



Federal Court of Canada

Annual Report

1989

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**TABLE OF CONTENTS**

INTRODUCTION .....	3
A. JUDGES OF THE COURT .....	4
B. PROTHONOTARIES .....	13
C. STAFF OF THE COURT .....	14
D. CHANGES IN LEGISLATION .....	17
E. COURT PROCEEDINGS .....	21
F. COURT ACCOMMODATIONS .....	28
G. OFFICIAL LANGUAGES .....	29
H. LAW CLERKS .....	30
I. AUTOMATION .....	31
J. COURT LIBRARY COMMITTEE .....	32
K. FINANCIAL SERVICES .....	33
<b>APPENDIX</b>	
OFFICES OF THE COURT .....	34

Federal Court of Canada



Cour fédérale du Canada

Chief Justice  
Juge en chef

OTTAWA, K1A 0H9

This is the second annual report prepared by the Federal Court of Canada. The reason for preparing such a report is to make information about the activities of the Court available to the public, other judicial bodies, and the legal profession; to address the public interest in how the Court operates, and to do so on an annual basis thereby affording a means of comparison with other years.

This report describes the events and issues affecting the Court during the calendar year 1989. Included in its contents are changes in the status of Court members, legislative changes affecting the Court and litigants, a review of Court proceedings, and specific issues of concern such as accommodations, official languages, and automation. Notes on the background of each of the judges of the Court have also been included.

I should like to acknowledge the support of the Administrator of the Court, Mr. Robert Biljan, and the Deputy Administrator, Judicial Information Services, Mr. William Wendt, who have helped to put this material together.

A handwritten signature in cursive script that reads "Frank Iacobucci".

Frank Iacobucci

## **PART A**

### **JUDGES OF THE FEDERAL COURT OF CANADA**

#### **The Chief Justice**

The Honourable F. Iacobucci

Chief Justice Iacobucci was born in Vancouver, B.C. and studied at the University of British Columbia and Cambridge University. Called to the Bar of Ontario in 1970, Mr. Justice Iacobucci practised law in New York, was professor and Dean of law at the University of Toronto and later Vice President and Provost of the University. Prior to his appointment to the Federal Court in 1988, Mr. Justice Iacobucci was Deputy Minister of Justice and Deputy Attorney General of Canada.

#### **The Associate Chief Justice**

The Honourable J.A. Jerome, P.C.

Born in Kingston, Ontario and educated at the University of Toronto and Osgoode Hall, Mr Justice Jerome practised law in Sudbury and was a member of Parliament, Parliamentary Secretary to the President of the Privy Council, and Speaker of the House of Commons prior to his appointment as Associate Chief Justice of the Court in 1980.

**The Federal Court of Canada**

**Court of Appeal**

**The Honourable Louis Pratte**

Mr. Justice Pratte was born in Quebec City and educated at Laval University and the Faculté de droit et des sciences économiques, Paris. Mr. Justice Pratte was called to the Bar of Quebec in 1950. He was a professor of civil law at Laval University. Mr. Justice Pratte was appointed to the Trial Division of the Federal Court in 1971 and to the Federal Court of Appeal in 1973.

**The Honourable Darrel V. Heald**

Mr. Justice Heald was born in Regina and studied at the University of Saskatchewan. Called to the Bar of Saskatchewan in 1941, he practised law in Regina. Mr. Justice Heald was a member of the Legislative Assembly of Saskatchewan and was Attorney General and Provincial Secretary of Saskatchewan prior to his appointment to the Federal Court Trial Division in 1971. Mr Justice Heald was appointed to the Federal Court of Appeal in 1975.

**The Honourable John J. Urie**

Mr. Justice Urie was born in Guelph, Ontario, and studied at Queen's University and Osgoode Hall Law School. He was called to the Bar of Ontario in 1948 and practised law in Ottawa before his appointment to the Federal Court of Appeal in 1973.

**The Honourable Patrick M. Mahoney, P.C.**

Mr. Justice Mahoney was born in Winnipeg and studied at the University of Alberta. He was called to the Bar of Alberta in 1952 and practised law prior to being elected to the House of Commons, where he served as Parliamentary Secretary to the Minister of Finance and was named Minister of State. Mr. Justice Mahoney was appointed to the Federal Court Trial Division in 1973, and to the Federal Court of Appeal in 1983.

The Honourable Louis Marceau

Mr. Justice Marceau was born in Québec City and educated at Laval University and the Faculté de Droit et des sciences économiques de Paris. Called to the Bar of Quebec in 1949, Mr. Justice Marceau was Dean of the Law School of Laval University and Quebec Public Protector (ombudsman). Mr. Justice Marceau was appointed to the Federal Court Trial Division in 1975, and to the Federal Court of Appeal in 1983.

The Honourable James K. Hugessen

Mr. Justice Hugessen was born in Montreal and educated at Oxford and McGill Universities and the University of Montreal. He was called to the Quebec Bar in 1958, and practised law in Montreal. Mr. Justice Hugessen was a Judge and later the Associate Chief Justice of the Quebec Superior Court before being appointed to the Federal Court of Appeal in 1983.

The Honourable Arthur J. Stone

Mr. Justice Stone was born in St. Peter's, Nova Scotia and educated at St. Francis Xavier University, Dalhousie Law School, and Harvard Law School. He was called to the Bar of Nova Scotia in 1956 and held occasional appearance standing at the Bars of Ontario, New Brunswick and British Columbia. Mr. Justice Stone practised law in Toronto, and was appointed to the Federal Court of Appeal in 1983.

The Honourable Mark R. MacGuigan, P.C.

Mr. Justice MacGuigan was born in Charlottetown, P.E.I. and educated at St. Dunstan's University, the University of Toronto, Osgoode Hall Law School, and Columbia University. Called to the Bars of Newfoundland and of Prince Edward Island in 1984, and of Ontario in 1985, Mr. Justice MacGuigan was professor of Law at the University of Toronto, and Osgoode Hall Law School, and was founding Dean of the Faculty of Law, University of Windsor. Mr. Justice MacGuigan was Secretary of State for External Affairs, and Minister of Justice and Attorney General. Mr. Justice MacGuigan was appointed to the Federal Court of Appeal in 1984.

The Federal Court of Canada

The Honourable Bertrand Lacombe

Mr. Justice Lacombe was born in Lavaltrie, Quebec and educated at Ottawa, McGill and Cambridge Universities. He was called to the Bar of Quebec in 1961, practised law in Montreal, and was a lecturer in Constitutional Law at McGill University. Mr. Justice Lacombe was appointed to the Federal Court of Appeal in 1985, and resigned in December, 1989.

The Honourable Alice Desjardins

Madame Justice Desjardins was born in Montreal and educated at the University of Montreal and Harvard Law School. She was called to the Bar of Quebec in 1958, practised with the Department of Justice in Ottawa, and was Associate Professor of law at the University of Montreal. Madame Justice Desjardins was appointed to the Superior Court of Quebec in 1981; and to the Federal Court of Appeal in 1987.

**Trial Division**

**The Honourable Frank U. Collier**

Mr. Justice Collier was born in Winnipeg and educated at the University of British Columbia. He was called to the Bar of British Columbia in 1951, and was appointed to the Federal Court Trial Division in 1971.

**The Honourable George A. Addy**

Mr. Justice Addy was born in Ottawa and educated at Ottawa University and Osgoode Hall Law School. He was called to the Bar of Ontario in 1942. Mr. Justice Addy retired from the military with the rank of Lieutenant-Colonel. He practised law prior to his appointment to the Supreme Court of Ontario in 1967. He was appointed to the Federal Court Trial Division in 1973.

**The Honourable Jean-Eudes Dubé, P.C.**

Mr. Justice Dubé was born in Matapédia, Quebec and studied at St. Joseph, Ottawa, and Georgetown Universities. He studied law at the University of New Brunswick, and was called to the Bar of New Brunswick in 1957. Mr. Justice Dubé practised law in New Brunswick, and was elected to the House of Commons, where he served as Minister of Veterans Affairs and Minister of Public Works. He was appointed to the Federal Court Trial Division in 1975.

**The Honourable Paul U.C. Rouleau**

Mr. Justice Rouleau was born in Cornwall, Ontario. He studied law at Dalhousie University. Called to the Bar of Ontario in 1960, Mr. Justice Rouleau was a judge of the County and District Court of Ontario prior to his appointment to the Federal Court Trial Division in 1982.

## The Federal Court of Canada

### The Honourable Francis C. Muldoon

Mr. Justice Muldoon was born in Winnipeg. He studied law at the University of Manitoba, and was called to the Bar of Manitoba in 1956. He practised law in Winnipeg, was Chairman of the Manitoba Law Reform Commission, and President of the Canadian Law Reform Commission. Mr. Justice Muldoon is also a member of the Law Society of Saskatchewan. He was appointed to the Federal Court Trial Division in 1983.

### The Honourable Barry L. Strayer

Mr. Justice Strayer was born in Moose Jaw, Saskatchewan and educated at Luther College, University of Saskatchewan, and Oxford and Harvard Universities. Called to the Bar of Saskatchewan in 1959, Mr. Justice Strayer was professor of law at the University of Saskatchewan, and practised with the Department of the Attorney General of Saskatchewan and the Department of Justice in Ottawa, where he was appointed Assistant Deputy Minister. Mr. Justice Strayer was appointed to the Federal Court Trial Division in 1983.

### The Honourable John C. McNair

Mr. Justice McNair was born in Fredericton, N.B. and educated at the Universities of New Brunswick and London, and at Dalhousie University. Called to the Bar of New Brunswick in 1951, Mr. Justice McNair practised law in Fredericton. He was appointed to the Federal Court Trial Division in 1983.

### The Honourable Barbara J. Reed

Madame Justice Reed was born in St. Catherines, Ontario and educated at the University of Toronto and Dalhousie University. She was called to the Bar of Ontario in 1971. Madame Justice Reed was Assistant Professor, Faculty of Law, University of Ottawa. She practised with the Department of Justice in Ottawa and was Legal Counsel to the Privy Council Office. She was appointed to the Federal Court Trial Division in 1983.

### The Honourable Pierre Denault

Mr. Justice Denault was born in Verdun, Quebec and studied law at the University of Ottawa. Called to the Bar of Quebec in 1964, he practised law in Victoriaville prior to his appointment to the Federal Court Trial Division in 1984.

Annual Report - 1989

The Honourable Yvon Pinard, P.C.

Mr. Justice Pinard was born in Drummondville, Quebec and educated at Sherbrooke University. Called to the Bar of Quebec in 1964, Mr. Justice Pinard practised law in Drummondville. He was elected to the House of Commons in 1974 and was appointed President of the Privy Council and Government House Leader. Mr. Justice Pinard was appointed to the Federal Court Trial Division in 1984.

The Honourable L. Marcel Joyal

Mr. Justice Joyal was born in Haileybury, Ontario. He studied at the University of Ottawa and McGill University. Mr. Justice Joyal was called to the Bar of Quebec in 1948 and of Ontario in 1949. He practised law in Ottawa. Mr. Justice Joyal was appointed to the Federal Court Trial Division in 1984.

The Honourable Bud Cullen, P.C.

Mr. Justice Cullen was born in Creighton Mine, Ontario and studied at the University of Toronto and Osgoode Hall. Mr. Justice Cullen was called to the Bar of Ontario in 1956. He was elected to the House of Commons in 1968, and served as Minister of National Revenue and Minister of Employment and Immigration. He was appointed to the Federal Court Trial Division in 1984.

The Honourable Leonard A. Martin

Mr. Justice Martin was born in Corner Brook, Newfoundland, and studied at the University of Toronto and Dalhousie University. Mr. Justice Martin was called to the Bar of Newfoundland in 1956 and was appointed to the Federal Court Trial Division in 1985.

The Honourable Max M. Teitelbaum

Mr. Justice Teitelbaum was born in Montreal and educated at Sir George Williams University, and McGill University Law School. Called to the Bar of Quebec in 1958, Mr. Justice Teitelbaum was appointed to the Federal Court Trial Division in 1985.

**The Federal Court of Canada**

**The Honourable W. Andrew MacKay**

**Mr. Justice MacKay was born in Halifax and educated at Dalhousie and Harvard Universities. Called to the Bar of Nova Scotia in 1954, Mr. Justice MacKay was Professor of Law and President and Vice Chancellor of Dalhousie University. He was Chairman of the Nova Scotia Human Rights Commission and Ombudsman of Nova Scotia before being appointed to the Federal Court Trial Division in 1988.**

### Changes in Membership of the Court

December 1989 marked the resignation of the Honourable Mr. Justice Bertrand Lacombe, who left the Court after a period of illness. Mr. Justice Lacombe has served his profession and the public with distinction both as a practising lawyer and as a member of the Federal Court of Canada. He was a member of the Appeal Division of the Court from 1985 to 1989.

### Special Activities of Members of the Court

In May, 1989, the Honourable Arthur Thurlow, Associate Chief Justice of the Federal Court of Canada from 1975 to 1980 and Chief Justice from 1980 to 1988, was awarded the degree of Doctor of Laws *honoris causa* by his alma mater, Dalhousie University.

In June, 1989, Chief Justice Iacobucci was awarded the degrees of Doctor of Laws *honoris causa* by the University of British Columbia and the University of Toronto.

During the year, several members of the Court took part in various special activities outside of their normal judicial duties. The following is a summary of some of these activities.

The Honourable Mr. Justice Muldoon participated as faculty member at the Canadian Judicial Centre for the instruction of newly appointed judges. The Honourable Mr. Justice Urie was president of the Canadian Section of the International Commission of Jurists. The Honourable Mr. Justice MacGuigan published "The Public Dimension in Legal Education" (Dalhousie Law Journal). In October, 1989, the Honourable Madame Justice Desjardins was appointed Chairperson of the Quebec Selection Committee for Rhodes Scholarships. The Honourable Mr. Justice Strayer presented a paper on "Public Interest Advocacy in Canada" at an International Bar Association conference in Strasbourg, France in October, 1989. He was on leave of absence from October to December, 1989, serving as an advisor to the Government of Hong Kong on the drafting and implementation of a Bill of Rights. In March, 1989, the Honourable Madame Justice Reed presented a seminar-lecture at the University of Ottawa entitled "Decision Making by Judges". In October, Madame Justice Reed presented a paper to the Computer Law Association, Fall Conference co-sponsored by the Computer Law Section of the Bar Association of San Francisco and the Santa Clara County Bar Association, on "Are Courts of General Jurisdiction the Proper Forum for Cases Involving Computer Technology?" In November, 1989, Madame Justice Reed was moderator of a panel on Canadian Administrative Law: Past, Present and Future, for the Canadian Bar Association's Seminar on Administrative Law.

**The Federal Court of Canada**

**PART B**

**PROTHONOTARIES**

**Senior Prothonotary**

Jacques Lefebvre, Esq.  
Ottawa

Mr. Lefebvre was born in Quebec City and studied law at Laval University. Called to the Bar of Quebec in 1957, Mr. Lefebvre practised in Ottawa and Montreal. He was appointed Senior Prothonotary in 1985.

**Associate Senior Prothonotary**

Peter A.K. Giles, Esq.  
Toronto

Mr. Giles was born in Edgbaston, Birmingham and studied law at Osgoode Hall. Called to the Bar of Ontario in 1956, Mr. Giles practised in Toronto. He was appointed Associate Senior Prothonotary in 1985.

## **PART C**

### **STAFF OF THE COURT**

The staff of the Federal Court of Canada works under the direction of the Administrator of the Court, Mr. Robert Biljan. The Administrator is the chief officer of the Court Registry and deputy head of the staff of the Court, with the overall responsibility for the management of Court operations.

The Court has offices in Ottawa and at 16 locations across Canada. Eight of the local offices are staffed by Federal Court employees, under the supervision of a District Administrator at each office. The other eight local offices are maintained by provincial or territorial court employees.

The principal office staff is organized into the following sections: Appeal Division, Trial Division, Administrative Services, Judicial Information Services, and the Office of the Administrator.

The Judicial Administrators of the Appeal and Trial Divisions assist in the non-judicial work of the offices of the Chief Justice and the Associate Chief Justice.

The total complement of staff of the Court in 1989 was 268 employees, of whom 58 worked at local offices, and the balance of 210 worked at the principal office.

The year 1989 saw the commencement of a new Head Librarian, Ms. Rosalie Fox, in June; of the Chief, Official Languages, Ms. Carmelle Bordeleau-Zenko, in September; and of a new Chief, Financial Services, Ms. Evelyn Burke, in October.

**The Federal Court of Canada**

A list of the principal Court officials at year end follows:

**Administrator of the Court**

Robert Biljan

**Acting Deputy Administrator - Appeal Division**

Paul Scott

**Deputy Administrator - Trial Division**

Gerald Parlee

**Deputy Administrator - Administration**

Raymond P. Guenette

**Deputy Administrator - Judicial Information Services**

William Wendt

**Deputy Administrator - Building Project**

Pierre R. Gaudet

**Head Librarian**

Rosalie Fox

**Chief, Personnel Services**

Pierre C. Lebrun

**Chief, Financial Services**

Evelyn Burke

**Annual Report - 1989**

**Judicial Administrators**

**Judicial Administrator (Appeal Division)**

Huguette R. Narum

**Judicial Administrator (Trial Division)**

Pauline Bratt

*(A list of the local offices of the Court is provided in the Appendix to  
this report.)*

## The Federal Court of Canada

### PART D

#### CHANGES IN LEGISLATION

##### Background

In the first annual report, prepared for the year 1988, there was a discussion of the historical background of the Federal Court of Canada and its predecessor, the Exchequer Court of Canada.

The Court has twice gone through major reorganizations, the first being in 1887 when original Exchequer Court jurisdiction was taken away from the Supreme Court of Canada and transferred to the Exchequer Court of Canada. The second was the reorganization of the Court as the Federal Court of Canada in 1971. This latter change brought an important reform in the domain of judicial review. The Court was then given supervisory jurisdiction over proceedings of federal boards and commissions. This judicial review jurisdiction is to be further amended by Bill C-38, *An Act to Amend the Federal Court Act, the Crown Liability Act, the Supreme Court Act and other Acts in consequence thereof*, which was introduced in the House of Commons in September, 1989 and passed second reading in November. Bill C-38 has since been passed by Parliament (S.C. 1990, c. 8) and will come into force on a date to be fixed by Order in Council. Because of the importance of this Bill, some selected highlights follow.

##### Amendment to *Federal Court Act*

##### Judicial Review

The *Act to Amend the Federal Court Act* continues the process of reform of the Court's judicial review jurisdiction. Included in the amendments are provisions for a streamlined procedure for general judicial review by either the Trial Division or the Appeal Division. The question of which Division has judicial review jurisdiction in any given case has been at times problematic. The amendment clearly delineates that original judicial review jurisdiction lies to the Trial Division, except in the case of decisions made by certain tribunals, which are named. The Court's judicial review jurisdiction will be broadened when the amendments come into force by

- a. the addition of new grounds for review (fraud/perjured evidence, acting contrary to law);

- b. the application of these new grounds and of review for procedural fairness to judicial review in the Court of Appeal in place of the more restrictive grounds for the present s. 28 applications;
- c. allowing any party directly affected by the decision to bring proceedings in the Court;
- d. providing for review where a tribunal has unreasonably delayed;
- e. providing for the issuance of interim orders (e.g. stays of proceedings, orders for preservation of property) by both Divisions of the Court and for the issuance of the traditional prerogative writs by the Appeal Division;

### Claims against the Crown

The Federal Court has exclusive jurisdiction in proceedings against the Crown under section 17 of the *Federal Court Act*. The exclusive jurisdiction has resulted in considerable inconvenience to litigants in a small number of cases in which counterclaim or third party proceedings are not within Federal Court jurisdiction. This raises the possibility that a party could have to defend and prosecute on the same cause of action in different courts. The amendments to the *Federal Court Act* and the *Crown Liability Act* will make the Court's jurisdiction concurrent instead of exclusive in cases where relief is claimed against the Crown. Thus when the amendment comes into effect the Court will share original jurisdiction in these cases with the courts in the provinces. By a further amendment, the Crown will be in the same position as a subject with respect to payment of pre-judgment interest.

### Income tax proceedings

An amendment to section 24 of the *Federal Court Act* accompanies changes to the *Tax Court of Canada Act* whereby the Tax Court will have exclusive original jurisdiction to hear references and appeals under the *Income Tax Act* (S.C. 1988, c.51). This amendment, which deletes the reference in section 24 to appeals under the *Income Tax Act*, was passed in 1988 but had not been proclaimed in force by the end of 1989. In the interim, the jurisdiction of the Federal Court - Trial Division to hear appeals from assessments and from decisions of the Tax Court continued. There were 328 appeals brought from income tax assessments during the year, and 153 appeals from decisions of the Tax Court, the highest totals for any year. After the amendments are proclaimed in force, decisions of the Tax Court will be subject to appeal to the Federal Court of Appeal or review under section 28.

## The Federal Court of Canada

### The Federal Court Rules

The Federal Court Rules are amended by the judges of the Court. A working group, the Federal Court Rules Subcommittee, chaired by the Honourable Mr. Justice Heald, prepares and recommends amendments to the judges of the Court after consultation with a committee of the Canadian Bar Association. Other members of the Rules Subcommittee in 1989 were The Honourable Mr. Justice Addy, the Honourable Mr. Justice Marceau, and the Chief Justice *ex officio*.

The present procedure for amendment of the Rules of the Court will change when amendments to the *Federal Court Act* in Bill C-38 come into force. These amendments will establish a Rules Committee chaired by the Chief Justice or his designate, and including members from the Court and the bar.

Federal Court Rule 203 affords the public a means for submitting recommendations concerning amendments to the Rules. The Court is interested in hearing from the public and the bar about any suggestions that would improve the effectiveness of the Rules. In this connection, a depository is kept in each office of the Registry for deposit of recommendations, which are then forwarded directly to the Chief Justice.

Notice of proposed changes to the Rules is given by publication in the *Canada Gazette*, and here also the public is invited to make representations on any proposed changes (*Federal Court Act*, s. 46(4)).

. . . .

With respect to developments during 1989, the Rules Subcommittee received and considered representations on proposed Amending Order 13. This proposal represents a major amendment which will revise several Court procedures, including the rules for production and discovery.

The Federal Court Immigration Rules (SOR/ 89-26) came into effect just before the beginning of the year. These Rules set out the procedure for appeals and applications for leave under new provisions of the *Immigration Act* relating to the determination of refugee status. The Rules dealing with time limits for filing of affidavits and written representations (Rules 9(3)(b) and Rule 17(2)) were amended on April 6, 1989 (SOR/ 89-200). Rule 9 specifies that a party applying for leave to commence a proceeding has 15 days to file supporting affidavits and representations. Rule 17 limits the time for a respondent to file representations and affidavits to 10 days.

In addition, the Court prepared to consider changes to the Rules necessitated by the amendments to the *Federal Court Act* in Bill C-38.

### **Other Legislation**

It has been quite common over the past few years for new or amended legislation to provide a specific right to appeal to the Court or for review by the Court. Among the legislation in this category passed by Parliament in 1989 were the following:

*The National Energy Board Act.* Amendments to this Act make the period for obtaining leave to appeal to the Federal Court run from the date of the release of a decision rather than the date the decision is made, and provide for the National Energy Board to be represented by counsel on the argument of the appeal.

*The Radio Act.* By amendments to this Act, the Federal Court is a court of competent jurisdiction for the granting of injunctions and for the hearing of applications relating to the forfeiture of radio apparatus.

*The Special Import Measures Act.* Amendments include provisions for applications for review of dispute settlement procedures relating to the *Free Trade Agreement*.

## The Federal Court of Canada

### PART E

#### COURT PROCEEDINGS

##### Jurisdiction

Parliament has conferred jurisdiction on the Federal Court of Canada relating to cases of specialized subject matter, and cases for which it has been deemed convenient to have a national forum. This jurisdiction is delineated in sections 17 to 30 of the *Federal Court Act* (R.S.C. 1985, c. F-7) and in a number of federal statutes. Among the matters dealt with by the Court are admiralty, income tax, customs, intellectual property, public service, labour relations, transportation, communications, immigration, unemployment insurance, parole and penitentiary proceedings.

The Court has limited criminal jurisdiction, comprised of proceedings for contempt of court, criminal proceedings relating to competition law, and quasi-criminal proceedings in other areas such as customs forfeiture cases.

##### Summary of Activities

During the year, there were 10,223 cases instituted in both Divisions of the Court, 835 trial or appeal hearings, and 2,548 motions and pre-trial conferences. The Court sat for a total of 1,409 days of hearings, which were held at the various Court offices and other locations across the country. The number of hearings and the total number of days sitting remained at the high levels seen in 1988.

In addition to their normal duties, Judges of the Court dealt with applications for warrants under the *Canadian Security Intelligence Service Act*, and objections to disclosure of government information under the *Canada Evidence Act* in cases involving international relations and national defence or security. Also, Judges of the Trial Division sit as Umpires for the hearing of appeals under the *Unemployment Insurance Act*. The Associate Chief Justice is Chief Umpire. During the year there were 1,413 unemployment insurance appeal hearings.

The Chairman and other judicial members of the Competition Tribunal are members of the Trial Division. Judges of the Court also hear cases as members of the Court Martial Appeal Court of Canada, and as assessors under the *Pesticide Residue Compensation Act*, the *Animal Disease and Protection Act*, and the *Plant Quarantine Act*.

As is the case with other courts of appeal, there are relatively few cases of the Federal Court of Appeal in which leave to appeal to the Supreme Court of Canada is granted. As a consequence, the Court is virtually the final court of appeal for most cases within its jurisdiction. Despite the Court's workload, and the extensive amount of travel required of judges, efforts are made to ensure that decisions of the Court are delivered promptly.

In the Trial Division, there were 122 pre-trial conferences, many of which were conducted by teleconference. It has been the experience of the Court that the practice of having conferences with counsel before lengthy trials leads to more efficient trial hearings. Another practice representing the efficient use of Court resources is the assignment of various classes of procedural matters to the Senior Prothonotary and the Associate Senior Prothonotary. The prothonotaries have disposed of a great number of Ottawa, Toronto and Montréal motions that would otherwise have been heard by judges of the Court.

There were 684 hearings in the Appeal Division. In addition, 975 judgments and orders were rendered on applications disposed of on written submissions, a considerable increase over the 387 in 1988. This increase is attributable to the new refugee determination legislation in the *Immigration Act*, which came into effect on January 1, 1989. A further increase is anticipated in 1990.

Reasons for judgments are published in a number of topical and national law reports. Selected cases are published in the Court's official report series, the *Federal Court Reports*, which is prepared by the Office of the Commissioner for Federal Judicial Affairs under the direction of the executive editor, Mr. William Rankin. *The Federal Court Reports* are available for consultation at law libraries or for purchase from the Canadian Government Publishing Centre (Supply and Services Canada, Ottawa K1A 0S9).

#### **A review of cases dealt with by the Court**

It is increasingly common that decisions of the Court have an impact on members of the Canadian public and the nature of our society. These decisions span a wide range of subject matter. The summary that follows is given to illustrate the range and bearing of some of the cases that were dealt with by the Court during 1989 - the period covered in this review. It must be noted, however, that it is not a complete list: it is far beyond the scope of this report to examine all of the important decisions that are delivered in a year, or to relate the findings or the legal issues that arise. The cases that follow serve only as examples of the issues presented to the Court for resolution and disposition.

In a number of cases, the Court dealt with refugee claims. The meaning of "convention refugee" was considered in *Adjei v. Minister of Employment and Immigration*. *Armason v.*

## The Federal Court of Canada

*Minister of Employment and Immigration* examined the credibility of a refugee claimant's testimony. Other immigration cases dealt with the refugee claims backlog program, the right to an interpreter, the stay of execution of deportation orders, sponsorship of family members, humanitarian considerations, medical requirements, student visas, permanent residence status, and so on. *The Queen v. Canadian Council of Churches* involved the standing of the respondent to contest eighty-eight provisions of the immigration legislation.

As noted above, there were more income tax appeals brought to the Court than in other years. *Williams v. The Queen* examined an exemption from taxation in the case of an Indian residing and working on a reserve. Other cases concerned such matters as the deduction of business losses by an aircraft rental business, the deductions of a pipeline company for surplus tariff charges, the deductions of amounts paid by a supermarket to an owner's wife and children, the expenses of a Soviet shipping company for advances paid to an American subsidiary, a sales representative's deductions for an office at home, the taxable income allowances received by derrick hands working in Alberta oil fields, and the valuation day value of a property that was for a time the site of a molybdenum tungsten mine near Mount Pleasant, New Brunswick. Several cases examined the validity of seizures of documents in connection with tax investigations. In one case, the plaintiff, a medical doctor, claimed damages for malicious collection of taxes following the garnishment of 75% of his gross income. In *Prior v. The Queen* the Court was asked to determine whether a Quaker was entitled to withhold a portion of tax equal to the percentage of the Federal budget used for military purposes.

Many of the patent cases considered by the Court raised issues of infringement and validity, and in several of these cases, the Court considered applications for interlocutory injunctions. There were proceedings relating to the compulsory licensing of pharmaceutical products, including the drug "gentamicin", the heart medicine "atenolol", and drugs for the treatment of bacterial infections. *Eli Lilly & Co. v. Novopharm Ltd.* concerned a patent for a tablet coating machine. The subject matter of other patent cases included a folding door with thermal insulation, a method for making metal oxide semiconductor field effect transistors, a surveillance system, an additive for car oils, "pants saver" car mats, etc. In *Standal Estate v. Swecan International*, apparently anticipating an adverse decision on patent infringement, a company sold its assets and transferred the proceeds of sale to the Cayman Islands. The Court was asked to issue a mandatory injunction requiring the return of the money. This case involved the consideration of a special remedy, the *Mareva* injunction, which prevents a party's disposing of assets prior to judgment.

The following are some of the trade marks that were involved in cases presented to the Court for disposition: "Turbo" used for automotive lubricants, "Sunoco Gold" for gasoline, "967-1111" used by Pizza Pizza take-out restaurants, "The Red Dot" for Knirps umbrellas, "Amigos" for snack food, "Detroit Tigers" for clothing, "Posture Beauty" for mattresses, "Spring Fresh" for Fleecy fabric softener, "T-Line" for golf clubs, "Feminique" for sanitary

napkins, "Le Zoo" for radio broadcasts, "Skydome", "Sak's Fifth Avenue", and "Vibra Shave". "Super Mac's" (for a larger version of Mac's Milk Stores) was opposed by McDonalds (owner of "Big Mac"). The "Quickie" convenience store objected to the use of "T.G. Quickly" for a restaurant.

Among the copyright cases considered by the Court was *Fourgons Transit Inc. v. Fourgons Ramco Inc.*, in which the copyright related to the form used by companies for tendering for the construction of vans.

Customs seizures were involved in cases in which the Crown had seized jewellery, a sports car, and a truck transporting illegally manufactured spirits.

In other Crown cases the Court considered claims relating to import licences, regional development grants, licences to operate car rental services at Mirabel and Dorval airports, tenders for the lease of office space for the headquarters of Transport Canada, and the contract for removal of garbage at Department of National Defence locations in Quebec. *Sogevex Inc. v. The Queen* involved the freight rate for the transport of peat moss by car ferry from Baie Comeau to Matane. *Canadian Pacific Ltd. v. National Transportation Agency* involved the rate for shipment of methanol by rail from Medicine Hat to Shelby, Montana. Examples of tort cases involving the Crown are the claim relating to the break of an underground telephone cable near Sept-Iles airport, a claim for wrongful arrest by the R.C.M.P., and a claim for damages to a Boeing 727 that was hit by a government truck. The government privatizing policy gave rise to *The Queen v. Public Service Alliance of Canada*. In this case, the Court was asked to determine whether teachers at federal penitentiaries performing services that were formerly the job of public servants were themselves employees.

Penitentiaries cases dealt with issues of prisoners' rights, such as inmate discipline, segregation, and transfers. *Piche v. Solicitor General of Canada* concerned double-bunking at Stony Mountain Institution. *Martineau v. The Queen* reviewed the refusal of the Solicitor General to grant a pardon.

Fisheries cases included *Keleher v. Department of Fisheries and Oceans*. This was an action by fishermen holding salmon fishing licences in the Saint John harbour, Bay of Fundy, and the Saint John River, and it concerned an offer by the Department of Fisheries to buy back the licences. In *Johnson v. Minister of Fisheries and Oceans* there was a motion for a mandatory injunction requiring the Minister to issue a herring roe seine fishing licence. *Soleiko v. The Queen* was an action against the Crown for contamination of mussels grown in Neguac Bay, New Brunswick.

In *Griffin v. Agriculture Canada*, the Court reviewed a decision of departmental officers to the effect that the entire 1988 potato seed crop grown by the Plaintiff could not be sold as it

## The Federal Court of Canada

was contaminated with bacterial ring rot. Other cases involved such matters as the recovery of advances paid by the Canadian Wheat Board. In *Lacey v. The Queen*, the Court considered the Wheat Board's method of pooling and distributing profits from the sales of particular grades of wheat, and using the profits to offset losses on the sales of other grades.

Several cases dealt with natives issues. *Sault v. La Forme* concerned Indian band council membership. In *Grand Chief Coon Come v. The Queen*, the James Bay Cree Indians applied to block construction of a Hydro-Quebec generating plant. *Lubicon Lake Band v. The Queen* concerned the treaty obligations of the government under Treaty 8 and the *Constitution Act*, 1930. In another case, the Walpole Island Indian Band requested an interlocutory injunction to stop the dumping of dredging spoil in Lake St. Clair near reserve lands.

Environmental issues were the subject of *Canadian Wildlife Federation v. Minister of the Environment* - in which construction of the Rafferty and Alameda dams on the Souris River Basin in Saskatchewan was halted pending environmental review.

The expropriation of lands under the *Railway Act* was the subject of *Canadian Transit Co. v. 429106 Ontario Ltd.* Other expropriation cases dealt with compensation payable by the Crown, and the determination of titles - for example, in Heart's Cove, Newfoundland; Bay St. Lawrence, Victoria County, Nova Scotia; in Shelburne County, Nova Scotia; and St. John's Harbour, St. John's Newfoundland.

Among the many judicial review cases was *Poirier v. Minister of Veterans Affairs*, in which the Court considered whether an administrative tribunal is entitled to rule on the constitutional validity of statutes. This case concerned the pension payable to male veterans at age 60, and to females at age 55. *Gingras v. Royal Canadian Mounted Police* involved the entitlement of a former R.C.M.P. member to a pension on his employment with the Canadian Security Intelligence Service. *Southam Inc. v. Attorney General of Canada* dealt with an application by the Southam newspaper chain for access to the proceedings of a Senate inquiry into the alleged misuse of funds by a senator. *Canadian Pacific Ltd. v. B.M.W.E.*, concerned an arbitrator's ruling under the *Maintenance of Railway Operations Act*, which Act imposed binding arbitration to end a national strike of railway employees. The arbitrator's ruling imposed conditions relating to the elimination of cabooses on trains. *Klaemt v. Minister of Transport* dealt with the refusal of the Minister of Transport to register a gyroplane as an ultra-light airplane.

Postal services were the subject of cases dealing with second class mail registration, and with mail interruption.

A number of cases dealt with the release of members of the armed forces (one member being released after 27 years service). In *Généreux v. General Court Martial*, the Court considered whether a military court martial amounts to a hearing by an independent tribunal. *Duncan v. Canada* involved a preliminary application to prevent the applicant's detention while he challenged the severity of his sentence.

Labour relations cases included the certification of unions and unjust dismissal proceedings. The Canada Labour Relations Board's refusal to declare O.C. Transpo and Blue Line Para Transpo a "single employer and single federal work" was reviewed in *ATU Local 279 v. Ottawa-Carleton Regional Transit Commission*. In *Terminaux Portuaires du Quebec Inc. v. Maritime Employers' Association*, the Court considered whether longshoring at the ports of Trois-Rivières and Bécancour was within federal jurisdiction. The fairness of union representation was questioned in a case involving the dismissal of an employee. Among the human rights cases was one in which the applicant alleged discrimination on the basis of race, colour, and national origin in connection with a failed employment application.

Labour relations cases involving members of the federal public service dealt with such matters as a surplus employee's right to retraining (*Saveland v. Canada*); overtime pay for travel (*Adams v. The Queen*); the fear of selection board bias in a competition (*Pépin v. Public Service Commission*); the selection process in which a person given an acting assignment in a position subsequently won a competition for the position (*Attorney General of Canada v. Pearce*); and the authority of an adjudicator where an employee is rejected on probation (*Attorney General of Canada v. Penner*). *Attorney General of Canada v. Public Service Alliance of Canada* concerned the question of designation of employees essential for national safety and security. *Attorney General of Canada v. Elliott* dealt with the interpretation of a collective agreement entitling the respondent language teachers to a "pedagogical break" between Christmas and January 2. *Attorney General of Canada v. Skuce* considered whether part-time employees could ask to work variable work hours.

Access to information cases included the release of information about the commuter air service "City Express", and an application by CFL football clubs to prevent publication of a brief about the football league. One example of the decisions relating to privacy was a ruling on personal information alleged to be in R.C.M.P. files.

A determination of dumping of paint brushes from China was examined in the case *Deputy Minister of National Revenue v. O. Mondell Importers Ltd.*

Unemployment insurance cases involved the characterization of vacation pay, severance pay, and their allocation. One concerned a payment made to settle a claim for wrongful dismissal. Other unemployment insurance cases involved such matters as availability for work; disqualification due to labour disputes, and misconduct; overpayments etc.

## The Federal Court of Canada

Among the Court's admiralty decisions were cases dealing with marine insurance, shipping contracts, cargo loss and damage, and claims for excess cargo. Examples of collision cases include the collision of a fishing vessel and a Coast Guard vessel, and damage to a boathouse struck by a barge. There were also claims relating to damage to a segment of submerged natural gas pipeline, and the entanglement of a stern trawler and a fishing vessel.

## PART F

### COURT ACCOMMODATIONS

Obtaining suitable accommodations for the judges and staff in Ottawa remained a persistent problem. In the headquarters of the Court, judges are located in two different buildings, and staff are located in different buildings across the downtown region, often with various administrative sections being divided due to lack of space. In 1989, Court staff were housed in four different locations in Ottawa and Hull, and at year's end plans were finalized for the move of a portion of the staff to a fifth location, the Lorne Building on Elgin Street. As has been noted before, the result of dispersed accommodations is delays, communications problems, and a diminished level of services to the public and to judges of the Court. Furthermore, there is often a shortage of court rooms for hearings.

Nevertheless, progress was made toward receiving approval for the construction of a single-purpose common building for the Court's principal office. Although the government announced a two-year freeze on construction projects in the National Capital Region, there was an express exception allowing planning for the new Federal Court of Canada building to proceed. Here is a résumé of the most significant events:

- Treasury Board Ministers approved the Court's space requirements for its new building.
- The Court negotiated a Memorandum of Understanding with the Department of Public Works that established a building project team composed of Federal Court and Public Works officials.
- The Department of Public Works prepared an Investment Analysis Report and a Treasury Board submission seeking preliminary project approval.

During the latter part of the year, ongoing consultations took place between officials of the Court, the Department of Public Works, and the National Capital Commission, in order to arrive at a consensus on the proposed Urban Design Guidelines. This document sets out architectural and landscape design parameters for the proposed Federal Court Building. Discussions on the guidelines continued at year's end. It is anticipated that 1990 will see further advancement toward the construction of the Federal Court building.

Also in 1989, the Department of Public Works approved the expansion of the Montreal, Toronto and Ottawa registry offices to accommodate existing staff.

## The Federal Court of Canada

### PART G

#### OFFICIAL LANGUAGES

Both the Federal Court of Canada and its predecessor, the Exchequer Court of Canada, have provided services to the public in French and in English since the founding of the Exchequer Court of Canada in 1875. The Federal Court remains fully committed to adherence to the principles of official languages policy and legislation. Bilingual services are available at each local office to enable litigants to conduct business with the Court in the language of their choice.

The translation of Court decisions remains a concern: due to the volume of reasons for decisions issued by the Court, it is inevitable with the present system for translation that there will be delays in the issuance of the translated versions of the decisions. There is a strong responsibility to provide the best possible public access to decisions of the Court. Efforts have been made to reduce the backlogs and delays, but we must examine ways to further improve this vital public service.

In view of the responsibilities of the Court under the new *Official Languages Act*, an Official Languages Section was established to advise management on official languages issues, evaluate linguistic requirements of positions, arrange and administer language testing, and provide text revision services for Court employees.

## PART H

### LAW CLERKS PROGRAM

The Federal Court of Canada sponsors a law clerks program for recent graduates of law schools who would like to add to their experience by doing research for judges of the Court. In 1988, there were 20 law clerks hired from locations across the country to participate in this program. Several of the clerks used their work with the Court as full or partial satisfaction of their provincial articling requirements. In those cases, members of the Court participated as principals during the periods of articles.

Law clerks are recruited approximately 18 months before the date their duties begin. Notices inviting applications are sent to law schools and bar admission courses. Judges who have been given special responsibility to oversee the law clerks program are the Honourable Mr. Justice Marceau and the Honourable Mr. Justice MacGuigan (Appeal Division), and the Honourable Mr. Justice Rouleau (Trial Division). The law clerk term runs from September to August. The following individuals were law clerks during the 1988-89 term:

#### Appeal Division

Yvan Houle	University of Ottawa
Jonathan Keene	University of Moncton
Marcel LaFlamme	University of Sherbrooke
John Lovell	University of Victoria
Anne MacKenzie	Queen's University
Alnasir Meghji	Dalhousie University
Isabelle Plante	University of Ottawa
Amalia Trister	University of Windsor

#### Trial Division

Ron Beram	University of Victoria
Laryssa Borowyk	University of Ottawa
Michael Burns	Dalhousie University
Karen Finkle	University of Birmingham
France Houle	University of Montreal
Stuart Kinney	University of New Brunswick
Claude Lapointe	University of Laval
Paula MacPherson	University of Ottawa
Kimberley Okell	McGill University
David MacFarlane	University of Windsor
Claire St-Louis Marcouiller	University of Laval
Doug Surtees	University of Saskatchewan

## **PART I**

### **AUTOMATION**

#### **Proceedings Management System**

The Registry is now developing a central computer system, the proceedings management system, which will provide staff a means to access information about Court proceedings, and will improve the control of information and communications between offices of the Registry. Treasury Board approved funds to proceed with the first phase of development.

The system will consist of a Digital mini computer and a communications network centred in the Lorne Building in Ottawa. It will also include electronic mail between offices. There will be 125 terminals on the computer network. By the time the system is operational, over 130 employees will have been trained in new work procedures.

#### **Word Processing**

The Registry is nearing completion of its conversion to computer word processing. At year end there were more than 130 work stations using word processing applications. The organization has adopted WordPerfect as its standard program. Training and support are provided to staff by the Informatics unit. The use of computers for the typing of decisions of the Court has enabled the judges' secretaries to provide copies of reasons on diskette for transmittal to QuicLaw. There, the text of the reasons is used to build the FCJ data base, a full-text data base consisting of all reasons of the Court beginning in January, 1986. Reasons on diskette are also provided to the Federal Court Reports staff for any decisions selected for publication in this series, thereby avoiding manual typesetting. The organization is examining the possibility of extending its electronic distribution of decisions.

#### **Other Applications**

Separate systems have been developed for maintaining records of trust accounts in the Court's financial services office, and an index of the taxations of costs has been developed for the use of taxing officers. Preliminary work was done on upgrading library and personnel systems.

## **PART J**

### **COURT LIBRARY COMMITTEE**

The year 1989 saw a change in the membership of the Court library committee, with the resignation of the Honourable Mr. Justice Dubé as chairman in August. Mr. Justice Dubé made a significant contribution to the Court library. His chairmanship spanned a period of more than seven years. At the beginning of the fall term, The Honourable Mr. Justice Stone was appointed chairman, and the Honourable Mr. Justice McNair and the Honourable Mr. Justice Pinard were appointed members. The Chief Justice is a member *ex officio*.

The committee approved new terms of reference in December that made the Head Librarian a committee member in addition to being, as was the case before, the secretary of the committee. The new terms of reference also provide for the nomination by the Administrator of a representative of the Registry.

The Federal Court of Canada

**PART K**

**FINANCIAL SERVICES**

Details of the organization's financial programs are given in annual expenditure plans that are included in Part III of the 1989-90 Estimates prepared for the Registry of the Federal Court of Canada. The plans contain information on the organization's financial program, its background and objectives, and information on costs and resources. Copies of the Estimates are available from the Canadian Government Publishing Centre (Supply and Services Canada, Ottawa K1A 0S9), or from Associated Bookstores.

**APPENDIX**

**OFFICES OF THE FEDERAL COURT OF CANADA**

**PRINCIPAL OFFICE - OTTAWA**

Federal Court of Canada  
Supreme Court Building  
Wellington Street  
Ottawa, Ontario  
K1A 0H9

**Registry Offices**  
**Appeal Division**  
Telephone: (613) 996-6795

**Trial Division**  
Telephone: (613) 992-4238

**LOCAL OFFICES**

*ALBERTA - CALGARY*

Dan Buell  
District Administrator  
3rd Floor, Canadian Oxy Building  
635 Eighth Avenue S.W.  
Calgary, Alberta  
T2P 3M3

Telephone: (403) 292-5920

*ALBERTA - EDMONTON*

Orrin Splane  
District Administrator  
Tower 1, Suite 530, Scotia Place  
10060 Jasper Avenue  
Edmonton, Alberta  
T5J 3R8

Telephone: (403) 495-4651

**APPENDIX A - OFFICES OF THE COURT**

The Federal Court of Canada

*BRITISH COLUMBIA - VANCOUVER*

Charles Stinson  
Assistant Administrator  
Pacific Centre  
16th Floor, Toronto Dominion Tower  
700 West Georgia Street  
Vancouver, British Columbia  
V7Y 1B6

(Mailing address: P.O. Box 10065)

Telephone: (604) 666-3232

*MANITOBA - WINNIPEG*

Gregory Smith  
District Administrator  
4th Floor, Imperial Broadway Tower  
363 Broadway Street  
Winnipeg, Manitoba  
R3C 3N9

Telephone: (204) 983-2509

*NEW BRUNSWICK - FREDERICTON*

Alexander DiGiacinto  
District Administrator  
Room 201, Justice Building  
423 Queen Street  
Fredericton, New Brunswick  
E3B 5H1

(Mailing address: P.O. Box 6000)

Telephone: (506) 452-3016

**APPENDIX A - OFFICES OF THE COURT**

Annual Report - 1989

*NEW BRUNSWICK - SAINT JOHN*

Georges Thériault  
District Administrator  
Room 413, Provincial Building  
110 Charlotte Street  
Saint John, New Brunswick  
E2L 2J4

Telephone: (506) 648-4990

*NEWFOUNDLAND - ST. JOHN'S*

Henry Thorne  
District Administrator  
The Court House  
Duckworth Street  
St. John's, Newfoundland  
A1C 5M3

(Mailing address: P.O. Box 937)

Telephone: (709) 722-2884

*NORTHWEST TERRITORIES - YELLOWKNIFE*

Muriel Melinchuk  
District Administrator  
The Court House  
4905-49<sup>th</sup> Street  
Yellowknife, Northwest Territories  
X1A 2N4

(Mailing address: P.O. Box 550)

Telephone: (403) 873-2044

**APPENDIX A - OFFICES OF THE COURT**

The Federal Court of Canada

*NOVA SCOTIA - HALIFAX*

François Pilon  
District Administrator  
Halifax Ferry Terminal  
5077 George Street  
Halifax, Nova Scotia  
B3J 1M3

Telephone: (902) 426-3282

Courtroom: The Law Court Building  
1815 Water Street  
Halifax, Nova Scotia  
B3J 1S7

*ONTARIO - TORONTO*

John Clegg  
District Administrator  
8th Floor  
Canada Life Building  
330 University Avenue  
Toronto, Ontario  
M5G 1R7

Telephone: (416) 973-3356

*PRINCE EDWARD ISLAND - CHARLOTTETOWN*

George MacMillan  
District Administrator  
Sir Henry Louis Davies Law Courts  
42 Water Street  
Charlottetown, P.E.I.  
C1A 8B9

(Mailing address: P.O. Box 2200)

Telephone: (902) 892-9900

**APPENDIX A - OFFICES OF THE COURT**

Annual Report - 1989

*QUEBEC - MONTRÉAL*

Monique Giroux  
District Administrator  
11th Floor  
Palais de Justice  
1 Notre-Dame Street East  
Montréal, Québec  
H2Y 1B6

Telephone: (514) 283-4820

*QUEBEC - QUÉBEC*

Mireille Bonin  
District Administrator  
Room 5.00  
Palais de Justice  
300 Jean Lesage Blvd.  
Québec, Québec  
G1K 8K6

Telephone: (418) 648-4920

*SASKATCHEWAN - REGINA*

Frederick Newis  
District Administrator  
The Court House  
2425 Victoria Avenue  
Regina, Saskatchewan  
S4P 3V7

Telephone: (306) 780-5268

**APPENDIX A - OFFICES OF THE COURT**

**The Federal Court of Canada**

***SASKATCHEWAN - SASKATOON***

**Dennis Berezowski  
District Administrator  
The Court House  
520 Spadina Crescent East  
Saskatoon, Saskatchewan  
S7K 2H6**

**Telephone: (306) 975-4509**

***YUKON TERRITORY - WHITEHORSE***

**William Williamson  
District Administrator  
Andrew A. Phillipsen Law Centre  
2134 Second Avenue  
Whitehorse, Yukon Territory  
Y1A 5H6**

**Telephone: (403) 668-4314**