

Please note that the *Courts Administration Service Act*, formerly Bill C-30, comes into force on July 2, 2003

**CONSOLIDATION
FEDERAL COURTS ACT, R.S., 1985, c. F-7**

Note: This consolidation has been prepared for convenience of reference only and has no official sanction.

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

SHORT TITLE

1 Short title

1. This Act may be cited as the *Federal Courts Act*.
R.S., c. 10(2nd Supp.), s. 1; **2002, c. 8, s. 14.**

INTERPRETATION

2(1) Definitions

2. (1) In this Act,

2(1) "action for collision" «*action pour collision*»

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

2(1) "Associate Chief Justice" «*juge en chef adjoint*»

[Repealed, 2002, c. 8, s. 15(1)]

2(1) "Canadian maritime law" «*droit maritime canadien*»

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

2(1) "Chief Justice" «*juge en chef*»

[Repealed, 2002, c. 8, s. 15(1)]

2(1) "Court" «Cour»

[Repealed, 2002, c. 8, s. 15(1)]

2(1) "Court of Appeal" «Cour d'appel» ou «Cour d'appel fédérale»

[Repealed, 2002, c. 8, s. 15(1)]

2(1) "Crown" «Couronne»

"Crown" means Her Majesty in right of Canada;

2(1) "federal board, commission or other tribunal" «office fédéral»

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

2(1) "Federal Court of Appeal" «Cour d'appel» ou «Cour d'appel fédérale»

[Repealed, 2002, c. 8, s. 15(1)]

2(1) "final judgment" «jugement définitif»

"final judgment" means any judgment or other decision that determines in whole or in part any substantive right of any of the parties in controversy in any judicial proceeding;

2(1) "judge" «juge»

[Repealed, 2002, c. 8, s. 15(1)]

2(1) "laws of Canada" «droit canadien»

"laws of Canada" has the same meaning as those words have in section 101 of the *Constitution Act, 1867*;

2(1) "practice and procedure" «pratique et procédure»

"practice and procedure" includes evidence relating to matters of practice and procedure;

2(1) "property" «biens»

"property" means property of any kind, whether real or personal or corporeal or incorporeal, and, without restricting the generality of the foregoing, includes a right of any kind, a share or a chose in action;

2(1) "Registry" «greffe»

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

2(1) "relief" «réparation»

"relief" includes every species of relief, whether by way of damages, payment of money, injunction, declaration, restitution of an incorporeal right, return of land or chattels or otherwise;

2(1) "Rules" «règles»

"Rules" means provisions of law and rules and orders made under section 46;

2(1) "ship" «navire»

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

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

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

"Supreme Court" [Repealed, 1990, c. 8, s. 1]

2(1) "Trial Division" «Section de première instance»

[Repealed, 2002, c. 8, s. 15(1)]

2(2) Senate and House of Commons

(2) For greater certainty, the expression "federal board, commission or other tribunal", as defined in subsection (1), does not include the Senate, the House of Commons or any committee or member of either House.

R.S., 1985, c. F-7, s. 2; 1990, c. 8, s. 1; 2001, c. 6, s. 115; 2002, c. 8, s. 15.

THE COURTS

3 Federal Court — Appeal Division continued

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

R.S., 1985, c. F-7, s. 3; 1993, c. 34, s. 68(F); 2002, c. 8, s. 16.

4 Federal Court — Trial Division continued

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

R.S., c. 10(2nd Supp.), s. 4; 2002, c. 8, s. 16.

THE JUDGES

5(1) Constitution of Federal Court of Appeal

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

5(2) Supernumerary judges

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

5(3) Additional office of judge

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

5(4) Judges of Federal Court

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

R.S., 1985, c. F-7, s. 5; R.S., 1985, c. 41 (1st Supp.), s. 11; 1992, c. 49, s. 127; 1996, c. 22, s. 1; 2001, c. 41, s. 95; 2002, c. 8, s. 16.

5.1(1) Constitution of Federal Court

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

5.1(2) Supernumerary judges

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

5.1(3) Additional office of judge

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

5.1(4) Judges of Federal Court of Appeal

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

2002, c. 8, s. 16.

5.2 Appointment of judges

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

2002, c. 8, s. 16.

5.3 Who may be appointed judge

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

(a) is or has been a judge of a superior, county or district court in Canada;

(b) is or has been a barrister or advocate of at least 10 years standing at the bar of any province; or

(c) has, for at least 10 years,

(i) been a barrister or advocate at the bar of any province, and

(ii) after becoming a barrister or advocate at the bar of any province, exercised powers and performed duties and functions of a judicial nature on a full-time basis in respect of a position held under a law of Canada or a province.

2002, c. 8, s. 16.

5.4 Judges from Quebec

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

2001, c. 41, s. 144(2)(d); 2002, c. 8, s. 16.

6(1) Rank and precedence

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

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

(b) the Chief Justice of the Federal Court;

(c) the other judges of the Federal Court of Appeal, according to seniority determined by reference to the respective times when they became judges of the Federal Court of Canada or the Federal Court of Appeal; and

(d) the other judges of the Federal Court, according to seniority determined by reference to the respective times when they became judges of the Federal Court of Canada or the

Federal Court.

6(2) Absence or incapacity of a Chief Justice

(2) If the office of Chief Justice of the Federal Court of Appeal or the office of the Chief Justice of the Federal Court is vacant, or the Chief Justice of either court is absent from Canada or is for any reason unable or unwilling to act, the powers and duties of the Chief Justice shall be exercised and performed by the senior judge of the same court who is in Canada and is able and willing to act and who has not elected to hold office as a supernumerary judge under section 28 of the *Judges Act*.

R.S., c. 10(2nd Supp.), s. 6; 2002, c. 8, s. 16.

7(1) Residence of judges

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

7(2) Rota of judges

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

7(3) No judge to be away for more than one month

(3) No judge shall be required under rules made under subsection (2) to remain in any centre other than the National Capital Region for a period longer than one month, unless it becomes necessary to do so to complete the hearing of a cause or matter.

R.S., c. 10(2nd Supp.), s. 7; 1976-77, c. 25, s. 21; 2002, c. 8, s. 17.

8(1) Tenure of office

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

8(2) Cessation of office

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

8(3) Transitional

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

R.S., 1985, c. F-7, s. 8; R.S., 1985, c. 16 (3rd Supp.), s. 7; 2002, c. 8, s. 18.

9(1) Oath of office for judges

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

9(2) How administered - Federal Court of Appeal

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

9(3) How administered — Federal Court

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

R.S., c. 10(2nd Supp.), s. 9; 2002, c. 8, s. 19.

10(1) Deputy judges of the Federal Court of Appeal

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

10(1.1) Deputy judges of the Federal Court

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

10(2) Consent required

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

10(3) Approval of Governor in Council

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

10(4) Salary of deputy judge

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

R.S., c. 10(2nd Supp.), s. 10; 1977-78, c. 22, s. 13; 2002, c. 8, s. 19.

10.1 Meetings

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

2002, c. 8, s. 19.

BARRISTERS, ADVOCATES, ATTORNEYS AND SOLICITORS

11(1) Barrister or advocate

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

11(2) Attorney or solicitor

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

11(3) Officers of Court

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

R.S., c. 10(2nd Supp.), s. 11; 2002, c. 8, s. 19.

PROTHONOTARIES

12(1) Prothonotaries

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

12(2) Senior Prothonotary and Associate Senior Prothonotary

(2) The Governor in Council shall designate one of the prothonotaries to be Senior Prothonotary and one of the prothonotaries to be Associate Senior Prothonotary.

12(3) Powers and duties

(3) The powers, duties and functions of the prothonotaries shall be determined by the Rules.

12(4) Salary

(4) Each prothonotary shall be paid a salary to be fixed by the Governor in Council.

12(5) Superannuation

(5) For the purposes of the *Public Service Superannuation Act*, a prothonotary shall be deemed to be employed in the Public Service.

12(6) Immunity from liability

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

12(7) Term of office

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

12(8) Cessation of office

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

R.S., c. 10(2nd Supp.), s. 12; 2002, c. 8, s. 20.

SHERIFFS AND MARSHALS

13(1) Sheriff

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

13(2) Ex officio sheriffs

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

13(3) Deputy sheriff

(3) The Rules may provide for the appointment of deputy sheriffs.

13(4) Sheriffs are marshals

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

R.S., c. 10(2nd Supp.), s. 13; 2002, c. 8, s. 21.

JUDICIAL ADMINISTRATORS

14(1) Designation

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

14(2) Duties - Federal Court of Appeal

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

- (a) the making of an order fixing the time and place of a hearing, or adjourning a hearing;
- (b) arranging for the distribution of judicial business in the court; and
- (c) arranging from time to time for the establishment of any panels of judges of the court that are necessary.

14(3) Duties - Federal Court

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

- (a) the making of an order fixing the time and place of a trial or hearing, or adjourning a trial or hearing; and
- (b) arranging for the distribution of judicial business in the court.

14(4) Revocation of designation

(4) A designation made under subsection (1) may be revoked at any time and is automatically revoked when the Chief Justice by whom it was made ceases to hold office as Chief Justice. 2002, c. 8, s. 22.

ORGANIZATION OF WORK

15(1) Sittings of the Federal Court

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

15(2) Arrangements to be made by Chief Justice of the Federal Court

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

15(3) Hearings in different places

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

R.S., c. 10(2nd Supp.), s. 15; 2002, c. 8, s. 23.

16(1) Sittings of the Federal Court of Appeal

16. (1) Except as otherwise provided in this Act or any other Act of Parliament, every appeal and every application for leave to appeal to the Federal Court of Appeal, and every application for judicial review or reference to that court, shall be heard in that court before not fewer than three

judges sitting together and always before an uneven number of judges. Otherwise, the business of the **Federal Court of Appeal** shall be dealt with by such judge or judges as the Chief Justice of **that court** may arrange.

16(2) Arrangements to be made by Chief Justice of the Federal Court of Appeal

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

16(3) Place of sittings

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

16(4) No judge to hear appeal from own judgment

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

16(5) Chief Justice of Federal Court of Appeal to preside

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

R.S., 1985, c. F-7, s. 16; 1990, c. 8, s. 2; **2002, c. 8, s. 23.**

JURISDICTION OF **FEDERAL COURT**

17(1) Relief against the Crown

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

17(2) Cases

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

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

17(3) Crown and subject: consent to jurisdiction

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

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

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

17(4) Conflicting claims against Crown

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

17(5) Relief in favour of Crown or against officer

(5) The **Federal Court** has concurrent original jurisdiction

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

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

17(6) Federal Court has no jurisdiction

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

R.S., 1985, c. F-7, s. 17; 1990, c. 8, s. 3; **2002, c. 8, s. 25.**

18(1) Extraordinary remedies, federal tribunals

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

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

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

18(2) Extraordinary remedies, members of Canadian Forces

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

18(3) Remedies to be obtained on application

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application

for judicial review made under section 18.1.

R.S., 1985, c. F-7, s. 18; 1990, c. 8, s. 4; 2002, c. 8, s. 26.

18.1(1) Application for judicial review

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

18.1(2) Time limitation

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

18.1(3) Powers of Federal Court

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

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

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

18.1(4) Grounds of review

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

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

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

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

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

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

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

18.1(5) Defect in form or technical irregularity

(5) **If** the sole ground for relief established on an application for judicial review is a defect in

form or a technical irregularity, the **Federal Court** may

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

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

1990, c. 8, s. 5; **2002, c. 8, s. 27.**

18.2 Interim orders

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

1990, c. 8, s. 5; **2002, c. 8, s. 28.**

18.3(1) Reference by federal tribunal

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

18.3(2) Reference by Attorney General of Canada

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

1990, c. 8, s. 5; **2002, c. 8, s. 28.**

18.4(1) Hearings in summary way

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

18.4(2) Exception

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

1990, c. 8, s. 5; **2002, c. 8, s. 28.**

18.5 Exception to sections 18 and 18.1

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

1990, c. 8, s. 5; **2002, c. 8, s. 28.**

19 Inter-governmental disputes

19. If the legislature of a province has passed an Act agreeing that the **Federal Court**, the **Federal Court of Canada** or the Exchequer Court of Canada has jurisdiction in cases of controversies between Canada and that province, or between that province and any other province or provinces that have passed a like Act, the **Federal Court** has jurisdiction to determine the controversies. R.S., c. 10(2nd Supp.), s. 19; 2002, c. 8, s. 28.

20(1) Industrial property, exclusive jurisdiction

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

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

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

20(2) Industrial property, concurrent jurisdiction

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

R.S., 1985, c. F-7, s. 20; 1990, c. 37, s. 34; 2002, c. 8, s. 29.

21 Citizenship appeals

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

R.S., c. 10(2nd Supp.), s. 21; 1974-75-76, c. 108, s. 38; 2002, c. 8, s. 30.

22(1) Navigation and shipping

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

22(2) Maritime jurisdiction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22(3) Jurisdiction applicable

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

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

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

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

(d) in relation to all mortgages or hypothecations of, or charges by way of security on, a ship, whether registered or not, or whether legal or equitable, and whether created under foreign law or not.

R.S., 1985, c. F-7, s. 22; 1993, c. 34, s. 69(F); 1996, c. 31, s. 82; **2002, c. 8, s. 31**.

23 Bills of exchange and promissory notes - aeronautics and interprovincial works and undertakings

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

(a) bills of exchange and promissory notes, where the Crown is a party to the proceedings;

(b) aeronautics; and

(c) works and undertakings connecting a province with any other province or extending beyond the limits of a province.

R.S., c. 10(2nd Supp.), s. 23; 2002, c. 8, s. 32.

24(1) Appeals under other Acts

24. (1) [Repealed, 2002, c. 8, s. 33]

24(2) Transfer of jurisdiction to Court of Appeal

(2) [Repealed, 2002, c. 8, s. 33]

25 Extraprovincial jurisdiction

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

R.S., c. 10(2nd Supp.), s. 25; 2002, c. 8, s. 33.

26 General original jurisdiction

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

26(2) Transfer of original jurisdiction to Court of Appeal

[Repealed, 2002, c. 8, s. 33]

R.S., c. 10(2nd Supp.), s. 26; 2002, c. 8, s. 33.

JURISDICTION OF FEDERAL COURT OF APPEAL

27(1) Appeals from Federal Court

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

(a) a final judgment;

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

(c) an interlocutory judgment; or

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

27(1.1) Appeals from Tax Court of Canada, except from informal procedure

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

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

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

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

27(1.2) Appeals from informal procedure in Tax Court of Canada

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

27(1.3) Grounds for appeal

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

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

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

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

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

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

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

27(1.4) Hearing in summary way

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

27(2) Notice of appeal

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

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

allow before or after the end of those 10 days; and

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

27(3) Service

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

27(4) Final judgment

(4) For the purposes of this section, a final judgment includes a judgment that determines a substantive right except as to any question to be determined by a referee pursuant to the judgment.

R.S., 1985, c. F-7, s. 27; R.S., 1985, c. 51 (4th Supp.), s. 11; 1990, c. 8, ss. 7, 78(E); 1993, c. 27, s. 214; **2002, c. 8, s. 34.**

28(1) Judicial review

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

- (a) the Board of Arbitration established by the *Canada Agricultural Products Act*;
- (b) the Review Tribunal established by the *Canada Agricultural Products Act*;
- (c) the Canadian Radio-television and Telecommunications Commission established by the *Canadian Radio-television and Telecommunications Commission Act*;
- (d) the Pension Appeals Board established by the *Canada Pension Plan*;
- (e) the Canadian International Trade Tribunal established by the *Canadian International Trade Tribunal Act*;
- (f) the National Energy Board established by the *National Energy Board Act*;
- (g) [Repealed, 1992, c. 49, s. 128]
- (h) the Canada Industrial Relations Board established by the *Canada Labour Code*;
- (i) the Public Service Staff Relations Board established by the *Public Service Staff Relations Act*;

- (j) the Copyright Board established by the *Copyright Act*;
- (k) the Canadian Transportation Agency established by the *Canada Transportation Act*;
- (l) [Repealed, 2002, c. 8, s. 35] the Tax Court of Canada established by the *Tax Court of Canada Act*;
- (m) umpires appointed under the *Employment Insurance Act*;
- (n) the Competition Tribunal established by the *Competition Tribunal Act*;
- (o) assessors appointed under the *Canada Deposit Insurance Corporation Act*; and
- (p) the Canadian Artists and Producers Professional Relations Tribunal established by subsection 10(1) of the *Status of the Artist Act*.

28(2) Sections apply

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

28(3) Federal Court deprived of jurisdiction

(3) If the Federal Court of Appeal has jurisdiction to hear and determine a matter, the Federal Court has no jurisdiction to entertain any proceeding in respect of that matter.
R.S., 1985, c. F-7, s. 28; R.S., 1985, c. 30 (2nd Supp.), s. 61; 1990, c. 8, s. 8; 1992, c. 26, s. 17, c. 33, s. 69, c. 49, s. 128; 1993, c. 34, s. 70; 1996, c. 10, s. 229, c. 23, s. 187; 1998, c. 26, s. 73; 1999, c. 31, s. 92(E); 2002, c. 8, s. 35.

29. to 35. [Repealed, 1990, c. 8, s. 8]

SUBSTANTIVE PROVISIONS

36(1) Prejudgment interest, cause of action within province

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

36(2) Prejudgment interest, cause of action outside province

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

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

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

36(3) Interest on special damages

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

36(4) Exceptions

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

(a) on exemplary or punitive damages;

(b) on interest accruing under this section;

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

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

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

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

36(5) Judicial discretion

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

36(6) Application

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

36(7) Canadian maritime law

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

R.S., 1985, c. F-7, s. 36; 1990, c. 8, s. 9; **2002, c. 8, s. 36.**

37(1) Judgment interest, causes of action within province

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

37(2) Judgment interest, causes of action outside or in more than one province

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

R.S., 1985, c. F-7, s. 37; 1990, c. 8, s. 9; **2002, c. 8, s. 37.**

38. [Repealed, 1990, c. 8, s. 9]

39(1) Prescription and limitation on proceedings

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

39(2) Prescription and limitation on proceedings in the Court, not in province

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

(3) [Repealed, 1990, c. 8, s. 10]

R.S., 1985, c. F-7, s. 39; 1990, c. 8, s. 10; **2002, c. 8, s. 38.**

40(1) Vexatious proceedings

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

40(2) Attorney General of Canada

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

40(3) Application for rescission or leave to proceed

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

40(4) Court may grant leave

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

40(5) No appeal

(5) A decision of the court under subsection (4) is final and is not subject to appeal.
R.S., 1985, c. F-7, s. 40 1990, c. 8, s. 11; 2002, c. 8, s. 39.

41. [Repealed, 1990, c. 8, s. 11]

42 Maritime law continued

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

43(1) Jurisdiction *in personam*

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

43(2) Jurisdiction *in rem*

(2) Subject to subsection (3), the jurisdiction conferred on the Federal Court by section 22 may be exercised *in rem* against the ship, aircraft or other property that is the subject of the action, or against any proceeds from its sale that have been paid into court.

43(3) Exception

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

43(4) Where action *in personam* may be commenced

(4) No action *in personam* may be commenced in Canada for a collision between ships unless

(a) the defendant is a person who has a residence or place of business in Canada;

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

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

43(5) Exception

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

43(6) Where suit pending outside Canada

(6) Where an action for a collision between ships has been commenced outside Canada, an action

shall not be commenced in Canada by the same person against the same defendant on the same facts unless the action in the other jurisdiction has been discontinued.

43(7) Ship owned by sovereign power

(7) No action *in rem* may be commenced in Canada against

(a) any warship, coast-guard ship or police vessel;

(b) any ship owned or operated by Canada or a province, or any cargo laden thereon, where the ship is engaged on government service; or

(c) any ship owned or operated by a sovereign power other than Canada, or any cargo laden thereon, with respect to any claim where, at the time the claim arises or the action is commenced, the ship is being used exclusively for non-commercial governmental purposes.

43(8) Arrest

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

43(9) Reciprocal security

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

R.S., 1985, c. F-7, s. 43; 1990, c. 8, s. 12; 1996, c. 31, s. 83; **2002, c. 8, s. 40.**

44 Mandamus, injunction, specific performance or appointment of receiver

44. In addition to any other relief that the **Federal Court of Appeal or the Federal Court** may grant or award, a *mandamus*, **an** injunction or **an** order for specific performance may be granted or a receiver appointed by **that** court in all cases in which it appears to the court to be just or convenient to do so. **The** order may be made either unconditionally or on **any** terms and conditions **that** the court **considers** just.

R.S., c. 10(2nd Supp.), s. 44; **2002, c. 8, s. 41.**

PROCEDURE

45(1) Giving of judgment after judge ceases to hold office

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

45(2) Taking part in giving of judgment after judge of Federal Court of Appeal ceases to hold

office

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

45(3) If judge unable to take part in giving of judgment

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

R.S., c. 10(2nd Supp.), s. 45; 2002, c. 8, s. 42.

45.1(1) Rules Committee

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

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

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

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

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

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

45.1(2) Representation

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

45.1(3) Chief Justice shall preside

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

45.1(4) Term

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

45.1(5) Expenses

(5) Each person referred to in paragraphs (1)(c) and (d) is entitled to be paid travel and living

expenses incurred in carrying out duties as a member of the rules committee while absent from the person's ordinary place of residence but those expenses shall not exceed the maximum limits authorized by Treasury Board directive for employees of the Government of Canada.

1990, c. 8, s. 13; 2002, c. 8, s. 43.

46(1) Rules

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

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

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

(ii) rules providing for discovery and production, and supplying of copies, of documents by the Crown in a proceeding to which the Crown is a party,

(iii) rules providing for production of documents by the Crown in a proceeding to which the Crown is not a party,

(iv) rules providing for the medical examination of a person in respect of whose injury a claim is made,

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

(vi) rules providing for the reference of any question of fact for inquiry and report by a judge or other person as referee,

(vii) rules respecting the service of documents within Canada and rules authorizing and governing the service of documents outside Canada,

(viii) rules governing the recording of proceedings in the course of a hearing and the transcription of that recording,

(ix) rules governing the appointment of assessors and the trying or hearing of a cause or **other matter wholly or partly with the assistance of assessors, and**

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

(b) for the effectual execution and working of this Act and the attainment of its intention and objects;

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

(d) for fixing the fees to be paid by a party to the Registry **of the Federal Court of Appeal and**

of the Federal Court for payment into the Consolidated Revenue Fund in respect of proceedings in those courts;

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

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

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

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

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

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

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

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

46(2) Extent of rules

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

46(3) Uniformity

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

46(4) Advance publication of rules and amendments

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

(a) shall give notice of the proposal by publishing it in the *Canada Gazette* and shall, in the notice, invite any interested person to make representations to the committee in writing with

respect thereto within sixty days after the day of that publication; and

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

46(5) Rules to be laid before Parliament

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

R.S., 1985, c. F-7, s. 46; 1990, c. 8, s. 14; 1992, c. 1, s. 68; 2002, c. 8, s. 44.

47. [Repealed, 1990, c. 8, s. 15]

48(1) How proceeding against Crown instituted

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

48(2) Procedure for filing originating document

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

48(3) Service of originating document

[Repealed, 2002, c. 8, s. 45]

48(4) Certificate

[Repealed, 2002, c. 8, s. 45]

48(5) Certificate to be evidence

[Repealed, 2002, c. 8, s. 45]

R.S., c. 10(2nd Supp.), s. 48; 2002, c. 8, s. 45.

49 No juries

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

R.S., c. 10(2nd Supp.), s. 49; 2002, c. 8, s. 45.

50(1) Stay of proceedings authorized

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

in any cause or matter,

(a) on the ground that the claim is being proceeded with in another court or jurisdiction; or

(b) where for any other reason it is in the interest of justice that the proceedings be stayed.

50(2) Stay of proceedings required

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

50(3) Lifting of stay

(3) **A court that orders a stay** under this section may subsequently, in **its** discretion, **lift the stay**. R.S., c. 10(2nd Supp.), s. 50; **2002, c. 8, s. 46**.

50.1(1) Stay of proceedings

50.1 (1) The **Federal Court** shall, on application of the Attorney General of Canada, stay proceedings in any cause or matter in respect of a claim against the Crown where the Crown desires to institute a counter-claim or third-party proceedings in respect of which the **Federal Court** lacks jurisdiction.

50.1(2) Recommence in provincial court

(2) **If** the **Federal Court** stays proceedings under subsection (1), the party who instituted **them** may recommence **the** proceedings in a court constituted or established by or under a law of a province and otherwise having jurisdiction with respect to the subject-matter of the proceedings.

50.1(3) Prescription and limitation of actions

(3) **If** proceedings are recommenced **under** subsection (2) within 100 days after the proceedings are stayed in the **Federal Court**, the claim against the Crown in the recommenced proceedings **is** deemed, for the purposes of any laws relating to prescription and the limitation of actions, to have been instituted on the day the proceedings in the **Federal Court** were instituted. 1990, c. 8, s. 16; **2002, c. 8, s. 47**.

51 Reasons for judgment to be filed

51. **If** a judge gives reasons for a judgment pronounced by **the judge** or pronounced by a court of which **the judge** was a member, **the judge** shall file a copy of the reasons in the Registry of the court.

R.S., c. 10(2nd Supp.), s. 51; **2002, c. 8, s. 48**.

JUDGMENTS OF **FEDERAL COURT OF APPEAL**

52 Powers of Federal Court of Appeal

52. The Federal Court of Appeal may

(a) quash proceedings in cases brought before it in which it has no jurisdiction or whenever those proceedings are not taken in good faith;

(b) in the case of an appeal from the **Federal Court**,

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

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

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

(c) in the case of an appeal other than an appeal from the **Federal Court**,

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

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

(d) [Repealed, 1990, c. 8, s. 17]

R.S., 1985, c. F-7, s. 52; 1990, c. 8, s. 17; **2002, c. 8, s. 50**.

EVIDENCE

53(1) Taking of evidence

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

53(2) Admissibility of evidence

(2) Evidence that would not otherwise be admissible **is** admissible, in the discretion of the **Federal Court of Appeal or the Federal Court** and subject to any rule that may relate to the matter, if it would be admissible in a similar matter in a superior court of a province in accordance with the law in force in any province, **even though** it is not admissible **under** section 40 of the *Canada Evidence Act*.

R.S., c. 10(2nd Supp.), s. 53; **2002, c. 8, s. 51**.

54(1) Who may administer oath, affidavit or affirmation

54. (1) All persons authorized to take and receive affidavits to be used in any of the superior courts of a province may administer oaths and take and receive affidavits, declarations and solemn affirmations to be used in the **Federal Court of Appeal or the Federal Court**.

54(2) Person empowered by commission

(2) The Governor in Council may, by commission, empower any person who the Governor in Council thinks necessary, in or outside Canada, to administer oaths and to take and receive affidavits, declarations and solemn affirmations in or concerning any proceeding had or to be had in the Federal Court of Appeal or the Federal Court.

54(3) Oath, affidavit or affirmation is valid

(3) Every oath, affidavit, declaration or solemn affirmation taken or made under this section is as valid and of the same effect, to all intents, as if it had been administered, taken, sworn, made or affirmed before the Federal Court of Appeal or the Federal Court.

54(4) Style of commissioner

(4) Every commissioner empowered under subsection (2) shall be styled a commissioner for administering oaths in the Federal Court of Appeal and the Federal Court.

R.S., c. 10(2nd Supp.), s. 54; 2002, c. 8, s. 51.

PROCESS

55(1) Application of process

55. (1) The process of the Federal Court of Appeal and the Federal Court runs throughout Canada and any other place to which legislation enacted by Parliament has been made applicable.

55(2) Enforcement of order for payment of money

(2) An order for payment of money, whether for costs or otherwise, may be enforced in the same manner as a judgment.

55(3) No attachment for non-payment only

(3) No attachment as for contempt shall issue for the non-payment of money alone.

55(4) Sheriff to execute process

(4) A sheriff or marshal shall execute the process of the Federal Court of Appeal or the Federal Court that is directed to the sheriff or marshal, whether or not it requires the sheriff or marshal to act outside their geographical jurisdiction, and shall perform all other duties expressly or impliedly assigned to the sheriff or marshal by the Rules.

55(5) Federal Court process if absence or incapacity of sheriff

(5) If there is no sheriff or marshal or a sheriff or marshal is unable or unwilling to act, the process of the Federal Court shall be directed to a deputy sheriff or deputy marshal, or to any other person provided for by the Rules or by a special order of that court made for a particular case, and that person is entitled to take and retain for their own use the fees provided for by the Rules or the special order.

55(6) Federal Court of Appeal process if absence or incapacity of sheriff

(6) If there is no sheriff or marshal or a sheriff or marshal is unable or unwilling to act, the process of the Federal Court of Appeal shall be directed to a deputy sheriff or deputy marshal, or

to any other person provided for by the Rules or by a special order of that court made for a particular case, and that person is entitled to take and retain for their own use the fees provided for by the Rules or the special order.

R.S., 1985, c. F-7, s. 55; 1996, c. 31, s. 84; 2002, c. 8, s. 52.

56(1) Analogy to provincial process

56. (1) In addition to any writs of execution or other process that are prescribed by the Rules for enforcement of its judgments or orders, the Federal Court of Appeal or the Federal Court may issue process against the person or the property of any party, of the same tenor and effect as those that may be issued out of any of the superior courts of the province in which a judgment or an order is to be executed, and if, by the law of that province, an order of a judge is required for the issue of a process, a judge of that court may make a similar order with respect to like process to issue out of that court.

56(2) Process against person

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

56(3) Process against property

(3) All writs of execution or other process against property, whether prescribed by the Rules or authorized by subsection (1), shall

(a) unless otherwise provided by the Rules, be executed, with respect to the property liable to execution and the mode of seizure and sale, as nearly as possible in the same manner as similar writs or process that are issued out of the superior courts of the province in which the property to be seized is situated are, by the law of that province, required to be executed; and

(b) bind property in the same manner as similar writs or process issued by the provincial superior courts, and the rights of purchasers under the writs or process are the same as those of purchasers under those similar writs or process.

56(4) Claim against property seized

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

(5) [Repealed, 1990, c. 8, s. 18]

R.S., 1985, c. F-7, s. 56; 1990, c. 8, s. 18; 2002, c. 8, s. 53.

GENERAL

57(1) Constitutional questions

57. (1) **If** the constitutional validity, applicability or operability of an Act of Parliament or of the legislature of a province, or of regulations **made under such an Act**, is in question before the **Federal Court of Appeal or the Federal Court** or a federal board, commission or other tribunal, other than a service tribunal within the meaning of the *National Defence Act*, the Act or regulation shall not be **judged** to be invalid, inapplicable or inoperable unless notice has been served on the Attorney General of Canada and the attorney general of each province in accordance with subsection (2).

57(2) Time of notice

(2) The notice **must** be served at least 10 days before the day on which the constitutional question is to be argued, **unless** the **Federal Court of Appeal or the Federal Court** or the federal board, commission or other tribunal, **as the case may be, orders otherwise**.

57(3) Notice of appeal or application for judicial review

(3) The Attorney General of Canada and the attorney general of each province are entitled to notice of any appeal or application for judicial review made in respect of the constitutional question.

57(4) Right to be heard

(4) The Attorney General of Canada and the attorney general of each province are entitled to adduce evidence and make submissions to the **Federal Court of Appeal or the Federal Court** or the federal board, commission or other tribunal, **as the case may be**, in respect of the constitutional question.

57(5) Appeal

(5) **If** the Attorney General of Canada or the attorney general of a province makes submissions, that attorney general **is** deemed to be a party to the proceedings for the **purpose** of any appeal in respect of the constitutional question.

R.S., 1985, c. F-7, s. 57; 1990, c. 8, s. 19; **2002, c. 8, s. 54**.

57.1 Fees to be paid to Receiver General

57.1 All fees payable in respect of proceedings in the **Federal Court of Appeal or the Federal Court** shall be paid to the Receiver General unless **they** are, in accordance with an arrangement made by the Minister of Justice, to be received and dealt with in the same manner as amounts paid as provincial court fees, in which case they shall be dealt with as so provided.

1990, c. 8, s. 19; **2002, c. 8, s. 55**.

58(1) Law reports editor

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

58(2) Contents

(2) **The editor shall include in the reports** only **the** decisions or **the** parts of **them that**, in the **editor's** opinion, are of sufficient significance or importance to warrant publication in the reports.

58(3) Printing and distribution

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

58(4) Official languages

(4) Each decision reported in the official reports shall be published therein in both official languages.

R.S., c. 10(2nd Supp.), s. 58; 2002, c. 8, s. 56.

59 Police services

59. Any services or assistance in connection with the conduct of the hearings of the Federal Court of Appeal and of the Federal Court, the security of those courts and their premises and of staff of the Courts Administration Service, or in connection with the execution of orders and judgments of those courts, that may, having regard to the circumstances, be found necessary shall be provided, at the request of the Chief Justice of each of those courts, by the Royal Canadian Mounted Police or any other police force that the Governor in Council may designate.

R.S., c. 10(2nd Supp.), s. 59; 2002, c. 8, s. 57.

SCHEDULE
(Section 48)

FEDERAL COURT

Between

A.B.

Plaintiff

and

Her Majesty the Queen

Defendant

STATEMENT OF CLAIM

Facts

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

Relief Sought

The plaintiff therefore claims as follows:

(a)

(b)

Dated at the day of, 20

(Signature)

Counsel for Plaintiff

*(or the plaintiff himself or herself
if the plaintiff acts for himself or herself)*

R.S., c. 10(2nd Supp.), Sch. I; 2002, c. 8, s. 58