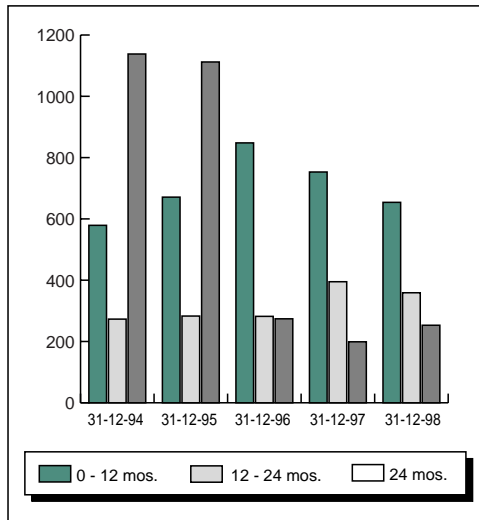
**Figure 5: Federal Court of Appeal Status of Perfected Proceedings**



The Court of Appeal is concerned about the large number of cases which were ready for hearing but for which a hearing date had not been assigned by December 31, 1998. The large increase in 1998 was attributed to a high response rate to the new status review process mentioned in Part 2.3. Unfortunately, at the same time that the Court was working to take control of its pending inventory, a large number of its judges were retiring or electing supernumerary status. As was mentioned in Part 1, there were 3 vacancies (one full panel of judges) on the Court as of December 31, 1998 and the Chief Justice was obliged to cancel six weeks of sittings scheduled for the period January 11 to March 31, 1999.

## Age of Pending Inventory

**Figure 6: Court of Appeal  
Distribution of Inventory by Age**



The age of the pending inventory at the end of each year is illustrated in Figure 6. While the number of pending cases over two years old is up slightly, from 199 (15% of the pending inventory) on December 31, 1997 to 253 (20% of the pending inventory) on December 31, 1998, it continues to be 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 2 major categories: administrative proceedings and litigation. Administrative proceedings arise from provisions in many federal statutes 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.

The second category - litigation - forms the main workload of the Trial Division. Litigation in the Trial Division 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.

**Figure 7: Trial Division  
Proceedings added to/disposed of  
from Inventory**

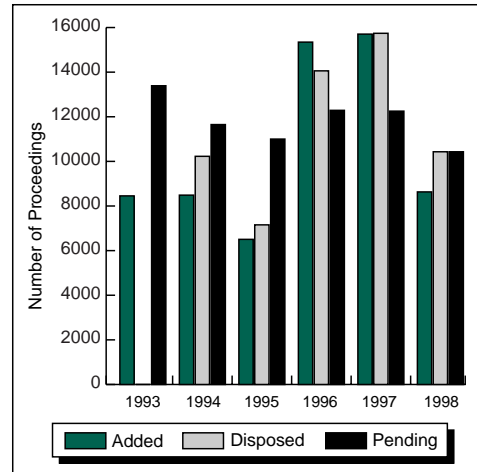


Figure 7 shows the 13,390 proceedings pending in the DRP inventory of the Trial Division as of December 31, 1993, and the size of the pending inventory at the end of each subsequent year, together with the number of proceedings added to the inventory and those disposed of in each year. (The number of dispositions in 1993 is unavailable).

There were 12,252 proceedings pending in the Trial Division as of December 31, 1997. 8,632 proceedings were added to the inventory during 1998 and the Trial Division disposed of 10,431 proceedings, leaving 10,183 proceedings pending at the end of 1998.<sup>6</sup>

Figure 7 also shows that the total number of cases in the pending inventory has decreased substantially since December 31, 1993. Until December 31, 1998, the decrease had been entirely due to a major reduction in the Immigration inventory, which decreased from 4,950 proceedings pending on December 31, 1993 to 2,380 proceedings pending on December 31, 1997. However, during the same period

<sup>6</sup> The high numbers of new proceedings and dispositions during both 1996 and 1997 were the result of the initiative to complete the computerized inventory described in Part 4.1. The pending inventory as of December 31, 1997 increased by 274 proceedings as a result of this initiative.

the Non-Immigration component of the inventory increased by 1,432 proceedings. This represented an average increase of 358 Non-Immigration cases per year over those four years.

In 1998 the Non-Immigration component of the pending inventory decreased by 2,523 proceedings. Over 2,200 of these proceedings were disposed of as a result of the status review procedure described in Part 2.3. Not only was the inventory growth reversed, but there were 1,114 fewer Non-Immigration proceedings pending at the end of 1998 than at the end of 1993.

**Figure 8: Trial Division  
New Proceedings Commenced**

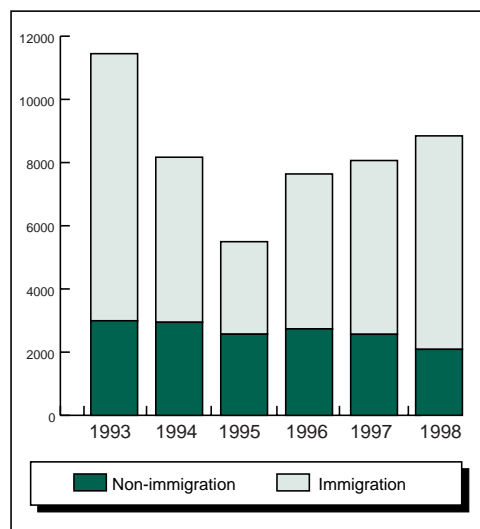


Figure 8 illustrates the number of new proceedings commenced in each year since 1993, adjusted to exclude those proceedings “reactivated” as a result of the initiative to complete the computerized inventory described in Part 4.1. Immigration proceedings are shown separately from all other proceedings. As Figure 8 shows, Immigration proceedings have been the most significant source of new proceedings since 1993, when Immigration proceedings peaked at 8,454 new filings, including 1,987 proceedings transferred from the Court of Appeal. Although the number of new filings dropped in both 1994 (5,224 new proceedings) and 1995 (3,649 new proceedings), it has been on a steady increase from 4,907 new proceedings to 6,759 in 1998.

In the Non-Immigration subject areas, however, the number of new proceedings commenced each year has been decreasing annually from 2,993 in 1993 to 2,088 in 1998.

**Figure 9: Trial Division  
Profile of Pending Inventory**

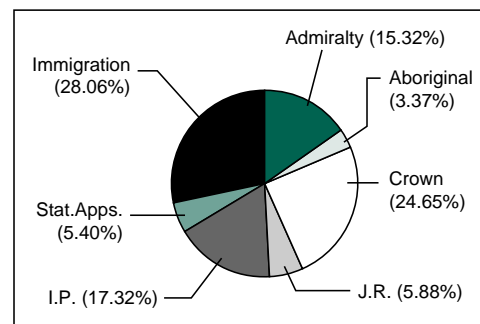


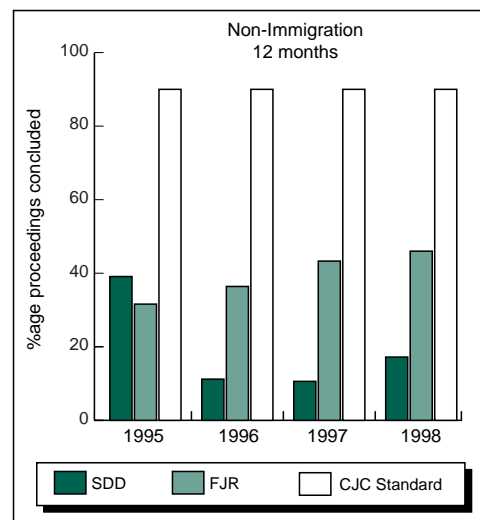
Figure 10 profiles the December 31, 1998 pending inventory by major subject area:

- Admiralty - 1,560
- Aboriginal Law - 343
- Crown Litigation - 2,510
- Judicial Review - 599
- Intellectual Property - 1,764
- Statutory Appeals and Applications - 550 and
- Immigration 2,857

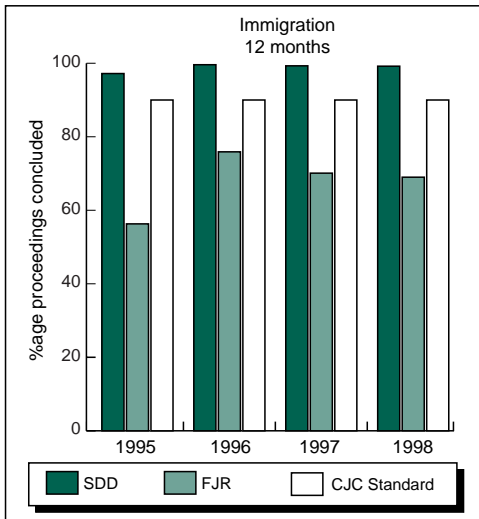
**4.5 Pace of Litigation in the Trial Division**

**Commencement to Judgment**

**Figure 10: Trial Division  
Percentage of dispositions within 12 months of commencement  
(Excluding Immigration)**

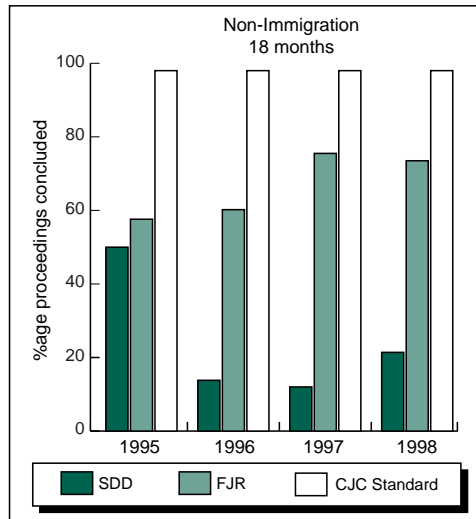


**Figure 11: Trial Division  
Percentage of dispositions within 12  
months of commencement  
(Immigration)**

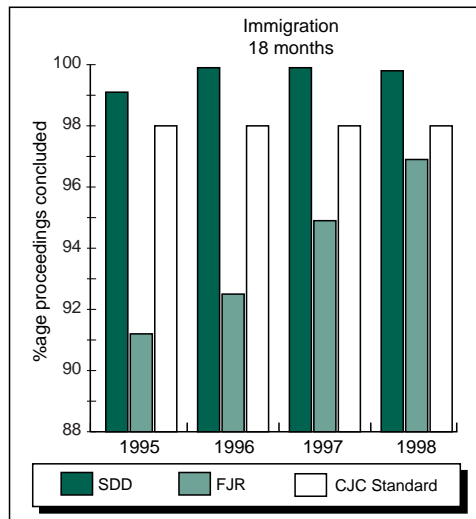


Figures 10 and 11 sample the cases in which dispositions were recorded in each year since 1995 and set out the percentage of these dispositions which occurred within 12 months of commencement. Figure 10 samples the dispositions in Non-Immigration proceedings, while Figure 11 samples dispositions in Immigration 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). The results are compared to the Canadian Judicial Council's standard of 90%.

**Figure 12: Trial Division  
Percentage of dispositions within 18  
months of commencement  
(Excluding Immigration)**

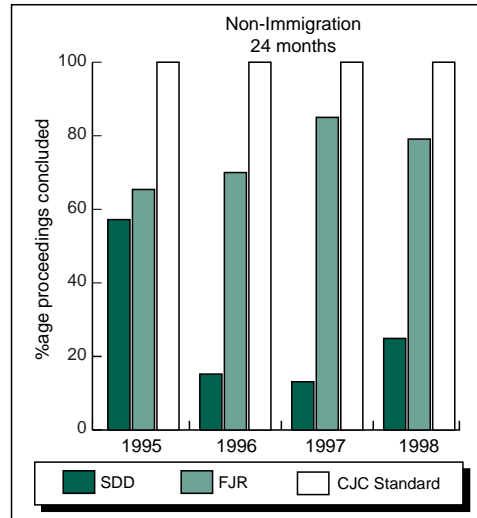


**Figure 13: Trial Division  
Percentage of dispositions within 18  
months of commencement  
(Immigration)**

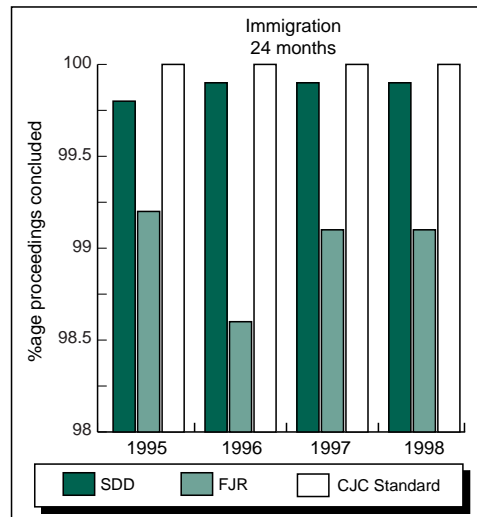


Figures 12 and 13 compare the percentage of dispositions which occurred within 18 months of commencement and compare the results to the Canadian Judicial Council Standard of 98%.

**Figure 14: Trial Division  
Percentage of dispositions within 24 months of commencement  
(Excluding Immigration)**



**Figure 15: Trial Division  
Percentage of dispositions within 24 months of commencement  
(Immigration)**



The Canadian Judicial Council's standard provides that every proceeding in the Court should be concluded within 24 months of its commencement. Figures 14 and 15 compare the results of dispositions in the Court to this standard.

As figures 11, 13 and 15 illustrate, the Court has consistently exceeded the standards in disposing of applications for leave to commence applications for judicial review in Immigration proceedings. Where leave

is granted, or in Immigration proceedings for which leave is not required, 69% were concluded within 12 months of commencement in 1998. This percentage increased to 96.9% within 18 months of commencement and 99.1 % within 24 months of commencement.

Figures 10, 12 and 14 illustrate that while the Court has yet to achieve the standards adopted by the Canadian Judicial Council in relation to Non-Immigration proceedings, with one exception<sup>7</sup> the dispositions by judgment of the Court after hearing have been considerably more timely than other forms of disposition; settlement, discontinuance, dismissal for delay.

### Status of Pending Inventory

**Figure 16: Trial Division  
Status of Pending Inventory as of  
December 31, 1998  
(Excluding Immigration)**

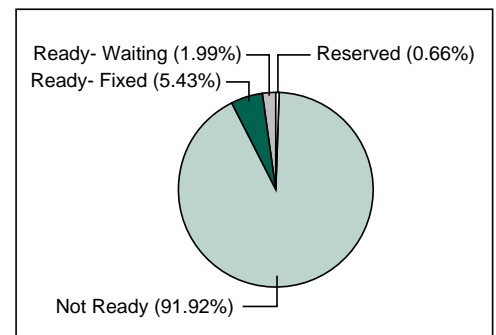


Figure 16 shows the status of the inventory of Non-Immigration proceedings pending as of December 31, 1998. 48 judgments were under reserve at year end, and 544 cases were ready but not yet heard. Of these, 398 had been assigned fixed hearing dates, leaving 146 to be fixed. 6,734 of the 7326 cases in the inventory were not ready for hearing.

On December 31, 1998, the inventory of Immigration proceedings pending in the Trial Division stood at 2,857 of which 2,305 were applications for leave and for judicial review. 24 judgments (0.84%) were under reserve. 832 proceedings (29.12%) were ready but not yet heard. Of these, 304

<sup>7</sup> In 1995 a greater percentage of dispositions within 12 months of commencement were attributed to settlements than to judgments.

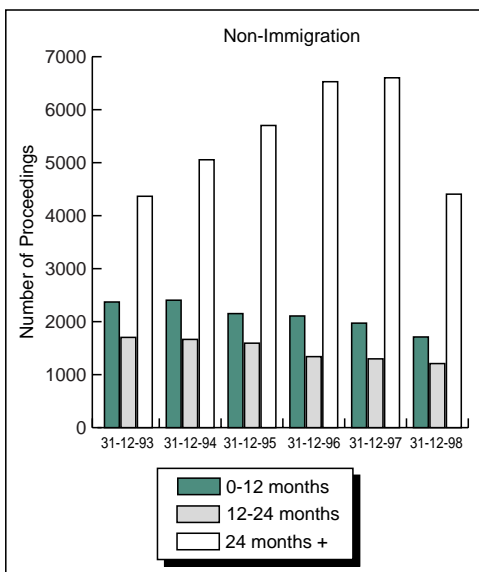


were fixed for hearing, and 504 leave applications were ready but not yet heard. 2,025 proceedings (70.87%), including 1,593 applications for leave and for judicial review, were not ready for hearing.

**Age of Pending Inventory**

Figure 17 illustrates the age of the pending inventory of Non-Immigration proceedings on each of the six reporting dates.

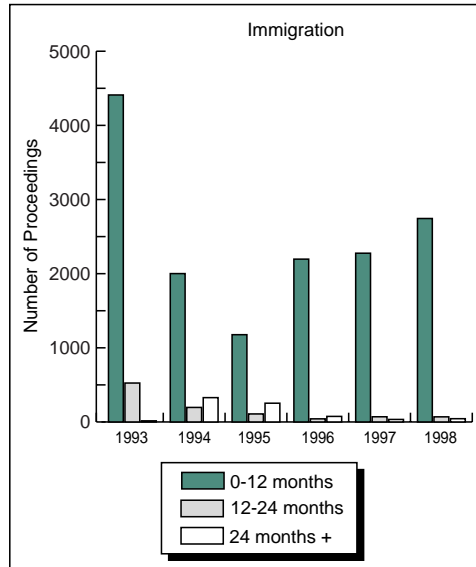
**Figure 17: Trial Division  
Age of Pending Inventory  
(Excluding Immigration)**



52% of proceedings in the pending inventory (4,366 proceedings) were over two years old on December 31, 1993. This number had increased to 67% (6,602 proceedings) by December 31, 1997. With the coming into force of the *Federal Court Rules, 1998*, status reviews were conducted in 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 years old was reduced to 4,406 (60%) as of December 31, 1998. A further reduction is expected in 1999 with the continuation of the status review process..

In sharp contrast is the distribution by age of pending Immigration proceedings shown in Figure 18.

**Figure 18: Trial Division  
Age of Pending Inventory as of  
December 31, 1998  
Immigration Proceedings Only**



The vast majority of Immigration proceedings pending on each reporting date 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 endeavours 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 quasi-judicial 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*. The staff of the Registry have similar responsibilities in relation to the Court Martial Appeal Court of Canada.

### 5.2 Auditor General’s Report

The Auditor General tabled a Report in the House of Commons on April 22, 1997 on the Federal Court of Canada and the Tax Court of Canada. In respect of the operations of the Registry, the report made several recommendations for improvements which were followed by the Registry and described in last year’s annual report. The Registry has further proposed a series of cost savings measures for services provided directly to the Judges and has addressed as well the recommendation that the effectiveness of caseload management techniques and the use of best approaches be expanded.

Case management was incorporated into the new *Federal Court Rules, 1998* which

came into effect on April 25, 1998. It is considered that this new system will improve efficiency and effectiveness in the resolution of cases with the increased involvement by the judges in the progress of the litigation brought before the Court. The Registry has introduced and developed technology based systems to support the new case management procedures and has also completed in 1998 an operational retraining program. The implementation of these systems by the Registry is more fully described in Part 5.5. An assessment of the impact of these developments with respect to benefits, the increased demands placed on the Registry’s resources, and best approaches for addressing that impact will require a larger sample of data and information than is presently available.

### 5.3 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. The Court’s plans for a new Federal Court Building received preliminary project approval from Treasury Board Ministers in February 1990, however this project is currently being held in abeyance. 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

Plans are being finalized in order to consolidate the Court’s accommodations within one building.

#### Toronto Local Office

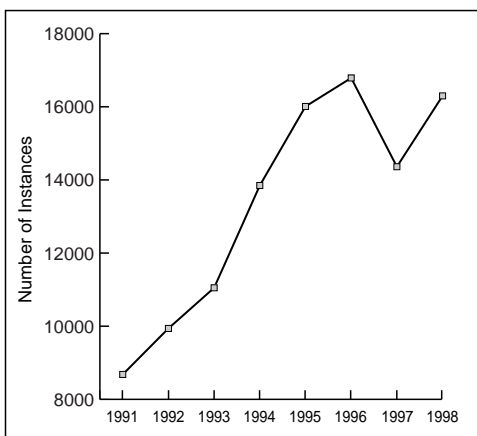
Long-term requirements are presently being revised with assistance from Public Works and Government Services Canada to evaluate market conditions for accommodations in downtown Toronto and to provide solutions for meeting the Court’s requirements in anticipation of the expiry of the Toronto office’s present lease.

#### 5.4 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, however, they do not form part of the Court’s Delay Reduction Programme (DRP) inventory.

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.

**Figure 19: Administrative Proceedings Commenced**



#### 5.5 Case Management

Case management, which was incorporated into the new *Federal Court Rules, 1998* which took effect 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.

In 1998 the Registry completed the implementation of an integrated system of advanced technological components and support services which combine to provide the Court with a fully comprehensive and

automated case management system. The most ostensible features of this system include a computerized case inventory package (called the Delay Reduction Programme - DRP) with ability 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 pre-automated records; teleconference and videoconference facilities; remote document filing by fax; a statistical retrieval package; and an electronic communication software (*Groupwise*).

Development of these integrated features has placed the Registry at the forefront of the automated case management field. This comprehensive system serves not only to enable the Court to meet its goals and objectives of case management, but assists the Registry as well in striving to optimize limited resources in the face of increasing demands for its services.

#### 5.6 Automation

All offices of the Registry have access to the Court’s centralized automation system, the Proceedings Management System, by means of a wide area network. This system is used to store and communicate information on court proceedings, to index proceedings, to track files using bar coding and to produce statistical reports. Public access to the Proceedings Management System is now available at all (Federal Court staffed) offices.

In 1998 an inventory of systems and applications was undertaken to determine the Registry’s level of readiness for the Year 2000 problem. The Registry has reported to the Treasury Board Secretariat that all of its computer equipment and applications, save for one, are Year 2000 compliant. The remaining Trust Accounting application will be compliant by June 1999.

The Registry’s automated proceedings record system, the Proceedings Management System, was also enhanced in 1998 to support the new litigation procedures brought about by the *Federal*

*Court Rules, 1998*. Implementation of case management required substantial system changes which were done in two phases. Phase I introduced components to record and track the progress of proceedings according Rules based milestones. Phase II integrated components for reporting information on tracking, file status, audit and statistics. Features of the Registry's new system include an on-line, *ad hoc* query capability for retrieving statistical data and other relevant case information such as time measurement, case identification and case categories.

A project also began in May 1998 to upgrade the Registry's computing platform (VAX7610) by migrating to an Alpha 4000. The Alpha 4000 computing platform yields a number of performance benefits, including a threefold increase in processing speed. In order to migrate the Proceedings Management System and other Registry systems, such as the Distribution Management and Human Resource Information Management systems, it was also necessary to upgrade the Registry's relational database management system (ORACLE) and related development tools. A new testing methodology has been put in place to ensure that all system functionality is tested so that expected results are qualified, quantified and documented. Actual migration to a production environment is planned for completion in March 1999.

A Desktop Replacement project was initiated in 1998 to replace 386 and 486 models with Pentium II computers and to change from MicroSoft Windows for Workgroups to Microsoft Windows 95. This project includes an upgrade of all network servers to IntraNetware, the implementation of Novell Zenworks (Zero Effort Networks) to reduce costs for administering and managing the workstation and programs on a network, and a streamlined Help Desk function. It is expected this project will be completed in all offices by May 1999.

Also in 1998, a communications network upgrade was initiated to increase available bandwidth for access mission critical

systems, such as the Proceedings Management system, and to allow greater access to Internet resources such as QuickLaw. Communications equipment in the National Capital region was also replaced in 1998. Other offices will be completed by May of 1999.

### **5.7 Registry Officer Development Program**

The Registry's training section continued delivery of its Registry Officer Development Program in 1998. The program includes several modules covering subjects ranging from operational procedures through responsibilities and mandate of the Registry. Revisions to the modules incorporating case management procedures began in 1998 with the coming into effect of the new *Federal Court Rules, 1998*. Completion of this project, which has been delayed by the diversion of considerable attention and resources to a Treasury Board plan for the implementation of a new employee classification system, is planned for June 1999.

The Registry Officer training program is delivered to staff of the Registry across Canada. In order to maximize cost savings, a project has been initiated to convert the training modules to a computer-based format. On completion, access to this program will be available via the Federal Court's Canada-wide Intranet. This training program is also offered to select students participating in the Court and Tribunal Administration program at Seneca College at Toronto and the "Techniques Juridiques" program at Ahuntsic College in Montreal. Plans are underway to extend this program in 1999 to other colleges in Ontario and British Columbia.

### **5.8 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. Copies of the Estimates are available from the Canada Communications Group or from Associated Bookstores. The following is a summary:

(thousands of dollars)	<b>Estimate 1998-2000</b>	Forecast 1998-99	Actual 1997-98
<b>Personnel</b>			
Salaries and wages	<b>18,062</b>	19,832	17,538
Contributions to employee benefit plans	<b>3,613</b>	3,899	3,144
<b>Sub-total</b>	<b>21,675</b>	23,731	20,682
<b>Goods and Services</b>			
Transportation and communications	<b>1,600</b>	2,005	1,541
Information	<b>467</b>	254	317
Professional and special services	<b>3,790</b>	4,069	3,790
Rentals	<b>283</b>	403	283
Purchased repair and upkeep	<b>262</b>	208	262
Utilities, materials and supplies	<b>1,592</b>	1,778	1,592
Minor capital*	<b>1,595</b>	1,081	2,469
<b>Sub-total</b>	<b>9,589</b>	9,798	10,254
<b>Total Requirements</b>	<b>31,264</b>	33,529	30,937

\*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.

### 5.9 Registry Staff

The new 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 1999.

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 in 1998. Staff of the Registry were fully trained in the new Standard and UCS project phases for draft work description writing and preliminary evaluations were also met. The Registry also participated in inter-organizational UCS forums and included personnel from other public service organizations in its UCS training program.

The UCS project has had a dramatic impact on the Registry's resources and the extremely short timeframes and large scale

nature of the project have created serious impositions for other projects undertaken by the Registry and in areas of ongoing work. The Registry is nevertheless making every possible effort to minimize the resource and operational impacts of the this project and has undertaken to assist Treasury Board further.

In October 1998, the Registry of the Federal Court of Canada and the Immigration and Refugee Board co-hosted the International Association of Refugee Law Judges Third Conference. The Registry also participated in 1998 in an inter-organizational forum, called the Small Agency Administrators Network, for the exchange of information of mutual benefit and interest in respect of relations with the central agencies of federal government.

### 5.10 Employment Equity

The Registry of the Federal Court of Canada is reflective of the diversity of the Canadian population; as many nationalities are represented. Representation of designated groups in 1997-98 by the Registry was higher than public service averages with the sole exception of the aboriginal peoples group.

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As of March 31, 1998, representation in the Registry included:

- 278 women (66% of employees);
- 25 persons self-identified with disabilities (6% of employees);
- 23 employees self-identified as visible minorities (5% of employees); and
- 8 self-identified persons belonging to the aboriginal group (2% of 422 employees canvassed).

Although the above-noted figures reflect an increase over the previous year in the representation of all four designated groups, the Registry is striving to increase representation of visible minorities and aboriginal peoples to better reflect the higher levels indicated by the available workforce data. Efforts are also being made to increase employee awareness about the importance of social diversity. Training has been made available to staff and diversity management education has been put in place for Registry managers.

The buildings accommodating the offices of the Federal Court of Canada are wheelchair accessible. Braille coding and/or audible floor indicators have been installed in most elevators. Parking is available for persons with disabilities at the principal office of the Registry at Ottawa as well as at all federally staffed offices of the Court across Canada. Ramps, washrooms, coat closets and water fountains are also fully accessible.

Employees requiring special aids such as telephone volume amplifiers, telecommunication devices for hearing and speech impaired (TDD or TYY), and enhanced computer equipment have been accommodated. Persons with hearing or speech impairments can communicate with the Registry across Canada through TDD access or private telecommunication company interpretation services.

## Appendix 1

### OFFICES OF THE FEDERAL COURT OF CANADA

#### PRINCIPAL OFFICE - OTTAWA

Ottawa, Ontario  
K1A 0H9

#### Appeal Division

Telephone: (613) 996-6795  
Facsimile: (613) 952-7226

#### Trial Division

Telephone: (613) 992-4238  
Facsimile: (613) 952-3653

#### LOCAL OFFICES

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Facsimile: (709) 772-6351

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CHARLOTTETOWN*  
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Sir Henry Louis Davies Law Courts  
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(416) 973-2154  
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•  
361 University Avenue  
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Immigration

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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*

