

**“Banish Your Backlog:
Concise Decision-Writing as a Teachable Skill That Improves Timely Justice”**
By Emily Crocco¹

“Administrative delay undermines a key purpose for which such decision-making authority was delegated - expeditious and efficient decision-making.”²
-Rowe J (Supreme Court of Canada)

A. Introduction

Many people know that tribunals, courts, and other government decision-makers have increasingly long backlogs.³ What fewer people may realize is that the length of decisions are also soaring, and that there is a strong negative correlation between decision length and how many decisions a court publishes.

Using original research, in this article I show that in the past decade, even though Canada’s Federal Court (FC) and Federal Court of Appeal (FCA) have more judges on their benches and annually received fewer new applications, the average number of decisions published by their judges decreased as the length of their decisions increased.⁴

Given this data, I returned to the Supreme Court of Canada’s (SCC’s) decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*.⁵ Many of us have rightly focused on what *Vavilov* tells us a reasonable decision must *include*. This time, I reviewed *Vavilov* for what the Court said we can *exclude* from reasonable decisions. In this paper, I summarize some of that guidance.

¹Administrative law lawyer and Chairperson of the Canada Agricultural Review Tribunal. Many thanks to the Hon. Justice Patrick Healy, Prof. Carissima Mathen, Prof. Paul Daly, Witold Tymowski, Supt. Peter Hearty, and Christine O’Doherty for their thoughtful feedback, to Muhammad Bilal for his statistical research assistance, and to Hugh Neilson for his steadfast encouragement and love. All errors are my own.

²*Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 46 (*Abrametz*).

³See, for example, A. Jones, “Excruciating delays at Ontario’s Landlord and Tenant Board: Ombudsman’s report” (May 4, 2023), online: the Canadian Press <<https://globalnews.ca/news/9673513/excruciating-delays-ontario-landlord-and-tenant-board-ombudsman/>>.

⁴My results are consistent with earlier studies done in other jurisdictions. In his ground-breaking, comprehensive study, Jonathan Khan found that from 1980 to 2018, the median word count of British Columbia Supreme Court decisions increased by almost 1,000 words to 4,740 words. He also found that the median delivery time increased from eight days in 1980 to 28 days in 2018. See J. Khan, “If I Had More Time, Would I Have Written a Shorter and Faster Decision?” (2022) 45:2 Dal. LJ 427 at 444-45. See also X. Beauchamp-Tremblay & A. Dusséaux, “Not Your Grandparents’ Civil Law: Decisions Are Getting Longer. Why and What Does it Mean in France and Québec?” (June 20, 2019), online: Slaw, <<https://www.slaw.ca/2019/06/20/not-your-grandparents-civil-law-decisions-are-getting-longer-why-and-what-does-it-mean-in-france-and-quebec/>>.

⁵2019 SCC 65 (*Vavilov*).

Next, I reviewed hundreds of recent FC and FCA decisions and identified language that some judges use to write more concisely. I share these phrases as tools decision-makers can use to write succinctly.

Finally, I suggest that given my research, the ability to write concisely should be a strong consideration when decision-makers and their support staff are hired and reinforced thereafter through training.

B. The Federal Courts' Decisions and Backlogs are Getting Longer

In reviewing all of the decisions published on CanLII from the FC and FCA from April 1, 2011, through March 31, 2022,⁶ I discovered strong negative correlations between the average length of decisions and the average number of decisions these courts and their judges publish each year.⁷

In other words, the longer their decisions, the fewer the Federal Courts and their judges are likely to publish.

The Federal Court

From 2012 to 2022, the FC received approximately 50% fewer new applications and the number of FC judges increased by 21%.⁸

Despite those advantages:

- The number of open files increased by 32%;
- The average decision length increased by 17%; and
- The average number of decisions published decreased by 20%.⁹

The Federal Court of Appeal

Between the same periods, the FCA had 24% fewer new applications and the number of its judges increased by 18%.¹⁰

⁶ See Appendix 1 for the data I compiled relating to the Federal Court, and Appendix 2 for the data I compiled relating to the Federal Court of Appeal.

⁷ I used the Pearson correlation coefficient for these determinations. With respect to the average number of pages per decision and the average number of decisions published per judge, at the FC, $R(9) = -.88$, $p < .05$, and at the FCA, $R(9) = -.90$, $p < .05$. With respect to the average number of pages per decision and the number of decisions published each year by the court, at the FC, $R(9) = -.82$, $p < .05$, and at the FCA, $R(9) = -.85$, $p < .05$.

⁸ During the 2011-2012 fiscal year, the FC received 31,527 new applications. During the fiscal 2021-2022 year, the FC received 15,809, new applications. Between the same periods, the number of FC judges increased by six, from 28 to 34 judges.

⁹ As of March 31, 2012, the FC had 6,981 open files. As of March 31, 2022, the FC had 9,209 open files. In 2011-2012, the average decision length was 12 pages and the average number of decisions published per judge was 51. By 2021-2022, the average decision length was 14 pages and the average number of decisions published per judge had reduced to 41.

¹⁰ During the 2011-2012 fiscal year, the FCA received 471 new applications. During the fiscal 2021-2022 year, the FCA received 357 new applications. Between the same periods, the number of FCA judges increased by two, from 11 to 13 judges.

Despite those advantages:

- The number of open files increased by 33%;
- The average decision length increased by 70%; and
- The average number of decisions published by its judges decreased by 46%.¹¹

Interestingly, reversing an earlier trend, the FCA's decisions have become longer, on average, than the FC's decisions.

C. How Decision Length Impacts Timely Access to Justice

At times, longer decisions are required, for example, because a case presents challenging facts or law.

That said, whatever a "longer" decision means to a tribunal or court, there are almost always ways to reduce decision length. Even small reductions in decision length can be important because longer decisions not only take more time to draft, but to legally review, edit, and translate. For example, in one hour a typical editor can edit 2-3 pages for standard texts and 1-2 pages for difficult texts.¹²

A key question, then, is whether the additional details are worth the delays.¹³ As Justice Karakatsanis warned in *Hryniak v Mauldin*:

"Prompt judicial resolution of legal disputes allows individuals to get on with their lives. But, when court costs and delays become too great, people look for alternatives or simply give up on justice."¹⁴

On the need for a "shift in culture" to improve the timeliness of the civil justice system, Justice Karakatsanis added:

"The proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure."¹⁵

¹¹ As of March 31, 2012, the FCA had 360 open files. As of March 31, 2022, the FCA had 479 open files. In 2011-2012, the average decision length was 10 pages and the average number of decisions published per judge was 28. By 2021-2022, the average decision length was 17 pages and the average number of decisions published per judge had reduced to 15.

¹²See A. Einsohn and M. Schwartz, *The Copyeditor's Handbook*, 4th ed., (Oakland: University of California Press, 2019), online: <<https://www.editors.ca/local-groups/toronto/find-work-or-find-editor/what-editors-charge#:~:text=Substantive%2C%20structural%2C%20or%20stylistic%20editing,2%20to%204%20pages%2Fhour>>.

¹³For a list of the reasons to write concise decisions, see G. Lebovits, A.V. Curtin & L. Solomon, "Ethical Judicial Opinion Writing" (2008) 21:2 *Geo J Legal Ethics* 237 at 254ff. See also G. Lebovitz, "Short Judicial Opinions: The Weight of Authority" (2004) 76:7 *NYSBA J.* 64; A. Kozinski, "The Wrong Stuff" (1992) *BYU L Rev* 325; and S. Feng, S. D'Mello, & A.C. Graesser, "Mind Wandering While Reading Easy and Difficult Texts" (2013) 20 *Psychon Bull Rev* 586.

¹⁴2014 SCC 7 at para 25.

¹⁵*Ibid.* at para 28.

The task, then, is to simplify the procedures where possible to make decision-making timelier and accessible.

Some of these important changes are already underway. For example, judges and adjudicators are now widely encouraged to write in plain language to improve access to justice.¹⁶

To change the wordiness of decisions, we will need to challenge some of our presumptions of what reasonable decisions must contain. As Selya J noted, “using fewer citations will make some judges uneasy, worried that either their devotion or their scholarship will be called into question.”¹⁷

But it’s not only judges and adjudicators who may struggle with the idea and practice of concise decision-writing. Legal counsel, law clerks, analysts, and editors may also need reassurance that brief decisions can reflect professional excellence.¹⁸

To help those of us who hesitate to write or support brief decisions, in the next section, I show that in *Vavilov*, the SCC repeatedly recognized that concise decisions can be reasonable.

D. What *Vavilov* Says We Can Exclude from Reasonable Decisions

Although it tells us what reasonable decisions must *include*, the SCC’s decision in *Vavilov* also tells us what reasonable decisions can *exclude*.¹⁹

¹⁶ See, for example, Provincial Court of British Columbia, “Plain language – essential for real access to justice” (2017), online: <<https://www.provincialcourt.bc.ca/enews/enews-18-07-2017#:~:text=The%20impact%20of%20plain%20language&text=We%20contribute%20to%20improved%20understanding,and%20accessible%20to%20average%20Canadians.%E2%80%9D>>; Social Security Tribunal, “An evaluation of how easy it is to read decisions of the Social Security Tribunal” (2022), online: <<https://www.sst-tss.gc.ca/en/our-work-our-people/evaluation-easy-it-read-decisions-social-security-tribunal>>; and Government of Canada Communications Community Office, “Plain language, accessibility and inclusive communications” (2022), online: <<https://www.canada.ca/en/privy-council/services/communications-community-office/communications-101-boot-camp-canadian-public-servants/plain-language-accessibility-inclusive-communications.html>>.

¹⁷Selya J, “Judges on Judging: Publish and Perish: The Fact of the Federal Appeals Judge in the Information Age”, (1994) 55 Ohio St LJ 405 at 414. See also “How to Write a Concise Opinion” by Douglas J, (1984) 22:4 Judges J 47. Concise decisions do not preclude thoughtful, humble ones. On this, see E. Craig, “Judicial Audiences: A Case Study of Justice Dave Watt’s Literary Judgments” (2018) 64 McGill LJ 309.

¹⁸ Decision-writers and their administrators should resist dogmatic rules about how decisions should be written: Morissette JA, “A Personal Perspective on Judgment Writing” (2020) 26:2 Can Crim L Rev 131 at 152-53: «Un nouveau juge qui écrit bien à sa manière et qui s’abstient de tout prosélytisme...devrait être laissé tranquille.»

¹⁹Importantly, decisions should not be assessed “against a standard of perfection” or to “the formalistic constraints and standards of academic logicians”; *Vavilov*, *supra* note 5 at paras 91 and 104. Even an *overly* concise, “not particularly articulate” decision can be reasonable where its reasoning can be ascertained: *Hussey v Bell Mobility Inc.*, 2022 FCA 95 at paras 86-88, 108.

The SCC wrote that reasonable decisions do not need to “include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred”.²⁰

Notably, the SCC found in *Vavilov* that reasonable decisions may exclude:

- Essential elements of a rationale or interpretation of a statute, where they can be inferred from the record;²¹
- Adjudication of an issue, where the parties have conceded it;²²
- An explanation of well-established administrative law, where unchallenged;²³
- The essential elements of a section of a law, where undisputed;²⁴
- Analysis and findings on issues and concerns, where not central;²⁵
- A formalistic statutory interpretation, depending on the expertise and experience of the decision-maker and whether the provision is a minor element of the decision;²⁶ and
- Detailed reasons, where the potential for significant personal impact is limited.²⁷

Given this direction, it can be entirely appropriate to put less in our decisions. As Phelan J wrote in *Su v Canada (Citizenship and Immigration)*:

“There is nothing unfair or inadequate about brief reasons...so long as the Court can see a line of reasoning that could justify the decision – often referred to as “connecting the dots”.²⁸

So how do we do this? How do we put in enough information for a Court to “connect the dots” without writing too much?

E. Strategies For Writing Concisely

“Perfection is not the yardstick here.”²⁹

-Gauthier JA (Federal Court of Appeal)

²⁰ *Vavilov, ibid.* at para 91, citing *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16.

²¹ *Vavilov, ibid.* at paras 98, 103, 123. See also *Alexion Pharmaceuticals Inc. v Canada (Attorney General)*, 2021 FCA 157 at para 18, where Stratas JA wrote that “the reviewing court might be able to conclude from the circumstances that the administrator knew and considered all the elements but for reasons of concision the administrator did not expressly mention them all.” See also *Ramachandiran v. Canada (Citizenship and Immigration)*, 2023 FC 228 at para 40.

²² *Vavilov, ibid.* at para 94.

²³ *Ibid.*

²⁴ *Ibid.* at para 120.

²⁵ *Ibid.* at paras 127-28.

²⁶ *Ibid.* at paras 119-122.

²⁷ *Ibid.* at para 133. As Diner J wrote in *Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17, ““Reasonableness” is not synonymous with “voluminous reasons”; simple, concise justification will do.”” See also *Anvari v Canada (Citizenship and Immigration)*, 2023 FC 365.

²⁸ *Su v Canada (Citizenship and Immigration)*, 2021 FC 1269 at para 10.

²⁹ *Rosianu v Western Logistics Inc.*, 2021 FCA 241 at para 75.

There are many general strategies to writing concisely, including using point-first writing, connecting words, and plain language.³⁰ I will not review those strategies here.

Instead, below I review easy-to-adopt phrases from recent FC and FCA decisions that can help us draft shorter decisions while helping our readers “connect the dots” on how we came to our decisions.³¹

I have italicized the important aspects of each citation. In addition, I have reproduced the below phrases in Appendix 3 for an at-a-glance chart of the strategies I’ve identified.

1. Summarize the Law

Instead of using long, block quotes, briefly summarize only the parts of the law that are necessary to the issue you must determine. For example:

- “*For our purposes, it will not be necessary to describe in detail the CRB. Sufficient to say that it is part of a package introduced by the federal government...*”³²
- “Under section 44 of the *Act*, a person who receives an overpayment of benefits is required to return the amount of the overpayment without delay. *These provisions have the effect of* creating an enforceable debt obligation in the amount specified in the Notice of Debt.”³³
- “With respect to the Court’s exercise of discretion to hear the appeals despite their mootness, *we have considered the relevant factors* set out in *Borowski* and agree that the exercise of our discretion is not warranted. It is not necessary to hear the merits of the appeals.”³⁴

2. Summarize Undisputed Facts

If the parties do not dispute the facts, you can often summarize them concisely, as the judges did here:

- “*The facts are undisputed and may be briefly summarized.*”³⁵

³⁰ See the beautifully written commentary by Stratas JA, “Some thoughts on legal writing and written advocacy” (March 8, 2021), online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3800057>.

See also Australian Centre for Justice Innovation and Monash University, “The Timeliness Project: Background Report” (October 1, 2013), online: <<https://ssrn.com/abstract=2713502>>.

³¹ For other ideas, see J. Khan, ““The Life of a Reserve”: How Might We Improve the Structure, Content, Accessibility, Length & Timeliness of Judicial Decisions?” (LL.M. thesis, University of Toronto, 2019), online: <https://dam-oclc.bac-lac.gc.ca/download?id=b5220be5-5f39-43b0-8b1a-d315e64d62eb&fileName=Khan_Jon_%20201911_LLM_thesis.pdf>.

³² *Matembe v Canada (Attorney General)*, 2023 FC 290 at paras 4-5.

³³ *Velasco v Canada (Attorney General)*, 2023 FC 331 at para 17 (*Velasco*). See also *Kubiangan c Canada*, 2023 CAF 30 at para 4, where the FCA briefly refers, without elaborating, to the sections of the applicable law and to an earlier FCA decision on the FC’s jurisdiction to consider an issue.

³⁴ *Spencer v Canada (Attorney General)*, 2023 FCA 8 at para 6.

³⁵ *Cassidy v Canada*, 2011 FCA 271 at para 2.

- “[T]he facts are not in dispute other than...”³⁶
- “No exceptions to that presumption have been raised nor apply”.³⁷
- “The absence of responding documents from the Appellant has left the Respondent’s Bill of Costs *substantially unopposed*.”³⁸

3. Summarize Lengthy Evidence or Submissions

You do not need to summarize all of the evidence or submissions that you received. Recall that “large numbers of documents do not necessarily entail complexity, especially in a routine case dealing with issues in which the tribunal has experience.”³⁹

To signal that you’ve heard the evidence without addressing all of it, consider this language:

- “Before this Court, *the applicant essentially argues that* the Board ignored evidence...”⁴⁰
- “I am of the view that *he is essentially asking this Court to*...That is not this Court’s role on judicial review...”⁴¹
- “*The Respondent advances a series of submissions at* paragraphs 35-44 of its Memorandum *that seek to justify the decision*...”⁴²
- “*The applicant made two central submissions to support his position that the RAD’s decision was unreasonable. I will address them in turn.*”⁴³
- “*The applicant’s legal position on corroborative evidence from his parents is neatly summarized*...”⁴⁴
- “*The evidence filed by the respondents in opposition to the stay consists largely of media reports appended to affidavits of non-experts. It is hearsay.*”⁴⁵

4. Refer Only Once to The Evidence You Agree With

If you agree with a party’s submissions, avoid summarizing that evidence in one part of your decision and then repeating it later when you indicate your agreement.

Instead, try something like this:

- “Mr Burlacu *argues, and I agree that*...”⁴⁶

³⁶ *Canada v Kilback Stock Farm Ltd.*, 2020 FC 981 at para 18.

³⁷ *Velasco*, *supra* note 33 at para 13.

³⁸ *Soulliere v Canada*, 2023 FCA 142 at para 6.

³⁹ *Abrametz*, *supra* note 2 at para 66.

⁴⁰ *Tulk v Canada (Attorney General)*, 2022 FCA 45 at para 2.

⁴¹ *Kot v Canada (Attorney General)*, 2022 FCA 133 at para 16 (*Kot*).

⁴² *Burlacu v Canada (Attorney General)*, 2022 FC 1467 at para 37 (*Burlacu*).

⁴³ *Singh v Canada (Citizenship and Immigration)*, 2023 FC 215 at para 16 (*Singh*).

⁴⁴ *Ibid.* at para 19.

⁴⁵ *Canada v Boloh 1(A)*, 2023 FCA 60 at para 18.

⁴⁶ *Burlacu*, *supra* note 42 at para 33.

- “The Respondent *submits, and I agree*, that when a court reviews the merits of an administrative decision, the presumptive standard of review is reasonableness...”⁴⁷
- “The Respondent *concedes, and I agree*, that the Applicant has identified a serious issue and has satisfied the first branch of the conjunctive Toth test...”⁴⁸

5. Stick to the Determinative Issues

Limit your decision to the issues you must determine. You can do this by using language that tells your audience that you’re aware of other issues than the ones you analyze.

From the Outset

Below are phrases that signal that the judge was aware of other issues, but that they will concentrate only on the relevant ones:

- “*The determinative issue... is whether...*”⁴⁹
- “*I acknowledge that before the Tax Court, and this Court, [the Applicant] advanced several other issues of concern to her.....[W]e cannot consider those issues. We can only address the correctness of the Tax Court’s decision. Any other claims she might have could only be advanced elsewhere.*”⁵⁰
- “*The dispute here is really about whether...*”⁵¹
- “*The Applicant requested many remedies, most of which are not available on judicial review. What does fall within this Court’s jurisdiction is the Applicant’s request that the underlying decision be set aside and sent back for redetermination.*”⁵²
- “*Notwithstanding the interesting historical backdrop of these proceedings, the issue is straightforward...*”⁵³
- “*Even though the applicant labels it differently, the problem which this Court is being asked to resolve is the result of an under-inclusive definition.*”⁵⁴

Once You Make a Determinative Conclusion

Once you have reached a determinative conclusion, avoid unnecessary assessments of other evidence or allegations. For example:

⁴⁷ *Velasco*, *supra* note 33 at para 13.

⁴⁸ *Setyawati v Canada (Citizenship and Immigration)*, 2022 CanLII 1328 at para 18 (FC).

⁴⁹ *Shohratifar v Canada (Citizenship and Immigration)*, 2023 FC 218 at para 4.

⁵⁰ *Pudney v Canada*, 2023 FCA 42 at paras 16-17.

⁵¹ *BMO Nesbitt Burns Inc. v Canada (National Revenue)*, 2023 FCA 43 at para 4. See also *Asghar v Canada*, 2023 FCA 62 at para 4, where Locke JA wrote that “[t]he Federal Court was not required to discuss each and every one of Mr. Asghar’s allegations, as we assume that the Federal Court considered all of them.”

⁵² *Mahoney v Canada*, 2023 FC 507 at para 2.

⁵³ *Bacardi & Company Ltd. v Havana Club Holdings S.A.*, 2004 FCA 220 at para 24.

⁵⁴ *Canada (Attorney General) v Vorobyov*, 2014 FCA 102 at para 31.

- “Having found the breach of procedural fairness to be determinative, it is unnecessary for me to assess the remaining two questions raised by the Applicant.”⁵⁵
- “I should note that, *in reaching this conclusion, it is not necessary to comment on the Federal Court’s analysis in this regard or the respondent’s arguments thereon...*”⁵⁶
- “*In view of my conclusion with respect to jurisdiction, it is unnecessary for me to address whether an order of mandamus would be available as a remedy and I decline to do so.*”⁵⁷
- “*Although the Applicant raised a number of issues with the Decision, the Officer’s failure to address the TRP request is dispositive of this judicial review. Therefore, I decline to address the other issues raised by the Applicant.*”⁵⁸
- “*It is unnecessary for me to address Mr. Egenti’s fairness concerns because the credibility findings themselves are unreasonable.*”⁵⁹

6. Limit Your Analysis to Dispositive Evidence

Like limiting your analysis to the determinative issue, you can limit your analysis to the evidence that will dispose of the issue before you.

As Roussel JA wrote in a recent decision:

“Furthermore, contrary to the applicant’s assertion, the Board was not required to refer to every piece of evidence, including the testimony of all the witnesses. It was also not required to respond to every argument or to make an explicit finding on each constituent element leading to its conclusion...”⁶⁰

The following is sample language you can use to concentrate on the evidence that will decide an issue:

- “I conclude that the officer’s decision was reasonable *in at least one determinative respect.*”⁶¹

⁵⁵ *Carola v Canada (Attorney General)*, 2021 FC 1347 at para 75. See also *Smith v Canada*, 2022 FCA 221 at paras 10 & 12 (*Smith*); and *Mulla v Canada (Citizenship and Immigration)*, 2022 FC 463 at para 17, where Gleeson J wrote that “an institutional context that includes a high volume of applications will justify reasons that do not include detailed explanations and references to the evidence but instead are limited to markers and conclusions... sufficient to... identify and follow the... chain of logic.”

⁵⁶ *Smith, ibid.* at para 15.

⁵⁷ *Wood v Canada (Attorney General)*, 2023 FC 224 at para 22.

⁵⁸ *Asciutto v Canada (Citizenship and Immigration)*, 2023 FC 883 at para 10. See also *Singh*, *supra* note 43 at para 19.

⁵⁹ *Egenti v Canada (Citizenship and Immigration)*, 2023 FC 639 at para 21.

⁶⁰ *Kot*, *supra* note 41 at para 14.

⁶¹ *Shafique v Canada (Citizenship and Immigration)*, 2023 FC 226 at para 2.

- “Having determined that the Officer’s... analysis was unreasonable, it is unnecessary to review the Applicant’s submissions with respect to establishment.”⁶²

7. Avoid Referring to Trite Law

“Trite law” is a phrase used to indicate that a law is common knowledge, obvious or well established.

In your decision, avoid referring to trite principles, like these:

- You are aware of, or have considered, the record before you.⁶³
- You are not required to make specific reference to every single piece of evidence in the record.⁶⁴
- Factual disputes must be determined on their merits in each case.⁶⁵

F. Concluding Thoughts

“What is needed is clear, succinct, forceful writing. It is not easy.”⁶⁶

-Dickson J (Supreme Court of Canada)

I recognize that writing concisely can be difficult, especially at first.⁶⁷ But the ability is a muscle, like any other: The more we train it, the stronger it gets. And as we get better at identifying what is unnecessary, our efficiencies accumulate.⁶⁸

My research demonstrates that concise writing is an important factor as courts and tribunals look to improve the timeliness of their decision-making.

⁶² *Khaja v Canada (Citizenship and Immigration)*, 2022 FC 1041 at para 38.

⁶³ *Durdevic v Canada (Citizenship and Immigration)*, 2018 FC 427 at para 26 and *Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at para 47 (*Nshogoza*).

⁶⁴ *Nshogoza, ibid.* at para 47.

⁶⁵ *Canadian Association of Refugee Lawyers v Canada (Citizenship and Immigration)*, 2019 FC 1126 at para 79.

⁶⁶ Dickson J, “Seminar on Judgment Writing” (CIAJ, July 2, 1981), online: <https://ciaj-icaj.ca/wp-content/uploads/podcasts/2020/11/podcast1a_dickson-speech-1981-copy.pdf>.

⁶⁷ “[C]oncise reasons are preferable and far more difficult to write than long rambling decisions”: *Canada (Citizenship and Immigration) v Mvundura*, 2021 FC 369 at para 32. Could the strategies used to produce concise research papers be adopted by decision-makers? See T.C. Clapper, “Vigorous writing is concise, research is rigorous”, (2020) 51:6 *Simulation & Gaming* 739.

⁶⁸ “When I strive toward brevity, I strive toward the essential and the meaningful. Brevity rails against the non-essential, against filling time, against boredom, against self-indulgent long-windedness and against agonizing repetition... Brevity is economy.” R. Bergart, “What do we talk about when we talk about brevity?” (Annual Modern Languages and Literatures Annual Graduate Conference, Western University, March 8, 2014), online:

<<https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1011&context=mlgradconference#:~:text=Robin%20Bergart%2C%20University%20of%20Guelph&text=This%20paper%20reveals%20a%20clash,at%20the%20University%20of%20Guelph>>.

As a result, I recommend that courts and tribunals evaluate candidates for this ability.

I further recommend that decision-makers and their staff be trained to write concisely. In my view, these measures will be most effective if, in addition to providing technical strategies, the guidance also addresses potential systemic and psychological barriers to the habit.

Appendix 1
Statistics About the Federal Court

Each column reflects the data from April 1st of the earlier year to March 31st of the later year.

FEDERAL COURT	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Number of open files at start of fiscal	5,209 ¹	6,981	9,200	7,784	8,320	6,165	5,772	4,711	5,904	6,910	8,311
Number of new applications	31,527	38,441 ²	37,275	35,731	31,577	28,304 ³	25,961	33,088	33,727	8,100	15,809 ⁴
Total number of applications	36,736	45,422	46,475	43,515	39,897	34,469	31,733	37,799	39,631	15,010	24,120
Number of open files at end of fiscal period	6,981 ⁵	9,200 ⁶	7,784	8,320	6,165	5,772 ⁷	4,711	5,904	6,910	8,311	9,209 ⁸
Number of decisions published by FC	1,416 ⁹	1,325 ¹⁰	1,131 ¹¹	1,195 ¹²	1,224 ¹³	1,276 ¹⁴	1,094 ¹⁵	1,498 ¹⁶	1,839 ¹⁷	1,000 ¹⁸	1,557 ¹⁹
Number of judges on the court ²⁰	28 ²¹	28 ²²	30 ²³	32 ²⁴	35 ²⁵	35 ²⁶	34 ²⁷	34 ²⁸	34 ²⁹	31 ³⁰	34 ³¹
Average number of decisions published per judge ³²	51	47	38	37	35	36	32	44	54	32	41
Average number of pages per decisions	12	13	15	15	14	14	15	12	12	16	14
Median number of pages per decisions	9	9	10	10	10	9	9	8	9	12	10

Appendix 2
Statistics About the Federal Court of Appeal

Each column reflects the data from April 1st of the earlier year to March 31st of the later year. Numbers in parentheses reflect percentage increase or decrease from preceding year.

FEDERAL COURT OF APPEAL	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Number of open files at start of fiscal	403 ³³	360	467	413	555	463	450	441	540	497	477
Number of new files during fiscal	471 ³⁴	595 ³⁵	496	621	527	527 ³⁶	422	463	490	342	357
Number of total files open during fiscal	874	955	963	1,034	1,082	990	872	904	1,030	839	834
Number of open files at end of fiscal period	360 ³⁷	467 ³⁸	413	555	463	450 ³⁹	441	540	497	477	479 ⁴⁰
Number of decisions published by FCA	309 ⁴¹	277 ⁴²	247 ⁴³	242 ⁴⁴	267 ⁴⁵	252 ⁴⁶	223 ⁴⁷	191 ⁴⁸	255 ⁴⁹	190 ⁵⁰	201 ⁵¹
Number of judges on the court ⁵²	11 ⁵³	11 ⁵⁴	11 ⁵⁵	8 ⁵⁶	12 ⁵⁷	12 ⁵⁸	12 ⁵⁹	12 ⁶⁰	12 ⁶¹	13 ⁶²	13 ⁶³
Average number of decisions published per judge ⁶⁴	28	25	22	30	22	21	19	16	22	15	15
Average number of pages per decision	10	11	10	10	11	12	14	15	12	17	17
Median number of pages per decision	6	5	5	5	6	7	8	8	7	11	9

Appendix 3
At-A-Glance Concise-Writing Phrases

A. Summarize The Law	
1	For our purposes, it will not be necessary to describe in detail [the particular law]. Sufficient to say that it is [brief summary].
2	Under [section of law], [summarize the section]. These provisions have the effect of [describe the effect].
3	"With respect to [X], we have considered the relevant factors set out in [case or law] and agree that [Y]. It is not necessary to hear [Z].

B. Summarize Undisputed Facts	
1	The facts are undisputed and may be briefly summarized.
2	[T]he facts are not in dispute other than...
3	No exceptions to that presumption have been raised nor apply.
4	The absence of responding documents from the [party] has left the [other party's] [argument re: X] substantially unopposed.

C. Summarize Lengthy Evidence or Submissions	
1	Before this [Court/tribunal], the applicant essentially argues that [X].
2	The [party] is essentially asking this [Court/tribunal] to [X]. This is not this [Court/tribunal's] role...
3	The [party] advances a series of submissions at paragraphs [X-Y] of its [written submissions] that seek to justify [Z]...
4	The [party] made two central submissions to support their position that [X]. I will address them in turn.
5	The [party's] legal position on [X] is neatly summarized in [Z]...
6	The evidence filed by the [party] in opposition to [X] consists largely of [Z].

D. Refer Only Once to The Evidence You Agree With	
1	[The party] argues, and I agree, that...
2	The [party] submits, and I agree, that...
3	The [party] concedes, and I agree, that [X]...

E. Stick to the Determinative Issues - From the Outset	
1	The determinative issue... is whether...
2	I acknowledge that the [party] advanced several other issues of concern to them.....[W]e cannot consider those issues. We can only address [X]. Any other claims they might have could only be advanced elsewhere.
3	The sole issue before the [Court/Tribunal] concerns...
4	The dispute here is really about...

5	The [party] requested many remedies, most of which are not available in [this process]. What does fall within this [Court's/tribunal's] jurisdiction is the [party's] request that...
6	Notwithstanding the interesting historical backdrop of these proceedings, the issue is straightforward...
7	Even though the [party] labels it differently, the problem which this [Court/tribunal] is being asked to resolve is...

F. Stick To the Determinative Issues – After Your Determinative Conclusion	
1	Having found the [X] to be determinative, it is unnecessary for me to assess the remaining two questions raised by the [party]...
2	I should note that, in reaching this conclusion, it is not necessary to comment on [X]...
3	In view of my conclusion with respect to [X], it is unnecessary for me to address whether [Y] and I decline to do so.
4	Although the [party] raised a number of issues with [X], the [Y] is dispositive of this process. Therefore, I decline to address the other issues raised by the [party].
5	“It is unnecessary for me to address [the party's] [X] concerns because the [Z] themselves are [determinative of this process].”

G. Limit Your Assessment to Dispositive Evidence	
1	I conclude that [X] in at least one determinative respect.
2	Having determined [X], it is unnecessary to review the [party's] submissions with respect to establishment.

ENDNOTES

¹ The statistics for the Federal Court's new proceedings for the end of each fiscal year from 2011-2012 through 2012-2013 are taken from the Courts Administration Service's [2011-2012 Annual Report](#).

² The statistics for the Federal Court's new proceedings for each fiscal year from 2012-2013 through 2015-2016 are taken from the Courts Administration Service's [2015-2016 Annual Report](#).

³ The statistics for the Federal Court's new proceedings for each fiscal year from 2016-2017 fiscal year through the 2020-2021 fiscal year are taken from the Courts Administration Service's [2020-2021 Annual Report](#).

⁴ The Courts Administration Service's [Annual Report 2021-2022 \(cas-satj.gc.ca\)](#).

⁵ The Courts Administration Service's [2011-2012 Annual Report](#).

⁶ The statistics for the Federal Court's active proceedings for the end of each fiscal year from 2012-2013 fiscal year through the 2015-2016 fiscal year are taken from the Courts Administration Service's [2015-2016 Annual Report](#).

⁷ The statistics for the Federal Court's active proceedings for the end of each fiscal year from 2016-2017 fiscal year through the 2020-2021 fiscal year are taken from the Courts Administration Service's [2020-2021 Annual Report](#).

⁸ According to the Courts Administration Service's [2021-2022 Annual Report](#).

⁹ See [Search Results | CanLII](#).

¹⁰ See [Search Results | CanLII](#).

¹¹ See [Search Results | CanLII](#).

¹² See [Search Results | CanLII](#).

¹³ See [Search Results | CanLII](#).

¹⁴ See [Search Results | CanLII](#).

¹⁵ See [Search Results | CanLII](#).

¹⁶ See [Search Results | CanLII](#).

¹⁷ See [Search Results | CanLII](#).

¹⁸ See [Search Results | CanLII](#).

¹⁹ See [Search Results | CanLII](#).

²⁰ These numbers exclude Supernumerary Judges, Deputy Judges and Prothonotaries. The numbers are taken from the version of the Federal Court's website as it is preserved online on the Internet Archive website (<https://web.archive.org>) as the webpage was last modified on or before March 31st of the fiscal year in question.

²¹ According to the Federal Court's website as it was captured on March 7, 2012, at [Federal Court \(Canada\) - About the Court - Judges and Prothonotaries \(archive.org\)](#).

²² According to the Federal Court's website as it was captured on March 7, 2012, at [Federal Court \(Canada\) - About the Court - Judges and Prothonotaries \(archive.org\)](#). (I couldn't find a screen grab that was within the 2012-2013 fiscal period.)

²³ According to the Federal Court's website as it was captured on March 12, 2014 at [Federal Court \(Canada\) - About the Court - Judges and Prothonotaries \(archive.org\)](#).

²⁴ According to the Federal Court's website as it was captured on October 27, 2014 at [Federal Court \(Canada\) - About the Court - Judges and Prothonotaries \(archive.org\)](#).

²⁵ According to the Federal Court's website as it was captured on February 21, 2016 at [Federal Court \(Canada\) - About the Court - Judges and Prothonotaries \(archive.org\)](#).

²⁶ According to the Federal Court's website as it was captured on March 30, 2017 at [Federal Court \(Canada\) - About the Court - Judges and Prothonotaries \(archive.org\)](#).

²⁷ According to the Federal Court's website as it was captured on June 13, 2017 at [Federal Court \(Canada\) - About the Court - Judges and Prothonotaries \(archive.org\)](#).

²⁸ According to the Federal Court's website as it was captured on June 13, 2017 at [Federal Court \(Canada\) - About the Court - Judges and Prothonotaries \(archive.org\)](#). I could not find a preserved page that was within the 2018-2019 fiscal year.

²⁹ [Federal Court - Members of the Court \(archive.org\)](#)

³⁰ [Federal Court - Members of the Court \(archive.org\)](#)

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- ³¹ According to the Federal Court's website as it was captured on March 7, 2022, at [Federal Court - About the Court - Members of the Court \(archive.org\)](#). This number excludes the Court's Supernumerary and Associate Judges.
- ³² Total number of decisions published by the Federal Court to CanLII.
- ³³ See [JU16-2012-eng.pdf \(publications.gc.ca\)](#).
- ³⁴ See [JU16-2012-eng.pdf \(publications.gc.ca\)](#).
- ³⁵ The statistics for the Federal Court of Appeal's new proceedings for each fiscal year from 2012-2013 fiscal year through the 2015-2016 fiscal year are taken from the Courts Administration Service's [2015-2016 Annual Report](#).
- ³⁶ The statistics from 2016-2017 through 2020-2021 are taken from the CAS' [2020-2021 Annual Report](#).
- ³⁷ According to the Courts Administration Service's [2011-12 Annual Report](#).
- ³⁸ The statistics for the Federal Court of Appeal's active proceedings for the end of each fiscal year from 2012-2013 fiscal year through the 2015-2016 fiscal year are taken from the Courts Administration Service's [2015-2016 Annual Report](#).
- ³⁹ The statistics for the Federal Court of Appeal's active proceedings for the end of each fiscal year from 2016-2017 fiscal year through the 2020-2021 fiscal year are taken from the Courts Administration Service's [2020-2021 Annual Report](#).
- ⁴⁰ According to the Courts Administration Service's [2021-2022 Annual Report](#).
- ⁴¹ See [Search Results | CanLII](#).
- ⁴² See [Search Results | CanLII](#).
- ⁴³ See [Search Results | CanLII](#).
- ⁴⁴ See [Search Results | CanLII](#).
- ⁴⁵ See [Search Results | CanLII](#).
- ⁴⁶ See [Search Results | CanLII](#).
- ⁴⁷ See [Search Results | CanLII](#).
- ⁴⁸ See [Search Results | CanLII](#).
- ⁴⁹ See [Search Results | CanLII](#).
- ⁵⁰ See [Search Results | CanLII](#).
- ⁵¹ See [Search Results | CanLII](#).
- ⁵² These numbers exclude Supernumerary Judges.
- ⁵³ According to the Federal Court of Appeal's website as it existed on February 8, 2012. See [About the Court - Judges Biographies \(archive.org\)](#).
- ⁵⁴ According to the Federal Court of Appeal's website as it existed on February 8, 2012 [About the Court - Judges Biographies \(archive.org\)](#).
- ⁵⁵ According to the Federal Court of Appeal's website as it existed on August 20, 2013. [About the Court - Judges Biographies \(archive.org\)](#)
- ⁵⁶ According to the FCA's website as it existed on August 5th, 2014, per ([Judges \(archive.org\)](#)).
- ⁵⁷ According to the FCA's website as it existed on September 10, 2015, per [Judges \(archive.org\)](#).
- ⁵⁸ This statistic was reached by comparing the FCA's website from [2015](#) to its website in [2019](#), and by reference to the dates provided on its current website ([Federal Court - Members of the Court - Former Judges and Associate Judges \(fct-cf.gc.ca\)](#)).
- ⁵⁹ This statistic was reached by comparing the FCA's website from [2015](#) to its website in [2019](#), and by reference to the dates provided on its current website ([Federal Court - Members of the Court - Former Judges and Associate Judges \(fct-cf.gc.ca\)](#)).
- ⁶⁰ According to the FCA's website as it existed on March 30, 2019, per [Federal Court of Appeal - Judges of the Court \(archive.org\)](#).
- ⁶¹ According to the FCA's website as it existed on January 23, 2020, per [Federal Court of Appeal - Judges of the Court \(archive.org\)](#).
- ⁶² According to the FCA's website as it existed on January 22, 2021, per [Federal Court of Appeal - Judges of the Court \(archive.org\)](#).
- ⁶³ According to the Federal Court of Appeal's website as it was on March 2, 2022. See [Federal Court of Appeal - Judges of the Court \(archive.org\)](#).
- ⁶⁴ Total number of decisions published by the Federal Court of Appeal to CanLII.