

21. REVIEW AND ENFORCEMENT OF DETERMINATIONS AND ORDERS	21. RÉVISION ET EXECUTION DES DÉCISIONS ET ORDONNANCES
<p>(1) Subject to this Part, every determination or order of the Tribunal is final and shall not be questioned or reviewed in any court, except in accordance with the <i>Federal Court Act</i> on the grounds referred to in paragraph 18.1(4)(a), (b) or (e) of the <i>Act</i>.</p> <p>(2) Except as permitted by subsection (1), no determination, order or proceeding made or carried on, by the Tribunal shall be questioned, reviewed, prohibited or restrained on any ground, including the ground that the Tribunal did not have jurisdiction or exceeded or lost its jurisdiction, or be made the subject of any proceeding in or any process of any court on any such ground, whether by way of injunction, <i>certiorari</i>, prohibition, <i>quo warranto</i> or otherwise.</p>	<p>(1) Sous réserve des autres dispositions de la présente partie, les décisions et ordonnances du Tribunal sont définitives et ne sont susceptibles de contestation ou de révision par voie judiciaire que pour les motifs visés aux alinéas 18.1(4)a), b) ou e) de la <i>Loi sur la Cour fédérale</i> et dans le cadre de cette loi.</p> <p>(2) Sauf dans les cas prévus au paragraphe (1), aucune mesure prise ou censée prise par le Tribunal dans le cadre de la présente partie ne peut, pour quelque motif, y compris pour excès de pouvoir ou incompétence, être contestée, révisée, empêchée ou limitée ou faire l'objet d'un recours judiciaire, notamment par voie d'injonction, de <i>certiorari</i>, de prohibition ou de <i>quo warranto</i>.</p>

CORRESPONDING SECTIONS:

<p>SAA: 21(1) 21(2)</p>	<p>CLC: 22(1) 22(2)</p>	<p>PSLRA: 51(1) 51(3)</p>
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COMMENTARY:

Subsections 18.1(3) and (4) of the *Federal Court Act* provide that:

- (3) On an application for judicial review, the Trial Division 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.
- (4) The Trial Division 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.

The Attorney General of Canada filed an application for judicial review (Court File No. A-750-98) of the decision that granted certification to the Writers' Union of Canada (1998 CAPPRT 028). On November 15, 2000, the Federal Court of Appeal dismissed the application. The Court noted:

[...]

- [4] The applicant's challenge to the Tribunal's decision is based on the allegation that the Tribunal acted beyond its jurisdiction by declaring the sector suitable for bargaining in a manner which empowers the Association to bargain in respect of pre-existing works.
- [5] Nothing in the certification order indicates the scope of actual bargaining or whether pre-existing works may be included or excluded, although the Tribunal did make reference to pre-existing rights in its reasons.
- [6] In this respect, the Tribunal, in its written submissions before the Court recognized that its powers extend only to the certification of a sector and not to limiting or expanding matters for subsequent negotiations.
- [7] The order of the Tribunal makes no reference to such matters and we are not called upon to adopt the reasons of the Tribunal but only to determine whether it had jurisdiction to make the certification order in issue. We are of the view that it did.

[...]

On April 1, 2003, the Attorney General of Canada filed an application for judicial review (Court File No. A-241-03) of the decision that granted certification to the Federation consisting of the Association des professionnelles et des professionnels de la vidéo du Québec (APVQ) and the Syndicat des techniciens du cinéma et de la vidéo du Québec (STCVQ) (now known as the Alliance québécoise des techniciens de l'image et du son), 2003 CAPPRT 041. In a decision dated May 19, 2004, the Federal Court of Appeal dismissed the application.