

**SUPREME COURT OF CANADA**

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| **Citation:** Strickland *v.* Canada (Attorney General), 2015 SCC 37, [2015] 2 S.C.R. 713 | **Date:** 20150709  **Docket:** 35808 |

Between:

Robert T. Strickland, George Connon,

Roland Auer, Iwona Auer-Grzesiak, Mark Auer and

Vladimir Auer by his Litigation Representative Roland Auer

Appellants

and

Attorney General of Canada

Respondent

**Coram:** McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

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| **Reasons for Judgment:**  (paras. 1 to 65)  **Joint Concurring Reasons:**  (paras. 66 to 85) | Cromwell J. (McLachlin C.J. and Rothstein, Moldaver, Karakatsanis, Gascon and Côté JJ. concurring)  Abella and Wagner JJ. |

Strickland *v.* Canada (Attorney General), 2015 SCC 37, [2015] 2 S.C.R. 713

Robert T. Strickland, George Connon,

Roland Auer, Iwona Auer-Grzesiak,

Mark Auer and Vladimir Auer by his

Litigation Representative Roland Auer Appellants

v.

Attorney General of Canada Respondent

**Indexed as:** Strickland ***v.* Canada (**Attorney General)

2015 SCC 37

File No.: 35808.

2015: January 20; 2015: July 9.

Present: McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

on appeal from the federal court of appeal

*Courts — Federal Court — Judicial review — Jurisdiction — Family law — Divorce — Child support — Guidelines — Lawfulness of federal child support guidelines challenged by means of judicial review — Federal Court declined to undertake judicial review — Whether provincial superior courts have jurisdiction to address validity of federal child support guidelines — Even if they do, whether federal courts erred in refusing to hear judicial review application on its merits — Federal Courts Act, R.S.C. 1985, c. F-7, s. 18 — Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), s. 26.1(2) — Federal Child Support Guidelines, SOR/97-175.*

The appellants brought an application for judicial review in the Federal Court seeking a declaration that the *Federal Child Support Guidelines* are unlawful as they are not authorized by s. 26.1(2) of the *Divorce Act*. They claim that the *Guidelines* are not based on the “relative abilities to contribute” of both spouses and that they do not reasonably calculate the amounts required “to maintain the children”. The application judge held that the Federal Court is not an appropriate forum in which to address the validity of the *Guidelines*. Given the minor role the Federal Court plays in issues under the *Divorce Act* and the breadth of the jurisdiction and expertise of the provincial superior courts in matters related to divorce and child support, it was found that it would be inappropriate for the Federal Court to consider the judicial review application on its merits. The Federal Court of Appeal upheld this conclusion.

*Held*: The appeal should be dismissed.

*Per* McLachlin C.J. and Rothstein, Cromwell, Moldaver, Karakatsanis, Gascon and Côté JJ.: The Court’s jurisprudence supports the principle that the provincial superior courts, in the context of proceedings properly before them, can address the legality of the conduct of federal boards, commissions and tribunals, where doing so is a necessary step in resolving the claims asserted in those proceedings. This means that in the context of family law proceedings otherwise properly before them, the provincial superior courts can decide that the *Guidelines* made by the Governor in Council are *ultra vires* and decline to apply them if doing so is a necessary step in resolving the matters before them.

Judicial review by way of the old prerogative writs has always been understood to be discretionary. This means that even if the applicant makes out a case for review on the merits, the reviewing court has an overriding discretion to refuse relief. Declarations of rights, whether sought in judicial review proceedings or in actions, are similarly a discretionary remedy. The discretionary nature of judicial review and declaratory relief is continued by the judicial review provisions of the *Federal Courts Act*. Section 18.1(3) provides that “[o]n an application for judicial review, the Federal Court may” make certain orders in the nature of those traditional remedies. As a result, judges of the Federal Court have discretion in determining whether judicial review should be undertaken. The fact that undertaking judicial review is discretionary means that the Federal Court judge’s exercise of that discretion is entitled to deference on appeal.

One of the discretionary grounds for refusing to undertake judicial review is that there is an adequate alternative. In order for an alternative forum or remedy to be adequate, neither the process nor the remedy need be identical to those available on judicial review. The categories of relevant factors are not closed, as it is for courts to identify and balance the relevant factors in the context of a particular case. The court should consider not only the available alternative, but also the suitability and appropriateness of judicial review in the circumstances. In short, the question is not simply whether some other remedy is adequate, but also whether judicial review is appropriate. Ultimately, this calls for a type of balance of convenience analysis which should take account of the purposes and policy considerations underpinning the legislative scheme in issue.

In this case, the appellants’ position that they are entitled to a ruling on the legality of the *Guidelines* through a judicial review is fundamentally at odds with the discretionary nature of judicial review and with the broad grounds on which that discretion may be exercised. The appellants do not have a right to have the Federal Court rule on the legality of the *Guidelines*; the Federal Court has discretion to do so which it has decided not to exercise. Further, the appellants’ position that the alternative is not adequate because it does not provide identical procedures or relief cannot be accepted. The appellants’ arguments focus too narrowly on how challenging the *Guidelines* in the context of family law litigation in the provincial superior courts will not provide everything that might be available to them on judicial review. Here, the appellants request a judicial determination of, among other things, whether the *Guidelines* are based, as they are required to be by s. 26.1(2) of the *Divorce Act*, on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation. Making that determination will inevitably engage family law expertise in relation to, among other things, the nature and extent of the obligation to maintain children and how the relative abilities of parents to do so should be assessed. The provincial superior courts deal day in and day out with disputes in the context of marital breakdown concerning the needs of children, as well as what custody and support arrangements are in their best interests. Parliament has entrusted, for practical purposes, this entire area of law to the provincial superior courts. Having done so, it would be curious to say the least, if the legality of a central aspect of that regime were to be finally decided by the federal courts which, as a result of federal legislation, have virtually no jurisdiction with respect to family law matters.

It would not be more efficient in this case to obtain a ruling in the Federal Court, as such a ruling would not be binding on any provincial superior court. Regardless of what the Federal Court might decide, before a ruling could have any practical effect, the issue would have to be re-litigated in the superior courts, or, alternatively, litigated up to this Court. It would be for the provincial courts to decide the impact of the illegality of the *Guidelines* on particular support orders and that could only be done in the context of a multitude of individual cases. Further, the appellants’ judicial review proceedings exclude direct adversarial participation by other directly affected parties: spouses and former spouses seeking child support orders or variations of them under the *Divorce Act*. However, adjudicating the issue in the context of *Divorce Act* or child support proceedings would ensure full participation of these parties.

In summary, the Federal Court did not make any reviewable error in exercising the discretion not to entertain the judicial review application for declaratory relief. Provincial superior courts have jurisdiction to address the validity of the *Guidelines* where doing so is a necessary step in resolving a case otherwise properly before them. Judicial review in the Federal Court is manifestly inappropriate in this case and the Federal Court reasonably exercised its discretion not to engage in it.

The parties assumed that the Federal Court has exclusive original jurisdiction to grant judicial review remedies directed against regulations promulgated by the Governor in Council and as a result, that point is not before the Court for decision. But as presently advised, the concerns expressed in the minority opinion in relation to this issue are not shared. The language of the *Federal Courts Act* can be taken as a clear and explicit expression of parliamentary intent. No one questions that s. 18 does not withdraw the authority of the provincial superior courts to grant the traditional administrative law remedies against federal boards, commissions and tribunals on division of powers grounds, but with respect to judicial review on administrative law grounds, it has been expressly confirmed that the Federal Court has exclusive original jurisdiction as described in s. 18 of the *Federal Courts Act*.

*Per* Abella and Wagner JJ.: Although there is agreement with the result reached by the majority opinion, there is concern that the reasons not be seen as representing a definitive view from this Court that the provincial superior courts cannot declare federal regulations invalid on administrative grounds. The parties did not argue the issue of whether s. 18 of the *Federal Courts Act* grants the Federal Court exclusive original jurisdiction to declare invalid federal regulations promulgated by the Governor in Council. As a result, this case should not be seen as categorically endorsing the assumption that the Federal Court has exclusive jurisdiction to declare invalid all such regulations. This Court has said that provincial superior courts have jurisdiction to declare invalid the federal laws they administer. Any derogation from the jurisdiction of the provincial superior courts requires clear and explicit statutory wording to this effect. Section 18 of the *Federal Courts Act* does not clearly and unequivocally strip the provincial superior courts of their jurisdiction to declare federal regulations made by the Governor in Council to be invalid on administrative grounds. The Federal Court was created to remove from the provincial superior courts the jurisdiction to supervise federal administrative tribunals, not to strip them of their jurisdiction to determine the *vires* of the federal regulations they apply. There is no evidence that Parliament intended to limit the subject-matter jurisdiction of the provincial superior courts by preventing them from determining the *vires* of the regulations they apply. At the very least, this argues for caution and full argument before this Court declares — or is seen to declare — that s. 18 of the *Federal Courts Act* means that the Federal Court has exclusive jurisdiction over all federal regulations even if they are not part of legislative schemes over which the Federal Court has jurisdiction or expertise, such as the *Divorce Act*.

**Cases Cited**

By Cromwell J.

**Adopted:** *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585; *Canada (Attorney General) v. McArthur*, 2010 SCC 63, [2010] 3 S.C.R. 626, aff’g 2008 ONCA 892, 94 O.R. (3d) 19; *Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada*, 2010 SCC 66, [2010] 3 S.C.R. 657; **referred to:** *Saskatchewan Wheat Pool v. Canada (Attorney General)* (1993), 67 F.T.R. 98; *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307; *Canada Labour Relations Board v. Paul L’Anglais Inc.*, [1983] 1 S.C.R. 147; *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Mills v. The Queen*, [1986] 1 S.C.R. 863; *R. v. Morgentaler* (1984), 41 C.R. (3d) 262; *R. v. Miller*, [1985] 2 S.C.R. 613; *May v. Ferndale Institution*, 2005 SCC 82, [2005] 3 S.C.R. 809; *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502; *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561; *Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)*, [1989] 2 S.C.R. 49; *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3; *Hadmor Productions Ltd. v. Hamilton*, [1982] 1 All E.R. 1042; *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61, [2011] 2 F.C.R. 332.

By Abella and Wagner JJ.

**Distinguished:** *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585; *Canada (Attorney General) v. McArthur*, 2010 SCC 63, [2010] 3 S.C.R. 626; **referred to:** *Ordon Estate v. Grail*, [1998] 3 S.C.R. 437; *Sorbara v. Canada (Attorney General)*, 2009 ONCA 506, 98 O.R. (3d) 673, leave to appeal refused, [2009] 3 S.C.R. x; *Saskatchewan Wheat Pool v. Canada (Attorney-General)* (1993), 107 D.L.R. (4th) 63; *Messageries publi-maison ltée v. Société canadienne des postes*, [1996] R.J.Q. 547; *Waddell v. Governor in Council* (1981), 30 B.C.L.R. 127, aff’d (1982), 142 D.L.R. (3d) 177; *Re Williams and Attorney-General for Canada* (1983), 45 O.R. (2d) 291; *British Columbia Milk Marketing Board v. Aquilini*, [1997] B.C.J. No. 843 (QL), rev’d in part (1998), 165 D.L.R. (4th) 626, notice of discontinuance filed, [1999] 2 S.C.R. v; *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307; *Wakeford v. Canada* (2002), 58 O.R. (3d) 65, leave to appeal refused, [2002] 4 S.C.R. vii; *Lavers v. British Columbia (Minister of Finance)* (1989), 64 D.L.R. (4th) 193; *International Fund for Animal Welfare, Inc. v. Canada (Attorney General)* (1998), 157 D.L.R. (4th) 561; *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, [2015] 1 S.C.R. 401; *Dyck v. Highton*, 2003 SKQB 396, 239 Sask. R. 38; *Ward v. Canada (Attorney General)* (1997), 155 Nfld. & P.E.I.R. 313, rev’d (1999), 183 Nfld. & P.E.I.R. 295, rev’d 2002 SCC 17, [2002] 1 S.C.R. 569; *Souliere v. Leclair* (1998), 52 C.R.R. (2d) 156; *Premi v. Khodeir* (2009), 198 C.R.R. (2d) 8; *Grenon v. Canada (Attorney General)*, 2007 ABQB 403, 76 Alta. L.R. (4th) 346; *Canada Labour Relations Board v. Paul L’Anglais Inc.*, [1983] 1 S.C.R. 147.

**Statutes and Regulations Cited**

*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

*Canadian Charter of Rights and Freedoms*.

*Combines Investigation Act*, R.S.C. 1970, c. C-23.

*Constitution Act, 1867*, s. 101.

*Criminal Code*, R.S.C. 1985, c. C-46.

*Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), s. 26.1.

*Extradition Act*, S.C. 1999, c. 18.

*Federal Child Support Guidelines*, SOR/97-175, ss. 7, 10.

*Federal Court Act*, S.C. 1970-71-72, c. 1, ss. 17, 18.

*Federal Courts Act*, R.S.C. 1985, c. F-7 [am. 2002, c. 8, s. 14], ss. 2 “federal board, commission or other tribunal”, 17 [am. 1990, c. 8, s. 3], 18, 18.1(3).

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APPEAL from a judgment of the Federal Court of Appeal (Blais C.J. and Sharlow and Gauthier JJ.A.), 2014 FCA 33, 460 N.R. 240, [2014] F.C.J. No. 998 (QL), 2014 CarswellNat 3631 (WL Can.), affirming a decision of Gleason J., 2013 FC 475, 432 F.T.R. 152, [2013] F.C.J. No. 529 (QL), 2013 CarswellNat 1363 (WL Can.). Appeal dismissed.

Glenn Solomon, Q.C., and Laura Warner, for the appellants.

Anne M. Turley and Catherine A. Lawrence, for the respondent.

The judgment of McLachlin C.J. and Rothstein, Cromwell, Moldaver, Karakatsanis, Gascon and Côté JJ. was delivered by

Cromwell J. —

1. Introduction
2. The appellants seek to make a point: that the *Federal Child Support* *Guidelines*, SOR/97-175, are unlawful. They chose to make it by bringing a judicial review application in the Federal Court. The Federal Court, however, found that this was not an appropriate means by which to raise this issue and dismissed their application. It did so by exercising the well-established discretion to decline to undertake judicial review when some other, more suitable remedy is available. The Federal Court of Appeal upheld that decision. In my view, it made no mistake in doing so.
3. The appellants’ challenge to the child support *Guidelines* raises an issue of fundamental importance to, and with broad ramifications for child support on divorce, an area entrusted by Parliament mainly to the provincial superior courts. Questions about the nature and objectives of child support on divorce, which are squarely within the expertise of those courts, will be central to resolving the appellants’ challenge. While the appellants point to procedural and efficiency advantages of addressing these questions by means of judicial review in the Federal Court, any advantages are, on closer examination, largely illusory. I would therefore affirm the decision of the Federal Court of Appeal.
4. Overview of the Facts, Judicial History and Issues
5. The Governor in Council has made guidelines, by regulation, respecting child support orders: *Guidelines*. The power to do so is conferred by s. 26.1 of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.). That provision authorizes the Governor in Council to make such guidelines “based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation” (s. 26.1(2)).
6. The six appellants are potentially affected by the *Guidelines* in different ways. Three of them pay child support. Robert T. Strickland entered into an interim child support agreement through court-mandated mediation during a divorce action. George Connon, who is separated from his wife, voluntarily pays child support calculated in accordance with the *Guidelines*.Roland Auer pays child support to his second wife, the amount of which was initially calculated with reference to the *Guidelines* and has since been varied twice by the Alberta Court of Queen’s Bench. The other three appellants are Roland Auer’s first wife, Iwona Auer-Grzesiak, and two of his sons. They argue that they are affected by Mr. Auer’s obligation to pay child support to his second wife.
7. The appellants maintain that the *Guidelines* are not authorized by s. 26.1(2) and are therefore unlawful (or as lawyers say, are *ultra vires*). They claim that, contrary to what that section requires, the *Guidelines* are not based on the “relative abilities to contribute” of both spouses and that they do not reasonably calculate the amounts required “to maintain the children”. To advance this position, the appellants brought an application for judicial review in the Federal Court seeking a declaration to this effect.
8. The Federal Court has “exclusive original jurisdiction . . . to . . . grant declaratory relief, against any federal board, commission or other tribunal”: *Federal Courts Act*,R.S.C. 1985, c. F-7, s. 18(1)(*a*). The parties argued the appeal on the assumption that, under the *Federal Courts Act*, the application for a declaration that the *Guidelines* are *ultra vires* is, by virtue of this provision, within the exclusive jurisdiction of the Federal Court. There was no argument to the contrary and I accept that assumption for the purposes of my reasons. However, the Attorney General of Canada brought a motion to dismiss the judicial review application arguing, among other things, that the Federal Court should exercise its discretion to decline to hear the application.
9. The Federal Court agreed and dismissed the appellants’ judicial review application: 2013 FC 475, 432 F.T.R. 152. The application judge, Gleason J., held that the Federal Court is not an appropriate forum in which to address the validity of the *Guidelines*. She reasoned that the provincial superior courts have jurisdiction over a claim that the *Guidelines* are *ultra vires* if that claim is made in proceedings in which those courts are asked to apply them. Given the minor role the Federal Court plays in issues under the *Divorce Act* and the breadth of the jurisdiction and expertise of the provincial superior courts in matters related to divorce and child support, it would be inappropriate for the Federal Court to consider the judicial review application on its merits. The Federal Court of Appeal upheld this conclusion: 2014 FCA 33, 460 N.R. 240.
10. The appellants’ appeal to this Court, as I see it, raises two related questions:

1. Do the provincial superior courts have jurisdiction to address the validity of the *Guidelines*?

2. Even if they do, did the federal courts err in refusing to hear the judicial review application on its merits?

1. In my view, the provincial superior courts have jurisdiction to address the validity of the *Guidelines* where doing so is a necessary step in resolving a case otherwise properly before them and the Federal Court did not err by refusing to hear the appellants’ judicial review application.
2. Analysis
   1. First Issue: Do the Provincial Superior Courts Have Jurisdiction to Address the Validity of the Guidelines?
      1. Position of the Parties
3. The Federal Court’s refusal to undertake judicial review was based on a central premise: the provincial superior courts may rule on the legality of the *Guidelines* when that question arises in a proceeding otherwise properly before them. The appellants challenge that premise. Their position is based on two uncontroversial propositions.
4. They say, first, that s. 18 of the *Federal Courts Act* gives the Federal Court exclusive original jurisdiction to (among other things) “grant declaratory relief, against any federal board, commission or other tribunal”. (The full text is in the Appendix.) This leads to their second point, which is that this exclusive jurisdiction undisputedly includes the jurisdiction to declare regulations promulgated by the Governor in Council, such as the *Guidelines*, to be *ultra vires*: *Saskatchewan Wheat Pool v. Canada (Attorney General)* (1993), 67 F.T.R. 98, at paras. 8 and 12. The appellants submit that it follows from these two points that litigants like themselves, who are seeking a public law remedy against a federal entity, may proceed *only* in the federal courts: *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, at para. 19.
5. The appellants note that there are only two exceptions to this exclusive jurisdiction of the Federal Court, neither of which applies here. First, Parliament may create express exceptions, as it has done in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and the *Extradition Act*, S.C. 1999, c. 18. There is no such express exception for the appellants’ judicial review proceeding. Second, Parliament cannot, through s. 18 of the *Federal Courts Act* or otherwise, deprive provincial superior courts of the ability to determine the constitutional validity and applicability of legislation: *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307; *Canada Labour Relations Board v. Paul L’Anglais Inc.*, [1983] 1 S.C.R. 147. But that principle does not apply here because the appellants challenge the *Guidelines* on administrative law, not on constitutional grounds.
6. Based on these points, the appellants submit that, contrary to the view of the federal courts, “the weight of authority, and strong policy considerations, favour concluding that the provincial superior courts do not require jurisdiction to determine administrative validity as part of being asked to apply the *Guidelines*” and that provincial superior courts must presume the *Guidelines* to be valid unless found to be invalid by a court of competent jurisdiction: A.F., at para. 83 (emphasis deleted).
7. The respondent Attorney General rejects this contention and supports the conclusion of the federal courts on this point.
8. In my respectful view, the Attorney General is correct. A provincial superior court can hear and determine a challenge to the legality of the *Guidelines* where that determination is a necessary step in disposing of support proceedings properly before it. This, in my view, is clear from a line of very recent authority from this Court. I will turn to review it and explain why it applies here after a brief account of the purposes of the Federal Court’s exclusive jurisdiction.
   * 1. Section 18 and the Federal Court’s Exclusive Jurisdiction
9. In 1970, Parliament enacted the *Federal Court Act*, S.C. 1970-71-72, c. 1. The Act was subsequently renamed the *Federal Courts Act*, S.C. 2002, c. 8, s. 14, which is the legislation in force today. For clarity, when I refer to the “Act” in these reasons, I refer to the enactment that was in force at the relevant time.
10. Before the Act, judicial review of federal administrative action was conducted by the provincial superior courts as an aspect of their inherent jurisdiction. However, with the growth of federal regulatory regimes and administrative tribunals, several disadvantages of this arrangement became apparent. These included the possibility of multiple proceedings involving a federal decision that could lead to conflicting decisions and “a perceived lack of familiarity with federal legislation by judges who encountered it only occasionally”: D. J. M. Brown and J. M. Evans, with the assistance of C. E. Deacon, *Judicial Review of Administrative Action in Canada* (loose-leaf), at topic 2:4100.
11. To respond to these concerns, Parliament consolidated judicial review of federal boards, commissions and tribunals within the exclusive jurisdiction of the Federal Court: s. 18 of the Act.This, it was hoped, would ensure uniformity and prevent a multiplicity of proceedings: see, e.g., *TeleZone*, at paras. 49-50; *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, at para. 35. The then-Minister of Justice stated that this consolidationwas “designed to create a single and uniform basis of superintending jurisdiction in relation to federal boards and commissions and to place them on the same footing in this regard as provincial boards and commissions”: *TeleZone*,at para. 50, citing *House of Commons Debates*, vol. V, 2nd Sess., 28th Parl., March 25, 1970, at p. 5471. Thus, with the passage of the Act, Parliament “remove[d] from the superior courts of the provinces the jurisdiction over prerogative writs, declarations, and injunctions against federal boards, commissions and other tribunals and . . . place[d] that jurisdiction (slightly modified) in a new federal court”: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 34; see also *Paul L’Anglais Inc.*, at p. 154.
12. The Actalso gave the Federal Court *exclusive* jurisdiction over proceedings against the federal crown: s. 17. However, this scheme proved unworkable in practice by virtue of the constitutional limits of the court’s jurisdiction under s. 101 of the *Constitution Act, 1867*. That meant that the Federal Court generally had no jurisdiction over Crown servants or over other co-defendants, third parties or defendants by counterclaim and that those persons and proceedings had to be addressed in parallel proceedings in the provincial superior courts. This unsatisfactory state of affairs was resolved by amendments in 1990 making the Federal Court’s jurisdiction over claims against the federal Crown concurrent with that of the provincial superior courts rather than exclusive: S.C. 1990, c. 8, s. 3; and see generally, P. W. Hogg, *Constitutional Law of Canada* (5th ed. Supp.), vol. 1, at pp. 7-33 and 7-34. Thus, since 1990, the Federal Court’s exclusive jurisdiction with respect to judicial review is a qualification of the general rule of concurrent jurisdiction between it and the provincial superior courts.
    * 1. The *TeleZone* Principle
13. I have already referred briefly to the practical problems which arose by virtue of the attempt to confer on the Federal Court exclusive jurisdiction over claims against the federal Crown. The conferral of exclusive jurisdiction in judicial review of federal tribunals has also given rise to some practical problems. The main one, which arose in a line of recent cases, is whether this exclusive judicial review jurisdiction means that a claim for damages based on allegedly unlawful conduct by a federal board, commission or tribunal cannot be brought in the provincial superior courts without the claimant first successfully applying for judicial review of that conduct in the Federal Court: *TeleZone*; *Canada (Attorney General) v. McArthur*, 2010 SCC 63, [2010] 3 S.C.R. 626; *Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada*, 2010 SCC 66, [2010] 3 S.C.R. 657.
14. The Attorney General of Canada adopted the position that bringing an action in the provincial superior courts without first challenging the legality of the conduct by way of judicial review in the Federal Court was an impermissible evasion of the Federal Court’s exclusive judicial review jurisdiction under s. 18 and therefore constituted an impermissible collateral attack on the actions of the federal tribunal. This Court, however, unanimously rejected this contention, noting that accepting it would create a “bottleneck” that was “manifestly not the intention of Parliament”: *TeleZone*, at para. 3.
15. *TeleZone* and the related cases, although they did not decide the precise point in issue here, support the principle that the provincial superior courts have the authority to consider and rule on the legality of the actions of federal tribunals when doing so is a necessary step in adjudicating claims properly before the superior courts. As in my view this principle is central to this case, a brief review of the key cases is in order.
16. In *TeleZone*, the plaintiff company sued the federal government in the Ontario Superior Court of Justice, seeking damages in tort, contract and equity stemming from a decision not to include TeleZone among the successful bidders for licences to provide personal communication services — essentially a cell phone network. It alleged that the Minister of Industry Canada had breached a term of the department’s policy statement which had accompanied its call for licence applications and had failed to treat TeleZone fairly as required by the tendering process. TeleZone neither impugned the Minister’s decision to issue the licences nor sought a licence for itself. It simply sought damages for the Minister’s allegedly illegal conduct in denying it a licence and for failing to treat it fairly. The Crown argued that by virtue of the Federal Court’s exclusive jurisdiction under s. 18 of the Act, TeleZone could not advance these claims in the Superior Court unless it first obtained from the Federal Court an order quashing the Minister’s decision.
17. The Court rejected the Crown’s position, holding that the Ontario Superior Court of Justice could determine whether the Minister’s decision was lawful or not for the purposes of the damages claim. The claim as pleaded was “dominated by private law considerations”: *TeleZone*, at para. 80. The Court explained that the grant of exclusive jurisdiction in s. 18 must be understood in the broader context of the Act.Section 17 of the Act (as amended in 1990) explicitly confers concurrent jurisdiction on the provincial superior courts “in all cases in which relief is claimed against the Crown”. The exclusive jurisdiction provision in s. 18 must be understood as “a reservation or subtraction from the more comprehensive grant of concurrent jurisdiction in s. 17”: para. 5. Thus, the provincial superior courts may exercise their concurrent jurisdiction where the attack on a law or an order is essential to the cause of action and adjudication of that allegation is a necessary step in disposing of the claim: para. 67. As Binnie J. put it on behalf of the Court, s. 18 of the Act does not “shield the Crown from private law damages involving [federal boards, commissions and tribunals] in respect of losses caused by unlawful government decision making without first passing through the Federal Court”: para. 3. The provincial superior courts, in the context of matters properly before them, have the authority “to determine every legal and factual element necessary for the granting or withholding of the remedies sought”, including the potential unlawfulness of government orders: para. 6. Binnie J. was careful to point out that this principle will not apply unless the validity of the underlying order is genuinely a necessary step in an otherwise valid proceeding and is not simply made to appear as such as the result of “artful pleading”: para. 75.
18. The companion case of *McArthur* supports the premise relied on by the Federal Court in this appeal. In *McArthur*, the plaintiff sued the federal Crown in the Ontario Superior Court of Justice. He sought damages and constitutional remedies for what he alleged was wrongful or false imprisonment and emotional harm stemming from time he spent in solitary confinement, segregation and a special handling unit. The Court stated the issue to be whether Mr. McArthur could pursue his damages claim in the Superior Court for arbitrary detention and alleged mistreatment without first seeking judicial review in the Federal Court to quash the segregation orders that were the basis of his claim: para. 1. Mr. McArthur alleged that the segregation orders were made without just cause and lacked the reasonable grounds required under the relevant statute. As Binnie J. noted, Mr. McArthur was “putting in issue the lawfulness or validity of the segregation orders, but he [did] so as an element of a private law cause of action over which the provincial superior court ha[d] jurisdiction”: para. 13.
19. The Court rejected the Crown’s position that Mr. McArthur must first seek judicial review in the Federal Court to quash the segregation orders that founded his claim: paras. 2 and 11. The Superior Court had jurisdiction to entertain the claim because its authority extended to “the person and the subject matter in question and, in addition, [because it] has authority to make the order sought”: para. 17, citing *Mills v. The Queen*, [1986] 1 S.C.R. 863, at p. 960, quoting Brooke J.A. in *R. v. Morgentaler* (1984), 41 C.R. (3d) 262 (Ont. C.A.), at p. 271. Thus, in adjudicating the claim, the Court could consider “the validity of Mr. McArthur’s detention in the context of a damages claim, as well as the impact, if any, of a *valid* order on Crown liability”: para. 15 (emphasis in original). Binnie J. concluded that “[t]here is nothing in the *Federal Courts Act* to give the Federal Court the exclusive jurisdiction to determine the lawfulness or validity of the order of a ‘federal board, commission or other tribunal’ when Mr. McArthur does not seek any of the remedies listed in s. 18 of the *Federal Courts Act*”: para. 17.
20. I acknowledge that, unlike in *McArthur*,the appellants in this case *do* seek a s. 18 remedy, a declaration of invalidity. However, the question at this point in the analysis focuses on the authority of the superior courts to deal with the *Guidelines*.*McArthur* strongly supports the premise of the Federal Court’s decision in the present case, that is, that the provincial superior courts have the authority to determine the “lawfulness or validity” of the *Guidelines* in the course of proceedings properly before them in which doing so is a necessary step in resolving those proceedings. As I will discuss below, this was a key consideration for the federal courts in exercising discretion not to undertake judicial review.
21. In the last of the relevant cases in the *TeleZone* line, *Canadian Food Inspection Agency*, the Agency contested the jurisdiction of the Quebec Superior Court to entertain recourses in warranty alleging that a direction the Agency had issued was the cause of any damage meat producers had suffered from being unable to market some of their product: para. 9. The Agency’s position was that the claims could not succeed without first attacking the lawfulness or validity of its decision by way of judicial review in the Federal Court: paras. 16 and 20. Once again, this Court affirmed that “[s]uccessfully challenging an administrative decision of a federal board on judicial review is not a requirement for bringing an action for damages with respect to that decision”: para. 21. Since the Quebec Superior Court had jurisdiction over the parties and the subject matter of the dispute, the claims were properly before it: para. 29.
22. This decision, too, supports the premise of the Federal Court in the present case: the superior court can rule on the legality of the federal administrative action in proceedings properly before it in which deciding that issue is an essential step.
23. Another line of cases illustrates and supports this approach. They affirm the view that a provincial superior court dealing with an application for *habeas corpus* with *certiorari* in aid can assess the legality of detention resulting from the decision of a federal board. These cases rejected the contention that *certiorari* in aid of *habeas corpus* was no longer available in the provincial superior courts by virtue of the exclusive jurisdiction provision in s. 18 of the Act.
24. In *R. v. Miller*, [1985] 2 S.C.R. 613, the Court noted that Parliament intended to leave with provincial superior courts “the jurisdiction by way of *habeas corpus* to review the validity of a detention imposed by federal authority”: p. 624. This parliamentary intent combined with the importance of *certiorari* in aid to the effectiveness of *habeas corpus* led the Court to conclude that a provincial superior court has jurisdiction to issue *certiorari* in aid of *habeas corpus* to assess the validity of detention: p. 625. *Certiorari* in aid was considered to be distinct from the writ of *certiorari* to quash a decision of a federal authority and was therefore not within the exclusive jurisdiction of the Federal Court by virtue of s. 18. In *May v. Ferndale Institution*, 2005 SCC 82, [2005] 3 S.C.R. 809, the Court reaffirmed this principle as it did once again most recently in *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502. The Court held that reasonableness of the decision to detain should be regarded as one element of its lawfulness. It followed that the provincial superior court may review for reasonableness in deciding an application for *habeas corpus* even though the court would, in effect although not in form, be assessing the legality on administrative law grounds of the federal board’s conduct and orders: para. 65.
    * 1. Conclusion on the First Issue
25. The Federal Court of Appeal held that the Federal Court judge “did not err in law when she concluded that the provincial superior courts have jurisdiction to determine the *vires* of the Guidelinesin the context of proceedings for which they have jurisdiction under the *Divorce Act* and to decline to apply them if found to be *ultra-vires*”: para. 7. I agree.
26. The Court’s jurisprudence, which I have just reviewed, supports the principle that the provincial superior courts, in the context of proceedings properly before them, can address the legality of the conduct of federal boards, commissions and tribunals, where doing so is a necessary step in resolving the claims asserted in those proceedings. This means that in the context of family law proceedings otherwise properly before them, the provincial superior courts can decide that the *Guidelines* are *ultra vires* and decline to apply them if doing so is a necessary step in resolving the matters before them. It follows that the appellants’ position to the contrary on this point must be rejected and that the premise underlying the decisions of the Federal Courts to decline jurisdiction was correct.
    1. Second Issue: Did the Federal Courts Err in Refusing to Hear the Judicial Review Application on Its Merits?
       1. Introduction
27. The appellants submit that the Federal Court erred by refusing to entertain their judicial review application.
28. The Federal Court based its discretionary decision to deny judicial review primarily on the greater expertise of provincial superior courts in family law. The Federal Court of Appeal upheld that decision and referred to additional factors supporting it. Invalidating the *Guidelines*, the Federal Court of Appeal reasoned, would have uncertain consequences in respect of family law matters outside the *Divorce Act* to which the *Guidelines* apply by virtue of provincial legislation and practice and adjudicating these issues in the context of a divorce or corollary relief proceeding in the superior courts would ensure a more complete adversarial debate: paras. 14-16.
29. The appellants submit that the federal courts erred because the possibility of challenging the *Guidelines* in the context of child support proceedings in the provincial superior courts is a remedy that is neither adequate nor truly “alternative” for several reasons. Before turning to those submissions in detail, however, it will be helpful to establish the legal framework within which this issue must be decided.
    * 1. Legal Principles
         1. The Discretionary Nature of Judicial Review and Declaratory Relief
30. Judicial review by way of the old prerogative writs has always been understood to be discretionary. This means that even if the applicant makes out a case for review on the merits, the reviewing court has an overriding discretion to refuse relief: see, e.g., D. J. Mullan, “The Discretionary Nature of Judicial Review”, in R. J. Sharpe and K. Roach, eds., *Taking Remedies Seriously: 2009* (2010), 420, at p. 421; *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561,at p. 575; D. P. Jones and A. S. de Villars, *Principles of Administrative Law* (6th ed. 2014), at pp. 686-87; Brown and Evans, at topic 3:1100. Declarations of right, whether sought in judicial review proceedings or in actions, are similarly a discretionary remedy: “. . . the broadest judicial discretion may be exercised in determining whether a case is one in which declaratory relief ought to be awarded” (Dickson C.J. in *Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)*, [1989] 2 S.C.R. 49, at p. 90, citing S. A. de Smith, *Judicial Review of Administrative Action* (4thed. 1980), at p. 513).
31. The discretionary nature of judicial review and declaratory relief is continued by the judicial review provisions of the Act. This is underlined both by the reference in s. 18 to the traditional prerogative writs and other administrative law remedies which have always been considered discretionary and by the use of permissive rather than mandatory language in relation to when relief may be granted. Section 18.1(3) provides that “[o]n an application for judicial review, the Federal Court may” make certain orders in the nature of those traditional remedies. This statutory language “preserves the traditionally discretionary nature of judicial review. As a result, judges of the Federal Court . . . have discretion in determining whether judicial review should be undertaken”: *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3,at para. 31; *TeleZone*,at para. 56.
32. The fact that undertaking judicial review is discretionary means that the Federal Court judge’s exercise of that discretion is entitled to deference on appeal. As this Court noted in *Matsqui*, an appellate court “must defer to the judge’s exercise of . . . discretion and must not interfere with it merely on the ground that the members of the appellate court would have exercised the discretion differently”: para. 39, quoting Lord Diplock in *Hadmor Productions Ltd. v. Hamilton*, [1982] 1 All E.R. 1042, at p. 1046.
    * + 1. Alternative Relief
33. One of the discretionary grounds for refusing to undertake judicial review is that there is an adequate alternative. The leading case is *Harelkin*, in which a student alleged that a university committee made a decision that violated his procedural rights. There was a right of appeal to the university’s senate, but instead of pursuing it, the student applied for judicial review. This Court held that the judge at first instance had erred in entertaining the judicial review application because he failed to exercise his discretion on relevant grounds: he did not consider whether the internal appeal process was an adequate alternative remedy that was capable of curing the denial of natural justice of which the student complained.
34. The Court has applied similar reasoning in a number of cases to dismiss applications for judicial review. For example, in *Matsqui*, the Court upheld the decision of the Federal Court to decline to hear Canadian Pacific’s application for judicial review because it could have pursued an appeal procedure established by the Matsqui Band. In *Canada (Auditor General)*, the Court refused judicial review to the Auditor General to challenge a denial of access to information because a political remedy — reporting to the House of Commons any refusals to comply with requests for information — was an adequate alternative remedy.
35. The cases identify a number of considerations relevant to deciding whether an alternative remedy or forum is adequate so as to justify a discretionary refusal to hear a judicial review application. These considerations include the convenience of the alternative remedy; the nature of the error alleged; the nature of the other forum which could deal with the issue, including its remedial capacity; the existence of adequate and effective recourse in the forum in which litigation is already taking place; expeditiousness; the relative expertise of the alternative decision-maker; economical use of judicial resources; and cost: *Matsqui*, at para. 37; *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61, [2011] 2 F.C.R. 332,at para. 31; Mullan, at pp. 430-31; Brown and Evans, at topics 3:2110 and 3:2330; *Harelkin*, at p. 588. In order for an alternative forum or remedy to be adequate, neither the process nor the remedy need be identical to those available on judicial review. As Brown and Evans put it, “in each context the reviewing court applies the same basic test: is the alternative remedy adequate in all the circumstances to address the applicant’s grievance?”: topic 3:2100 (emphasis added).
36. The categories of relevant factors are not closed, as it is for courts to identify and balance the relevant factors in the context of a particular case: *Matsqui*, at paras. 36-37, citing *Canada (Auditor General)*, at p. 96. Assessing whether there is an adequate alternative remedy, therefore, is not a matter of following a checklist focused on the similarities and differences between the potentially available remedies. The inquiry is broader than that. The court should consider not only the available alternative, but also the suitability and appropriateness of judicial review in the circumstances. In short, the question is not simply whether some other remedy is adequate, but also whether judicial review is appropriate. Ultimately, this calls for a type of balance of convenience analysis: *Khosa*, at para. 36; *TeleZone*,at para. 56. As Dickson C.J. put it on behalf of the Court: “Inquiring into the adequacy of the alternative remedy is at one and the same time an inquiry into whether discretion to grant the judicial review remedy should be exercised. It is for the courts to isolate and balance the factors which are relevant . . .” (*Canada (Auditor General)*,at p. 96).
37. This balancing exercise should take account of the purposes and policy considerations underpinning the legislative scheme in issue: see, e.g., *Matsqui*,at paras. 41-46; *Harelkin*, at p. 595. David Mullan captured the breadth of the inquiry well:

While discretionary reasons for denial of relief are many, what most have in common is a concern for balancing the rights of affected individuals against the imperatives of the process under review. In particular, the courts focus on the question of whether the application for relief is appropriately respectful of the statutory framework within which that application is taken and the normal processes provided by that framework and the common law for challenging administrative action. Where the application is unnecessarily disruptive of normal processes . . . the courts will generally deny relief. [Emphasis added; p. 447.]

1. The factors to be considered in exercising this discretion cannot be reduced to a checklist or a statement of general rules. All relevant factors, considered in the context of the particular case, should be taken into account.
   * 1. Analysis of the Appellants’ Position
2. The Federal Court exercised its discretion not to hear the judicial review application because Parliament has granted virtually exclusive jurisdiction over the *Divorce Act* to the provincial superior courtsand, by virtue of their expertise in child support matters, those courts are “better placed” than the Federal Court to deal with the validity of the *Guidelines*: para. 61. The Federal Court of Appeal essentially adopted this reasoning and further supported it by noting that appellate courts would “significantly benefit from the practical expertise that provincial superior courts have with such matters and from the additional arguments provided by the spouse seeking support as well as those of the AGC if he chose to intervene”: para. 16. These considerations are appropriately concerned more with the unsuitability of judicial review in the Federal Court in this case than with the narrower question of whether a remedy comparable to that sought by the appellants is available elsewhere. In my opinion, judicial review in the Federal Court is manifestly inappropriate here and that court reasonably exercised its discretion not to engage in it.
3. At its core, the appellants’ claim is that they are entitled to a ruling on the legality of the *Guidelines*. They say that they are seeking a purely public law remedy which they can only obtain in the Federal Court and they do not seek, or want, any other remedy. This claim is founded on three flawed propositions that also undermine the appellants’ more specific submissions.
4. First, the appellants’ position that they are entitled to a ruling on the legality of the *Guidelines* through a judicial review is fundamentally at odds with the discretionary nature of judicial review and with the broad grounds on which that discretion may be exercised. As Brown and Evans put it, “the discretionary nature of [judicial review] reflects the fact that unlike private law, its orientation is not, and never has been, directed exclusively to vindicating the rights of individuals”: topic 3:1100. The appellants thus do not have a right to have the Federal Court rule on the legality of the *Guidelines*; the Federal Court has a discretion to do so, which it has decided not to exercise.
5. Second, the appellants’ position that the alternative is not adequate because it does not provide identical procedures or relief cannot be accepted. The appellants’ arguments focus too narrowly on how challenging the *Guidelines* in the context of family law litigation in the provincial superior courts will not provide everything that might be available to them on judicial review. Exercising the discretion to decline judicial review jurisdiction requires the court to take a broader view. The court should consider such factors as the appropriateness of judicial review in the particular context and, as Mullan put it, whether judicial review is “appropriately respectful” of the statutory framework and of the “normal processes” for which it provides.
6. In short, the analysis cannot simply look at the alleged advantages of judicial review from the appellants’ perspective so that they can make their point, but also must engage with the more fundamental question of how judicial review interacts with the operation of the *Guidelines* in family law litigation in the provincial courts. When this is done, the conclusion is that the appellants’ position is misconceived.
7. The *Guidelines* operate and play a central role within a complex area of law, governed by the *Divorce Act*. Parliament has entrusted, for practical purposes, this entire area of law to the provincial superior courts. Having done so, it would be curious, to say the least, if the legality of a central aspect of that regime were to be finally decided by the federal courts, which, as a result of federal legislation, have virtually no jurisdiction with respect to family law matters. The appellants’ judicial review proceedings are thus deeply inconsistent with fundamental parliamentary choices about where important family law issues will be determined.
8. Third, the appellants’ position that obtaining a ruling in the Federal Court would be more efficient than a proliferation of rulings in the various provincial superior courts in individual family law proceedings cannot be accepted. The appellants submit that the alternative remedy of litigation in the provincial superior courts is inefficient and would give rise to multiple proceedings, undermining judicial economy. This is simply not the case.
9. The appellants’ position overlooks the fact that a ruling of the Federal Court on this issue would not be binding on any provincial superior court. Thus, regardless of what the Federal Court might decide, before the ruling could have any practical effect, the issue would have to be re-litigated in the superior courts, or, alternatively, litigated up to this Court. Even if there were a binding ruling that the *Guidelines* were unlawful, a proliferation of litigation would be inevitable. It would be for the provincial courts to decide the impact of the illegality of the *Guidelines* on particular support orders and that could only be done in the context of a multitude of individual cases. A further complexity arises from the fact that all provinces and territories except Quebec have adopted child support guidelines that are very similar to the *Guidelines* and use the federal child support tables. Those provincial laws are not subject to the appellants’ challenge and yet might well be affected by it. These practical considerations significantly undermine the appellants’ position that a single judicial review proceeding would resolve the main issue more efficiently.
10. In light of these considerations, arguments based on the efficiency of judicial review in the Federal Court do not persuade. They are disconnected from both the practical realities and the potential impact of these proceedings.
11. I turn to the appellants’ remaining specific submissions. They submit that a child support proceeding is not available for some of the appellants and is not appropriate for others. Mark Auer, Vladimir Auer and Iwona Auer-Grzesiak have no alternative way of addressing the impact they allege that the *Guidelines* have on them, in part because children cannot bring a child support application and thus cannot raise the validity of the *Guidelines* in that context. George Connon is not a party to proceedings under the *Divorce Act* and would rather not initiate adversarial proceedings to access the alternative remedy: his complaint is against the Governor General in Council, not his wife.
12. These submissions refer to factors that, while often strengthening the case for engaging in judicial review, cannot reasonably be thought to be entitled to much weight in the circumstances of this case. While the appellants say that the impact of the *Guidelines* on spouses and children from other marriages can only be addressed in judicial review proceedings,this must be considered in light of the fact that the appellants’ judicial review proceedings exclude direct adversarial participation by other directly affected parties: spouses and former spouses seeking child support orders or variations of them under the *Divorce Act*. As the Federal Court of Appeal pointed out, adjudicating the issue in the context of *Divorce Act* or child support proceedings would ensure full participation of these parties. This is at least as important a consideration as giving the appellants an opportunity to try to make their point that the *Guidelines* are unlawful. I agree with the Federal Court of Appeal that while having the legality of the *Guidelines* determined in a single proceeding in the Federal Court might weigh in favour of the Federal Court hearing the application, it does not outweigh the factors that favour declining jurisdiction. Moreover, as I discussed earlier, the touted advantages are largely illusory.
13. The appellants take exception to the Federal Court and the Federal Court of Appeal concluding that the interest of the payor applicants was to seek a downward variation in the amount of child support that they are paying. Counsel for the appellants emphasized during oral argument that this is not the relief sought in the judicial review application, that it is not the appellants’ characterization of the case and that even if successful in their judicial review application, there would be no immediate effect on most of the child support arrangements that underlie this case. Taking this submission at face value, the appellants seek to engage the discretionary judicial review jurisdiction of the Federal Court in an area outside its core institutional expertise in order to achieve “no immediate effect” for themselves. This consideration, in my respectful view, strengthens not weakens the case for declining to engage in judicial review in this case.
14. The appellants also submit that they seek a declaration of invalidity; the “alternative” would give them something else entirely, which they do not want. Quoting *TeleZone*, at para. 19, they say that “[a]ccess to justice requires that the claimant be permitted to pursue its chosen remedy directly”: A.F., at para. 145. The provincial superior courts do not, as required by *TeleZone*, have jurisdiction over the order sought. The appellants maintain that the alternative remedy in the provincial superior courts does not comply with the principle of rule of law. It would not provide instructions to the Governor in Council or permit the appellants to determine whether the *Guidelines* are properly enacted. In my respectful view, these submissions do not identify any reviewable error on the part of the Federal Court.
15. As I discussed earlier, the remedy available in an alternative forum need not be the claimant’s preferred remedy or identical to that which the claimant seeks by way of judicial review. As the Court affirmed in *Matsqui*,at para. 37, and *Harelkin*,at p. 588, the remedial capacity of the alternative decision-maker is only one factor to consider in assessing adequacy. Thus, assuming (as the parties did before us) that the provincial superior courts cannot grant the remedy of a declaration of invalidity, this factor is relevant but not decisive. As for the contention that denying access to judicial review is contrary to the principle of the rule of law, I have already explained that the appellants do not have a right to require the Federal Court to engage in judicial review. Moreover, there is ample opportunity for the legality of the *Guidelines* to be challenged in family law litigation to which their operation is directly relevant.
16. The appellants further submit that the courts below misunderstood the expertise engaged by these proceedings, as they assumed that this was a family law case. According to the appellants, this case requires administrative, not family law, expertise because the question is whether the legislation authorizes the making of these *Guidelines*. I respectfully disagree.
17. The appellants request a judicial determination of, among other things, whether the *Guidelines* are based, as they are required to be by s. 26.1(2) of the *Divorce Act*, on the principle “that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation”: see A.F., at paras. 12-13. Making that determination will inevitably engage family law expertise in relation to, among other things, the nature and extent of the obligation “to maintain” children and how the “relative abilities” of parents to do so should be assessed. The provincial superior courts deal day in and day out with disputes in the context of marital breakdown concerning the needs of children, as well as what custody and support arrangements are in their best interests. They regularly entertain submissions on the suitability of support orders, including setting support for special or extraordinary expenses (s. 7 of the *Guidelines*) and entertaining claims of undue hardship related to payment of support (s. 10 of the *Guidelines*). This subject-matter expertise will properly be brought to bear on the appellants’ contentions. I agree with the following observations of the Federal Court of Appeal:

. . . the *vires* of the Guidelines should be determined by a court that has developed the particular expertise to properly assess the arguments in their factual context. This is particularly important when one considers the nature of the arguments set out in paragraphs 14 and 15 of the application and the general allegation at paragraph 16 that the Guidelines are unreasonable and manifestly unjust, which involves looking at the impact of the Guidelines and the child support calculation formula on spouses and children in practice. Practical experience is relevant also when one considers that the Guidelines provide significant discretion to the provincial superior courts to depart from the statutory formula. According to the Appellants, such courts in fact rarely exercise that discretion. It would be difficult for the Federal Court to assess the validity of that contention. [para. 13]

* + 1. Summary

1. I conclude that the Federal Court did not make any reviewable error in exercising the discretion not to entertain this judicial review application for declaratory relief.
2. Since writing my reasons, I have had the advantage of reviewing the concurring reasons of my colleagues Abella and Wagner JJ. As they point out, this case was argued on the basis that there was no dispute that the Federal Court has exclusive original jurisdiction to grant judicial review remedies directed against regulations promulgated by the Governor in Council. This assumption by the parties is hardly surprising given this Court’s recent decision in *McArthur*, at paras. 2 and 17, aff’g 2008 ONCA 892, 94 O.R. (3d) 19, at para. 94, in which we at least implicitly if not explicitly affirmed that s. 18 of the Act gives the Federal Court exclusive original jurisdiction to issue a prerogative remedy or grant declaratory relief against any federal board, commission or other tribunal on administrative law grounds. My colleagues point to a number of “concerns” about this assumption and raise various possible arguments that might be made to the contrary. As none of these points was argued, I of course will keep an open mind about them. But I do not want my silence on these issues to be understood as indicating that, at least as presently advised, I share the concerns raised by my colleagues.
3. At this point, it seems to me that the language of the Act conferring “exclusive original jurisdiction” can be taken as a clear and explicit expression of parliamentary intent. Similarly, as presently advised I see no reason to doubt that the Governor in Council, when exercising “jurisdiction or powers conferred by or under an Act of Parliament” is a “federal board, commission or other tribunal” within the meaning of s. 2 the Act. Further, the Court in *Paul L’Anglais Inc.* distinguished between Federal Court jurisdiction to rule on constitutionality and jurisdiction to engage in judicial review on administrative law grounds. No one questions that s. 18 does not withdraw the authority of the provincial superior courts to grant the traditional administrative law remedies against federal boards, commissions and tribunals on division of powers grounds: see, e.g., *Paul L’Anglais Inc.* at pp. 152-63. But with respect to judicial review on administrative law grounds, the Court expressly confirmed that the Federal Court has exclusive original jurisdiction as described in s. 18 of the Act:

In adopting s. 18 of the *Federal Court Act*, . . . Parliament in effect divested the superior courts of the superintending and reforming power over federal agencies and conferred it on the Trial Division of the Federal Court . . . .

It is well established that the effect of s. 18 [of the *Federal Court Act*] was to transfer all superintending and reforming power over federal agencies from the superior courts to the Federal Court . . . .

. . .

. . . Parliament has a perfect right to enact that the superintending and reforming power over federal agencies, acting in the administration of the laws of Canada . . . will be exercised exclusively by the Federal Court, a court created for the better administration of those laws. However, it cannot confer such an exclusive power on the Federal Court when what is involved is no longer the administration of a law of Canada, but the interpretation and application of the Constitution. [pp. 153-54 and 162]

All of these matters are, of course, for another day.

1. Disposition
2. I would dismiss the appeal with costs.

The following are the reasons delivered by

1. Abella and wagner JJ. — The provincial superior courts administer the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), and the *Federal Child Support Guidelines*, SOR/97-175. As the majority states, Parliament has entrusted this entire area of law to the provincial superior courts.
2. The parties proceeded before us on the assumption that the Federal Court has exclusive jurisdiction to declare invalid all federal regulations promulgated by the Governor in Council. In view of the fact that this issue was not argued, and given its importance, in our respectful view this case should not be seen as categorically endorsing this assumption. Pending argument in another case where the issue is squarely raised, our concerns arise from a number of sources.
3. First, any derogation from the jurisdiction of the provincial superior courts “requires clear and explicit statutory wording to this effect”: *Ordon Estate v. Grail*, [1998] 3 S.C.R. 437, at para. 46; *Canada (Attorney General) v. TeleZone Inc.*, [2010] 3 S.C.R. 585, at para. 42. A superior court “has jurisdiction to entertain virtually any claim unless that jurisdiction is specifically, unequivocally and constitutionally removed by Parliament”: *Sorbara v. Canada (Attorney General)* (2009), 98 O.R. (3d) 673 (C.A.), at para. 7, leave to appeal refused, [2009] 3 S.C.R. x. It would be possible to argue, in our view, that s. 18 of the *Federal Courts Act*, R.S.C. 1985, c. F-7,does not clearly and unequivocally strip the provincial superior courts of their jurisdiction to declare federal regulations made by the Governor in Council to be invalid on administrative grounds.
4. In fact, this Court has never held that the Federal Court enjoys the exclusive authority to declare all regulations made by the Governor in Council invalid. Only two appellate courts have endorsed that proposition: *Saskatchewan Wheat Pool v. Canada (Attorney-General)* (1993), 107 D.L.R. (4th) 63 (Sask. C.A.), at pp. 66-69; *Messageries publi-maison ltée v. Société canadienne des postes*, [1996] R.J.Q. 547 (C.A.).
5. A contrary view was expressed by several others: *Waddell v. Governor in Council* (1981), 30 B.C.L.R. 127 (S.C.), appeal dismissed as academic (1982), 142 D.L.R. (3d) 177 (B.C.C.A.); *Re Williams and Attorney-General for Canada* (1983), 45 O.R. (2d) 291 (H.C.J.); and *British Columbia Milk Marketing Board v. Aquilini*, [1997] B.C.J. No. 843 (S.C.) (QL), rev’d in part on other grounds (1998), 165 D.L.R. (4th) 626 (B.C.C.A.), notice of discontinuance filed, [1999] 2 S.C.R. v.
6. Moreover, over three decades ago, this Court decided that provincial superior courts have jurisdiction to declare the federal laws they apply *ultra vires* on division of powers grounds so that they are not left with “the invidious task of execution of federal and provincial laws . . . while being unable to discriminate between valid and invalid federal statutes so as to refuse to ‘execute’ the invalid statutes”: *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307, at p. 328.
7. Provincial superior courts also have jurisdiction to declare the federal laws they apply to be contrary to the *Canadian Charter of Rights and Freedoms*: *Wakeford v. Canada* (2002), 58 O.R. (3d) 65 (C.A.), at para. 40, leave to appeal refused, [2002] 4 S.C.R. vii; *Lavers v. British Columbia (Minister of Finance)* (1989), 64 D.L.R. (4th) 193 (B.C.C.A.); *International Fund for Animal Welfare, Inc. v. Canada (Attorney General)* (1998), 157 D.L.R. (4th) 561 (Ont. Ct. (Gen. Div.)).
8. Federal regulations are federal law. Consequently, an argument can be made that the jurisdiction of the provincial superior courts to declare invalid the federal laws they apply necessarily includes the authority to declare invalid the federal *regulations* they apply: see e.g. *Canada (Attorney General) v. Federation of Law Societies of Canada*, [2015] 1 S.C.R. 401; *Dyck v. Highton* (2003), 239 Sask. R. 38 (Q.B.); *Ward v. Canada (Attorney General)* (1997), 155 Nfld. & P.E.I.R. 313 (Nfld. S.C. (T.D.)), rev’d on other grounds (1999), 183 Nfld. & P.E.I.R. 295 (Nfld. C.A.), rev’d [2002] 1 S.C.R. 569; *Souliere v. Leclair* (1998), 52 C.R.R. (2d) 156 (Ont. Ct. (Gen. Div.)); *Premi v. Khodeir* (2009), 198 C.R.R. (2d) 8 (Ont. S.C.J.); *Grenon v. Canada (Attorney General)* (2007), 76 Alta. L.R. (4th) 346 (Q.B.).
9. We are not suggesting that Parliament lacks the authority under s. 101 of the *Constitution Act, 1867* to grant the Federal Court jurisdiction to declare federal regulations *ultra vires*. Our concern is simply whether the *Federal Courts Act* has given it the *exclusive* jurisdiction to do so.
10. The Federal Court was created to remove from the provincial superior courts the jurisdiction to supervise federal administrative tribunals, not to strip them of their jurisdiction to determine the *vires* of the federal regulations they apply: Ian Bushnell, *The Federal Court of Canada: A History, 1875-1992* (1997), at pp. 157-58; see also Richard W. Pound, *Chief Justice W.R. Jackett: By the Law of the Land* (1999), at p. 220; John Turner, Minister of Justice and Attorney General of Canada, *House of Commons Debates*, vol. V, 2nd Sess., 28th Parl., March 25, 1970, at pp. 5469-71.
11. The view that s. 18 of the *Federal Courts Act* was designed to consolidate judicial review jurisdiction of federal boards in a national court — and *not* to interfere with the subject-matter jurisdiction of the provincial superior courts — was later confirmed by Doug Lewis, Minister of Justice and Attorney General of Canada, when introducing certain amendments to the *Federal Court Act* in 1989: *House of Commons Debates*, vol. IV, 2nd Sess., 34th Parl., November 1, 1989, at pp. 5413-14.
12. There is no evidence that Parliament intended to limit the subject matter jurisdiction of the provincial superior courts by preventing them from determining the *vires* of the regulations they apply. At the very least, this argues for caution and full argument before this Court declares — or is seen to declare — that s. 18 of the *Federal Courts Act* means that the Federal Court has exclusive jurisdiction over *all* federal regulations, even if they are not part of legislative schemes over which the Federal Court has jurisdiction or expertise, such as the *Criminal Code*, R.S.C. 1985, c. C-46, or, as in this case, the *Divorce Act*.
13. Nor should the companion decisions in *Canada (Attorney General) v. McArthur*, [2010] 3 S.C.R. 626,and *TeleZone* necessarily contradict this view. With respect, the question of whether the provincial superior courts have jurisdiction to declare federal regulations invalid was not in issue in either case, and neither judgment purported to decide the question of whether the Governor in Council is a “federal board, commission or other tribunal” for the purposes of the *Federal Courts Act*. In fact, the Governor in Council was not implicated in either case. As such, we respectfully disagree with the majority’s assertion that *McArthur* “implicitly if not explicitly affirmed that s. 18 of the Act gives the Federal Court exclusive original jurisdiction to issue a prerogative remedy or grant declaratory relief” against the Governor in Council: para. 63.
14. In *McArthur*, a prison inmate sought damages in the Ontario Superior Court of Justice against federal prison authorities for “arbitrary detention and alleged mistreatment”: para. 1. The legal issue was whether the inmate had to “first seek judicial review in the Federal Court to quash the segregation orders that [were] the basis of his claim” before he could proceed with his monetary claims in the superior court: para. 1. In *TeleZone*, a company sought damages in the Ontario Superior Court of Justice for breach of contract, negligence, and unjust enrichment resulting from a decision of the Minister of Industry Canada. The legal issue in that case was whether the company had to obtain “an order quashing the Minister’s decision” from the Federal Court before it could proceed with its damages claim in the superior court: para. 2.
15. In both cases, this Court concluded that s. 18 of the *Federal Courts Act* does not require a party to seek judicial review in the Federal Court before initiating an action for damages against the Crown in a provincial superior court. The Court’s decisions focused entirely on the jurisdiction of the provincial superior courts to issue monetary relief. As the majority itself acknowledges, the question of the provincial superior courts’ jurisdiction to issue declaratory relief in connection with federal regulations was not in issue. As a result, it is difficult to see how it can be said that these cases “support the principle” that the provincial superior courts have only a limited authority, or that they stand for the proposition that the provincial superior courts can only consider the administrative validity of federal regulations where it is “genuinely a necessary step in an otherwise valid proceeding and is not simply made to appear as such as the result of ‘artful pleading’”: para. 24.
16. The majority also suggests that this Court’s decision in *Canada Labour Relations Board v. Paul L’Anglais Inc.*, [1983] 1 S.C.R. 147, “expressly confirmed” that s. 18 grants the Federal Court exclusive original jurisdiction “to engage in judicial review on administrative law grounds”, while the provincial superior courts retain only the “jurisdiction to rule on constitutionality”: para. 64. In our respectful view, the *Paul L’Anglais* decision supports a contrary interpretation.
17. *Paul L’Anglais* was about a decision by the Canada Labour Relations Board, which had found that two media companies were “federal undertakings and that their employees perform work which falls under the jurisdiction established by the *Canada Labour Code*”. The companies brought a motion in the Quebec Superior Court arguing that their activities fell within “the exclusive authority of the provincial legislatures”. The issue before the Court was whether s. 18 ousted the jurisdiction of the superior court to “review the decision made in the case at bar by the Board”. The Court held that s. 18 does not have “the effect of superseding the superintending and reforming power of the Superior Court and its jurisdiction in evocation over the decision rendered in the case at bar by the Canada Labour Relations Board”: pp. 151-52, 158 and 163. Not only did the Court make no reference to any distinction between “constitutionality” and “administrative law grounds”, it made no reference to administrative law grounds at all. It is with respect inaccurate to state, as the majority does, that the Court made a distinction between “jurisdiction to rule on constitutionality”, and jurisdiction “to engage in judicial review on administrative law grounds” for the purposes of s. 18.
18. What the Court did say in *Paul L’Anglais* was that it was expressly endorsing and applying its earlier decision in *Law Society* (p. 158). In that case, the Director of Investigation and Research had interpreted the *Combines Investigation Act*, R.S.C. 1970, c. C-23, as giving him jurisdiction to initiate an investigation into the regulations and policies about advertising by members of the Law Society of British Columbia. The Law Society responded by initiating an action in the British Columbia Supreme Court seeking a declaration that the Act did not apply to the Law Society or its members, or, to the extent that it did apply, a declaration that the Act was *ultra vires* Parliament. The legal issue was whether s. 18 ousted the jurisdiction of the superior court to issue declarations in connection with federal laws. The Court concluded that s. 18 did not have this effect: pp. 320, 322-23 and 329.
19. In reaching this conclusion, the *Law Society* decision too did not distinguish between “constitutionality” and “administrative law grounds” to determine the effect of s. 18 on the jurisdiction of the provincial superior courts. Rather, the Court expressly held that the provincial superior courts cannot be stripped of the jurisdiction to declare invalid the federal laws they apply:

It is difficult to see how an argument can be advanced that a statute adopted by Parliament for the establishment of a court for the better administration of the laws of Canada can at the same time include a provision that the provincial superior courts may no longer declare a statute enacted by Parliament to be beyond the constitutional authority of Parliament. Sections 17 and 18 of the *Federal Court Act* must, in the view of the appellants, be so construed. In my view Parliament lacks the constitutional authority to so provide. To do so would strip the basic constitutional concepts of judicature of this country, namely the superior courts of the provinces, of a judicial power fundamental to a federal system as described in the *Constitution Act*.At the same time it would leave the provincially-organized superior courts with the invidious task of execution of federal and provincial laws, to paraphrase the *Valin* case, *supra*,while being unable to discriminate between valid and invalid federal statutes so as to refuse to “execute” the invalid statutes. For this second and more fundamental reason I conclude that the British Columbia courts have the requisite jurisdiction to entertain the claims for declarations herein made. [Emphasis added; p. 328.]

There was no suggestion, either in *Law Society* or *Paul L’Anglais*, that the legal proposition — provincial superior courts should not be in the “invidious” position of having to apply invalid federal laws — extended only to declarations of constitutional invalidity.

1. Accordingly, although we agree with the result reached by the majority, we are concerned that the reasons not be seen as representing a definitive view from this Court that the provincial superior courts cannot declare federal regulations invalid on administrative grounds.

**APPENDIX**

*Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.)

26.1 (1) The Governor in Council may establish guidelines respecting the making of orders for child support, including, but without limiting the generality of the foregoing, guidelines

(a) respecting the way in which the amount of an order for child support is to be determined;

(b) respecting the circumstances in which discretion may be exercised in the making of an order for child support;

(c) authorizing a court to require that the amount payable under an order for child support be paid in periodic payments, in a lump sum or in a lump sum and periodic payments;

(d) authorizing a court to require that the amount payable under an order for child support be paid or secured, or paid and secured, in the manner specified in the order;

(e) respecting the circumstances that give rise to the making of a variation order in respect of a child support order;

(f) respecting the determination of income for the purposes of the application of the guidelines;

(g) authorizing a court to impute income for the purposes of the application of the guidelines; and

(h) respecting the production of income information and providing for sanctions when that information is not provided.

(2) The guidelines shall be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation.

(3) In subsection (1), “order for child support” means

(a) an order or interim order made under section 15.1;

(b) a variation order in respect of a child support order; or

(c) an order or an interim order made under section 19.

*Federal Child Support Guidelines*, SOR/97-175

7. (1) In a child support order the court may, on either spouse’s request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child’s best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family’s spending pattern prior to the separation:

(a) child care expenses incurred as a result of the custodial parent’s employment, illness, disability or education or training for employment;

(b) that portion of the medical and dental insurance premiums attributable to the child;

(c) health-related expenses that exceed insurance reimbursement by at least $100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;

(d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child’s particular needs;

(e) expenses for post-secondary education; and

(f) extraordinary expenses for extracurricular activities.

(1.1) For the purposes of paragraphs (1)(d) and (f), the term “extraordinary expenses” means

(a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse’s income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or

(b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account

(i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,

(ii) the nature and number of the educational programs and extracurricular activities,

(iii) any special needs and talents of the child or children,

(iv) the overall cost of the programs and activities, and

(v) any other similar factor that the court considers relevant.

(2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

(3) Subject to subsection (4), in determining the amount of an expense referred to in subsection (1), the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.

(4) In determining the amount of an expense referred to in subsection (1), the court shall not take into account any universal child care benefit or any eligibility to claim that benefit.

10. (1) On either spouse’s application, a court may award an amount of child support that is different from the amount determined under any of sections 3 to 5, 8 or 9 if the court finds that the spouse making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.

* (2) Circumstances that may cause a spouse or child to suffer undue hardship include the following:

(a) the spouse has responsibility for an unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living;

(b) the spouse has unusually high expenses in relation to exercising access to a child;

(c) the spouse has a legal duty under a judgment, order or written separation agreement to support any person;

(d) the spouse has a legal duty to support a child, other than a child of the marriage, who is

(i) under the age of majority, or

(ii) the age of majority or over but is unable, by reason of illness, disability or other cause, to obtain the necessaries of life; and

(e) the spouse has a legal duty to support any person who is unable to obtain the necessaries of life due to an illness or disability.

(3) Despite a determination of undue hardship under subsection (1), an application under that subsection must be denied by the court if it is of the opinion that the household of the spouse who claims undue hardship would, after determining the amount of child support under any of sections 3 to 5, 8 or 9, have a higher standard of living than the household of the other spouse.

(4) In comparing standards of living for the purpose of subsection (3), the court may use the comparison of household standards of living test set out in Schedule II.

(5) Where the court awards a different amount of child support under subsection (1), it may specify, in the child support order, a reasonable time for the satisfaction of any obligation arising from circumstances that cause undue hardship and the amount payable at the end of that time.

(6) Where the court makes a child support order in a different amount under this section, it must record its reasons for doing so.

*Federal Courts Act*, R.S.C. 1985, c. F-7

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.

(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.

(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.

(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.

(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.

(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.

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.

(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.

(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.

*Appeal dismissed with costs.*

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