

Clerkships:
Federal Court of Appeal
Federal Court
Court Martial Appeal Court of
Canada

Ottawa, Ontario
2020-2021



Courts Administration Service
Service administratif des tribunaux judiciaires



OVERVIEW

1. Jurisdiction

- a) Federal Court
- b) Federal Court of Appeal
- c) Court Martial Appeal Court of Canada

2. Composition of the Courts

- a) Federal Court
- b) Federal Court of Appeal

3. Law Clerk Program



1. Jurisdiction – Federal Court

The Federal Court's jurisdiction - its scope of authority to hear and decide issues - extends across the federal landscape.

National Coverage

Geographically, the Court may sit anywhere in Canada and regularly conducts hearings and renders decisions in disputes across the country, with Registry offices conveniently located in all major cities. Orders of the Court are binding in every province and territory, thus providing efficient, national coverage.



1. Jurisdiction - Federal Court

Federal Subject Matter

Unlike the Superior Courts established by the provinces, the Federal Court does not have inherent general jurisdiction. In order for the Federal Court to have authority to hear a given subject matter:

- that subject matter must be assigned to Parliament under the Constitution;
- there must be actual, existing and applicable federal law; and
- the administration of that law must have been conferred upon the Federal Court.

This test is referred to as the ITO test after the case of *ITO-Int. Terminal Operators Ltd. v Miida Electronics Inc.* [1986] 1 S.C.R. 752.



1. Jurisdiction - Federal Court

The jurisdiction of the Federal Court is conferred by the *Federal Courts Act* and, at present, close to a hundred other applicable federal statutes.

These give the Court authority to hear and decide cases in a number of broad categories including:

- National Security
- Review of Federal Government Decisions
- Claims Involving the Federal Crown
- Immigration and Refugee Law
- First Nations' Claims
- Intellectual Property
- Maritime and Admiralty Disputes
- Other Areas of Jurisdiction

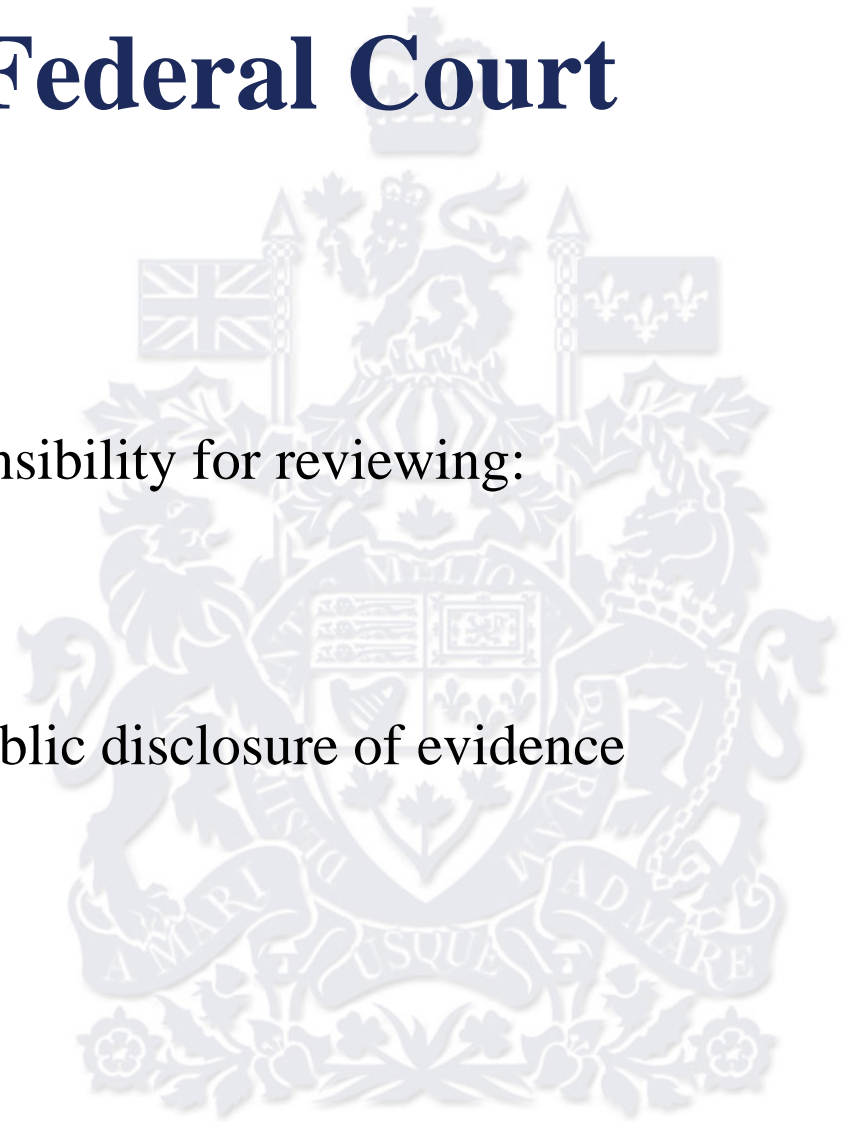


1. Jurisdiction - Federal Court

National Security

The Federal Court is assigned responsibility for reviewing:

- Security certificates
- Warrant requests
- Applications regarding the public disclosure of evidence



1. Jurisdiction - Federal Court

Review of Federal Government Decisions

The Federal Court has exclusive jurisdiction to review the legality of actions of most federal offices, boards, commissions, and tribunals. There fore, most government decisions at the federal level may be challenged in the Federal Court, including but not limited to decisions regarding:

- Immigration and refugee matters
- Elections
- Official languages
- Access to information
- Privacy
- Passports
- Prisoners in federal institutions



1. Jurisdiction - Federal Court

- War veterans
- Application of the *Canadian Charter of Rights and Freedoms*
- Environmental impact assessment
- Public works
- National defence
- Public service employment
- Aeronautics and transportation
- Oceans and fisheries



1. Jurisdiction - Federal Court

Immigration and Refugee Law

The Federal Court is responsible for applications for leave and judicial review in the following areas of immigration and refugee law:

a) Refugee Cases

- Immigration and Refugee Board – Refugee Appeal Division (refugee leave applications, motions to stay a removal, deportation or release Order; application for non-disclosure; referral of certificate)
- Pre-risk Removal Assessment



1. Jurisdiction - Federal Court

b) Non-Refugee Cases

- Immigration and Refugee Board - Immigration Appeal Division
- Immigration and Refugee Board – Immigration Division
- Other decisions arising within and outside of Canada - Citizenship and Immigration Canada
- Canada Border Services Agency, the Minister of Citizenship and Immigration, etc.



1. Jurisdiction - Federal Court

Claims involving the Federal Crown

The Federal Court shares jurisdiction with the provincial superior courts with respect to claims by and against the federal Crown. The Court's jurisdiction with respect to Crown litigation involves a range of significant disputes, including:

- First Nations' claims regarding inherent aboriginal rights and treaty rights
- Contractual disputes relating to the provision of goods and services to the federal government
- Civil liability claims for injury by agents of the federal government

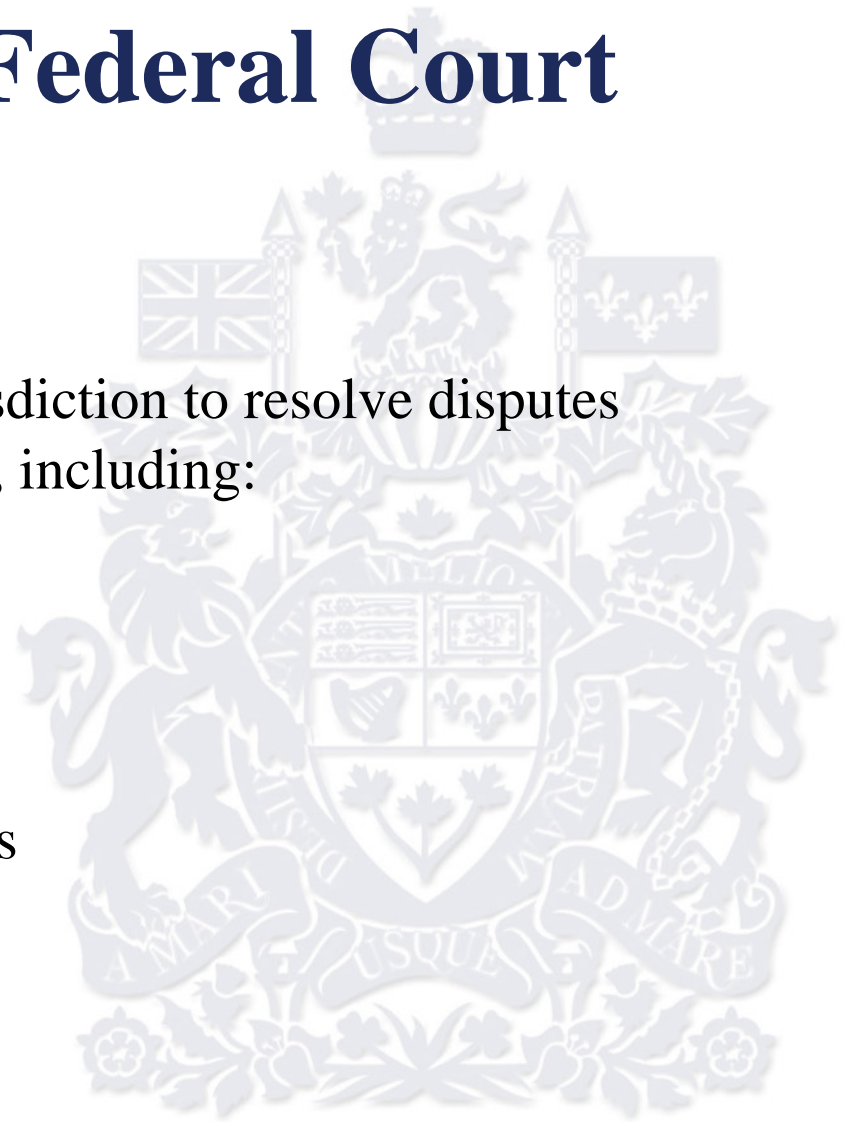


1. Jurisdiction - Federal Court

Intellectual Property

The Federal Court has extensive jurisdiction to resolve disputes regarding intellectual property rights, including:

- Copyright
- Industrial design
- Integrated circuits
- Patents and patented medicines
- Trade-marks



1. Jurisdiction – Federal Court of Appeal (FCA)

Similar Jurisdiction:

- The FCA hears appeals of decisions of the Federal Court.

Different Jurisdiction:

- Tax: appeals of decisions of the Tax Court of Canada.
- Judicial Review: Applications for judicial review of decisions from federal offices listed in section 28 of the *Federal Courts' Act*: CRTC, National Energy Board, Competition Tribunal, Social Security Tribunal, to name but a few.
- Immigration: only when a question has been certified in Federal Court. In practice, this means few immigration cases.



1. Jurisdiction - Court Martial Appeal Court of Canada (CMAC)

- CMAC's main function is to hear appeals from Courts Martial which are military courts established under the *National Defence Act* (NDA).
- The Courts Martial have jurisdiction to try military personnel and civilians accompanying them abroad, for crimes and offences against the *Code of Service Discipline* in the NDA.
- The CMAC essentially performs the function and status of a provincial superior court of appellate criminal jurisdiction.



2. Composition – Federal Court

- One Chief Justice and 34 other full-time judges plus 8 supernumerary judges and 6 prothonotaries .
- Itinerant Court – based in Ottawa, but cases heard across country.
- In Ottawa, the Court is situated at 90 Sparks Street.
- 1 law clerk per judge, except for supernumerary judges who share the services of clerks.
- Occasionally, law clerks provide assistance to the prothonotaries.



2. Composition - Federal Court of Appeal

- One Chief Justice plus 11 full-time members plus 4 supernumerary judges.
- Judges sit in panels of 3.
- Itinerant court that sits throughout Canada, based in Ottawa at 90 Sparks.
- Appeals from FCA go to SCC (by leave).
- 1 law clerk per judge, supernumerary judges may share the services of clerks.



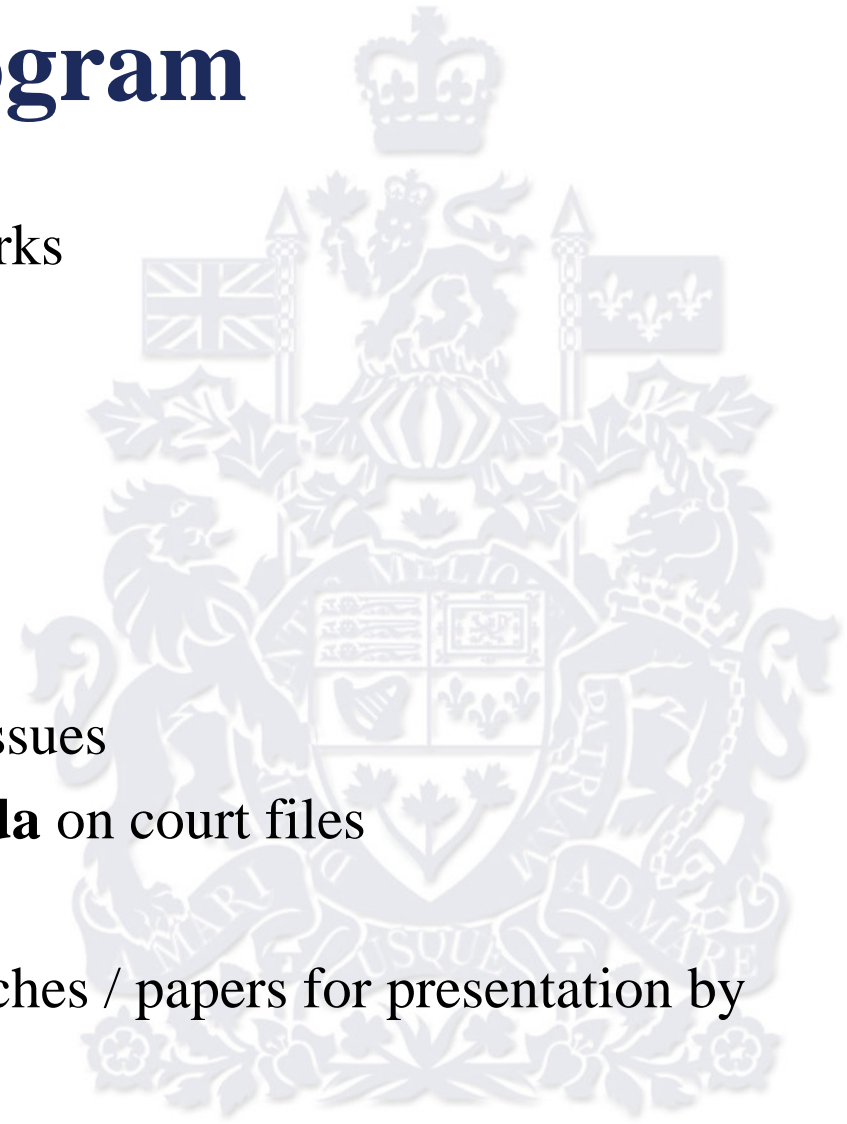
3. Law Clerk Program

This year the courts have 57 law clerks

- **15** for FCA
- **41** for Federal Court
- **1** for CMAC

The work involves:

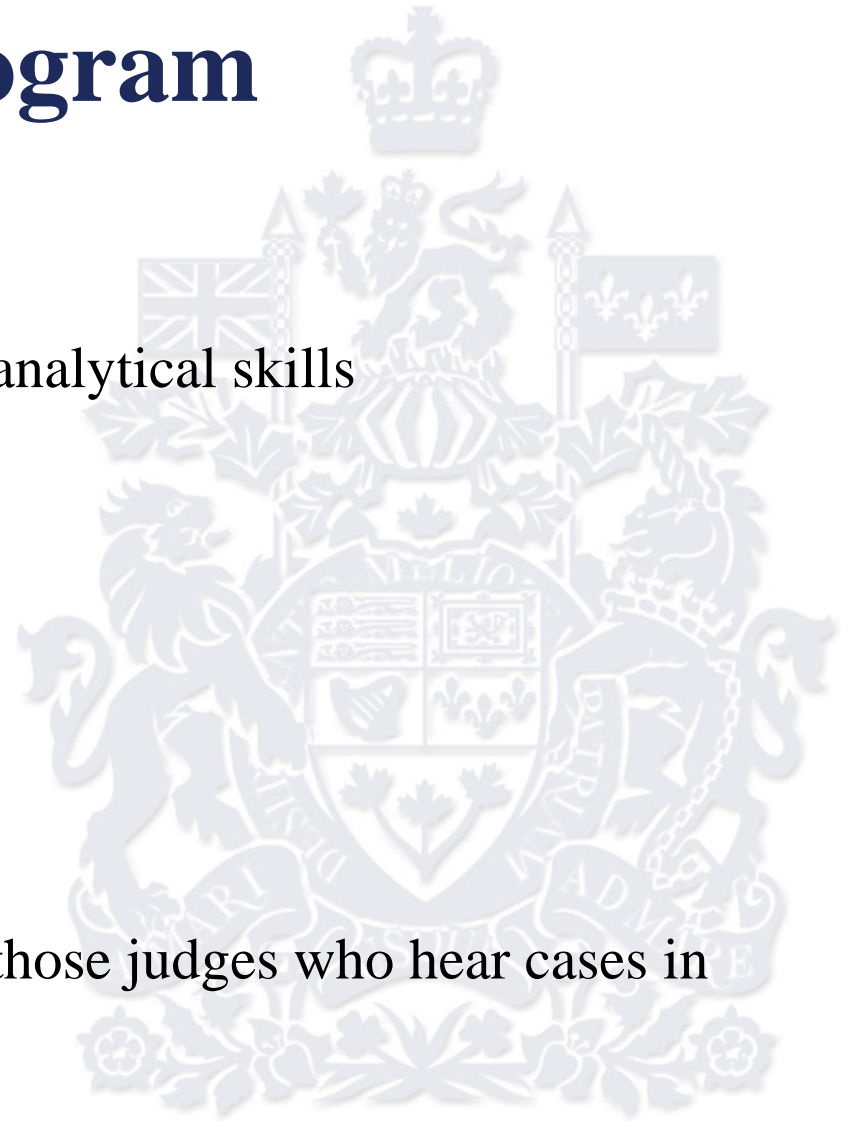
- **researching** specific legal issues
- preparing **bench memoranda** on court files
- **editing** draft **judgments**
- assist in preparation of speeches / papers for presentation by judge



3. Law Clerk Program

Qualities of a Law Clerk

- Excellent legal research and analytical skills
- Thoroughness
- Judgment
- Good writing skills
- Initiative
- Availability
- Reliability
- Bilingualism is an asset (for those judges who hear cases in both official languages)



3. Law Clerk Program

Recommended courses

- Administrative law
- Immigration / refugee law
- Maritime law
- Intellectual property
- Human rights law
- Environmental law
- A course on evidence.
- Tax law would be viewed as an additional asset if you are applying for the FCA.



3. Law Clerk Program

Experience

- Primarily one on one relationship for one year with full time judges; most judges have 20 to 30 years experience in the legal profession.
- Opportunity to work with different judges and Prothonotaries on individual files.
- Fulfills articling requirements for Ontario and Québec (for the other jurisdictions, the students should verify this with the law society in which they will seek admission).
- Collegiality / teamwork.



3. Law Clerk Program

Speakers Program

A variety of interesting speakers throughout the year, both from within the Courts as well as external guest speakers.

- Professor **Payan Akhavan**, McGill University, (former *UN human rights prosecutor*)
- Professor **Donald McRae**, Ottawa University, (*International Law*)
- The Honourable **Malcom Rowe** (*Differences between the roles played by the Courts of Appeal and the Supreme Court of Canada*)
- Mr. **Maxime Dea** (*Policy advisor to the Prime Minister*)
- The Honourable Senator **Kim Pate** (*Penal Law*)
- Professor **Joseph Carens** (*Ethics and Immigration*)



3. Law Clerk Program

Application deadline

- For 2019-2020: the hiring process is now complete.
- For the 2020-2021 clerkship year: applications must be submitted by **January 14, 2019**.
- **Note:** Applications are submitted on-line (please refer to the FCA, FC or CMAC websites). The on-line application portal will be available starting **November 19, 2018**.



3. Law Clerk Program

Interviews

- Interviews usually start in February and end in March or April.
- Some interviews conducted locally, either in Ottawa or in other cities if a judge is in town for hearings.
- Interviews can also be conducted by videoconferencing.



3. Law Clerk Program

The current salary is \$63,428 per annum.

Benefits

- Lump sum allowance to cover relocation expenses
- Dental Plan (premiums presently covered by employer)
- Public Service Health Care Plan (optional - employee and employer contribute)
- Long Term Disability Insurance (mandatory)
- Death Benefits (mandatory)
- Superannuation Plan (mandatory)
- 3 weeks of vacation
- Sick leave: According to the EC Collective Agreement



3. Law Clerk Program

For additional information, please contact:

- a) Mr. Witold Tymowski at 613-995-4549 (for FCA and CMAC)
- b) Ms. Chantal Proulx at 613-995-4547 (for Federal Court)
- c) Visit our web sites:

www.fca-caf.gc.ca

www.fct-cf.gc.ca

www.cmac-cacm.ca

