



Public Consultation: Federal Court Strategic Plan 2026-2030

From February 3 to March 20, 2025

STRATEGIC PRIORITIES

The Court is facing an unprecedented increase in workload and a rapidly evolving technological landscape. At the same time, support from the Courts Administration Service is limited by financial constraints. To face these challenges, the Court is considering the following strategic priorities:

- 1. Enhancing access to justice: Focusing on proportionality, accessibility, and efficiency, revising rules and practices, simplifying procedures for certain cases, and seeking jurisdictional clarity.**

Do you have comments regarding this proposed strategic priority?

A. Intellectual Property Law Section

- Improve online access to materials filed with the Court. The CBA Section believes that additional online access to materials will assist both parties and the registrar. Easy access to precedents, unpublished orders, and other online materials will provide both counsel and unrepresented litigants with better information for themselves and their clients. It will also alleviate pressure on the registrars when such materials are requested.
- Work towards posting all non-confidential materials filed with or issued by the Court on the electronic docket. Parties and members of the bar continually reiterate the usefulness of such electronic access. The CBA Section believes that additional online access will both improve access to justice and decrease workload the registrars. Easy access to precedents, unpublished orders, and other online materials will provide both counsel and unrepresented litigants with better information for themselves and their clients. It will also alleviate pressure on the registrars when such materials are requested. While all electronically filed or issued materials should be accessible, at minimum, all pleadings and motion records (whether in formal or letter form) should be posted. This would also bring the Federal Court in line with the United States Courts (PACER) and the Canadian Intellectual Property Office (and CIPO), where such documents are all available for download.
- Work towards posting all non-confidential filed with or issued by the Court. Most materials are filed electronically and should be available electronically. This should result in increased public access to such materials.
- Consider changes to the default judgment procedure to be more in line with provincial courts. If the defendant does not file a defence, it would be much more efficient for the

Court to grant default judgment, on motion of the non-defaulting party, based on the facts in the Statement of Claim being deemed true. The default judgment could issue with limited, non-precedential, reasons, and the Court could then provide broader avenues for the defendant to challenge the default judgment later, should the need arise. Such a challenge could be time-limited to a year to provide some certainty to the plaintiff. This would reduce Court resources needed for the hearing, the writing, the translation of the decision, and the precedential effect of a one-sided motion for judgment in future cases.

- Consider requiring parties to confirm compliance with Rule 257 (mandatory settlement discussions) in both complex and non-complex proceedings. This will assist parties in making early assessments on the viability of their case and improve settlement rates.
- Consider increasing transparency as to costs awards at the end of trial. There is uncertainty as to whether the tariff or a lump sum percentage will be applied. The current framework of the Rules suggests that the tariff should be the norm. However, more and more elevated cost awards are entertained, and awarded. Predictability and consistency may dictate a more equal treatment among cases—or at least a better understanding for departing from the norm. Consider setting out factors that would result in a departure from the tariff—i.e., lump sum award. Where a departure is warranted, the parties should agree, or the Trial Judge should decide that the lump sum should apply, at a trial management conference prior to trial. This will reduce surprise to litigants regarding how much in costs they could be liable for after a decision. Increased transparency is better for all parties to make informed decisions. This is particularly the case for unrepresented litigants.
- Consider enforcing that the parties should be providing costs submissions prior to decision. Parties are more reasonable prior to knowing the outcome. This will also increase transparency.

B. Immigration Law Section

- Post-COVID” federal immigration policy is a root cause for the increase in volumes of application for temporary status in Canada.
- The unprecedented increase in volumes of application for temporary status in Canada have had a corresponding increase in the volumes of Federal Court cases. However, there has not been a corresponding increase in resources for Federal Court. This presents an "access to justice" issue.
- Canada's immigration department used new artificial intelligence systems to help manage these volumes. However, many “boilerplate” decisions have not been compatible with the requirements of administrative law.
- In the result, very large numbers of cases have been settled, and by consent refusal decisions have been cancelled, with these immigration applications re-opened and sent to different immigration officers for renewed processing. At present, it appears that federal immigration policy is changing, and the volumes of applications for temporary status in Canada are currently decreasing.
- It is noted that while the immigration data is not publicly available, our members have been reporting anecdotally that significant numbers of the cases that have been returned for re-processing are refused a second or third time, for virtually the identical reason. In our view, this practice brings the administration of justice into disrepute.

- The CBA Section therefore recommend that the Court be invited to favourably consider “special reasons” for a cost award, when a case has been settled or returned by Court order for processing by a different officer and is then refused for virtually the identical reason.
- This new measure will improve access to justice.
- The CBA Section also proposes using the cost mechanism strategically. We propose that the immigration rules include a set cost amount to be payable within thirty days of the outcome of judicial review. This set cost amount would be an encouragement for the parties to settle cases prior to an oral hearing. The Court would retain the discretion to waive a set cost amount. Refugee-related cases would be exempt from the set cost amount.
- We recommend for consideration a set cost amount of fifteen hundred dollars (\$1500).

2. Accelerating the Court’s modernization and digital shift: Modernize technological infrastructure, enhance digital accessibility, and leverage technology to streamline processes and improve interactions with litigants, legal professionals, and the public, including self-represented individuals.

Do you have comments regarding this proposed strategic priority?

A. Intellectual Property Section

- The CBA Section applauds the Federal Court’s statement that it will not use generative AI to write court decisions.
- Improve online access to materials filed with the Court. Most materials are filed electronically. This should result in increased public access to such materials.
- Consider having open houses with law clerks from firms, or other training, to improve the party-side user experience with the eTrial Toolkit software. The party-side experience can be cumbersome. Perhaps such training could be put together with the assistance of the CBA Section.
- The Intellectual Property bar is eager to collaborate with the court in the use of AI for efficiency. Consider transparency with the bar as to the use that is being made of AI products in all areas of Court function. For example, is MS Co-pilot (or similar) being used to assist on the administrative side of court functions? Will AI be used in translation?

B. Immigration Law Section

- Regarding the necessity of in-person judicial review hearings, since these hearings primarily involve legal arguments and not witness testimony, it seems that conducting them remotely could save valuable court resources. The convenience of remote hearings would also enhance access to justice. On the other hand, professional collegiality is strengthened during the in-person hearing process, due to the proximity of the colleagues, and interactions with the Court and the Court’s administration service.
- The immigration rules may specify that hearings are held remotely; however, this should not be a mandatory requirement. Should Counsel prefer an in-person hearing, the

applicant could explicitly request this in the application for leave, or, at any time prior to the Leave decision, and specify the desired city/location for the hearing.

- We thank you for considering our submission and look forward to continued dialogue on this important issue.

3. Continuing to attract and support exceptional candidates: Recruit diverse, exceptional jurists and provide robust support to ensure their well-being, foster collegiality, and promote ongoing judicial education.

Do you have comments regarding this proposed strategic priority?

A. Intellectual Property Section

- Consider additional advocacy efforts to remove the residency requirement for Federal Court Judges in the Federal Courts Act (with the exception of designated judges who need to reside in Ottawa to respond to national security issues). Lawyers with the requisite specializations reside across Canada. The residency requirements were enacted when technology did not exist to permit judges and court staff to work remotely. The residency requirement dissuades or prevents qualified individuals from across Canada from applying to be judges. Eliminating the residency requirement will invite a wider and more diverse pool of applicants who have the specializations to be judges: see [Resolution 24-06-A](#).

4. Strengthening the Court's institutional independence and capacity: Secure adequate resources for administrative service, expand physical presence nationwide, and engage stakeholders to enhance public and legal community awareness of the Court's mission.

Do you have comments regarding this proposed strategic priority?

A. Intellectual Property Section

- Consider formalizing that Judges tell the parties when a decision has been sent to translation.
- The CBA Section feels that the Federal Court should monitor the upcoming changes in Ontario and the recent changes in Quebec, as well as changes that may follow in other provinces. However, the Federal Court should not cede its leadership position as a significant Court, particularly in matters of intellectual property.

OTHER PRIORITIES - AUTRES PRIORITÉS

Should the Court be considering different or additional strategic priorities?