

BILL C-30: COURTS ADMINISTRATION SERVICE ACT

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LEGISLATIVE HISTORY OF BILL C-30

HOUSE OF COMMONS		SENATE	
Bill Stage	Date	Bill Stage	Date
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Second Reading:	3 October 2001	Second Reading:	12 March 2002
Committee Report:	12 December 2001	Committee Report:	21 March 2002
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N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in bold print .			

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BILL C-30: COURTS ADMINISTRATION SERVICE ACT*

BACKGROUND

A. General

Bill C-30, An Act to establish a body that provides administrative services to the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court and the Tax Court of Canada, to amend the Federal Court Act, the Tax Court of Canada Act and the Judges Act, and to make related and consequential amendments to other Acts (the Courts Administration Service Act), was introduced in the House of Commons on 18 September 2001. It passed Second Reading on 3 October 2001. The Bill has three main objectives: to establish a single administrative structure for the Federal Court, the Court Martial Appeal Court and the Tax Court to be called the “Courts Administration Service”; to amend the *Federal Court Act* to create a separate Federal Court of Appeal; and to change the status of the Tax Court of Canada to that of a superior court. The Bill also makes consequential amendments to many other federal statutes, along with coordinating amendments to a number of bills currently before, or recently enacted by, Parliament.

Substantially similar measures were proposed as Bill C-40 during the 2nd Session of the 36th Parliament on 15 June 2000, but that Bill did not proceed beyond First Reading.

B. The Current Court Structure

1. General

The Supreme Court of Canada, the Federal Court of Canada and the Tax Court of Canada are established by Parliament pursuant to section 101 of the *Constitution Act, 1867*. These courts are administered by the federal government, unlike most courts in Canada which are administered by the provinces. Judges of the Federal Court and the Tax Court, as well as other federally appointed judges, are appointed by Order in Council, usually after consultation with the legal profession and the community. The judges can be removed only with the approval of Parliament.

2. The Federal Court of Canada

The Federal Court is a superior court of record, with an appeal and a trial division. It has both civil and criminal jurisdiction and is a bijural court, meaning its decisions encompass both the common law and civil law systems in Canada. The Court was created in 1971 by the enactment of the *Federal Court Act* as the successor to the Exchequer Court of Canada which was established in 1875. Both courts were established under the authority of section 101 of the *Constitution Act, 1867* as courts of law, equity and admiralty for the “better administration of the laws of Canada.” Although the Federal Court is headquartered in Ottawa, the judges of both divisions may sit across Canada. The Court reviews the disputed decisions of federal boards, commissions and tribunals. The Federal Court’s jurisdiction also includes interprovincial and federal-provincial disputes, intellectual property proceedings, admiralty matters, citizenship appeals, and appeals under certain federal statutes. The Federal Court shares jurisdiction with the provincial superior courts with respect to claims by and against the Crown. The Federal Court of Appeal has its own specific review jurisdiction in respect of a number of federal judicial boards, commissions or other tribunals.

The Chief Justice of the Federal Court of Canada is the president of the Court and is responsible for assigning cases to the judges of the Appeal Division. The Associate Chief Justice has the same responsibility for the Trial Division. Both have responsibilities for the administration of the Court. In addition to the judges of the Court, there are a number of prothonotaries. These are officers of the Court who exercise judicial and quasi-judicial functions, including hearing interlocutory motions and matters involving less than \$50,000.

The Registry of the Federal Court provides administrative and legal support services. The Registry’s head is the Administrator of the Federal Court, appointed by court order pursuant to the Rules of the Federal Court. The Administrator’s job is to manage the offices of the Court and supervise its staff. The Administrator is also a deputy of the Commissioner for Federal Judicial Affairs (see below) and is the registrar of the Court Martial Appeal Court.

3. The Tax Court of Canada

The Tax Court of Canada was created in 1983 to replace the Tax Review Board. Headquartered in Ottawa, the Court sits in major cities across the country. It has exclusive original jurisdiction, not only in relation to tax and revenue matters, but also under federal programs such as the Canada Pension Plan, Employment Insurance, and Old Age Security. These cases involve the appeal of decisions made by government officials. Generally, appeals of Tax Court decisions are made to the Appeal Division of the Federal Court of Canada.

The *Tax Court of Canada Act* makes the Chief Judge responsible for the proper transaction of the business of the Court, including assigning cases to judges. The Registry of the Tax Court provides administrative services to the Court. The Registry’s head is the Registrar, who is appointed by the Public Service Commission on the recommendation of the Commissioner for Federal Judicial Affairs and the Chief Judge and Associate Chief Judge of the Tax Court. As with the Administrator of the Federal Court, the Registrar’s duties are to manage the offices of the Court and to supervise its staff. The Registrar is also a deputy of the Commissioner for Federal Judicial Affairs.

4. The Court Martial Appeal Court

Courts martial are established under the *National Defence Act* to try members of the armed forces for breaches of the military Code of Service Discipline. A court martial is presided over by a judge advocate who is a legally trained

officer of the armed forces. A court martial might be composed of three or five officers of the armed forces who have the authority to determine the accused's guilt or innocence and, in the event of a guilty verdict, to determine the sentence. The judges of the Court Martial Appeal Court are judges of the Federal Court designated by the Governor in Council. A panel of three judges hears court martial appeals. The officers, clerks and employees appointed to the Federal Court provide their same services to a Court Martial Appeal Court. In certain circumstances, an appeal can be made to the Supreme Court of Canada from a decision of the Court Martial Appeal Court.

5. The Office of the Commissioner for Federal Judicial Affairs

The Office of the Commissioner for Federal Judicial Affairs was established in 1978 to act as an intermediary between the federally appointed judiciary and the government. The Office's duties are set out in the *Judges Act*. The Office administers the payment of salaries, allowances, expenses and annuities of the federally appointed judiciary, including the Federal Court, the Tax Court and provincial superior courts. It is the statutory duty of the deputies of the Commissioner (as noted above, these are the Administrator of the Federal Court of Canada and the Registrar of the Tax Court of Canada) to prepare budgets for their respective courts and to be responsible for other administrative arrangements necessary to ensure all reasonable requirements of the courts are met. These duties are to be carried out under the direction of the Commissioner.

C. The Auditor General's 1997 Report

In 1997, the Auditor General released a report entitled *Report on the Federal Court of Canada and the Tax Court of Canada*. This Report concluded that consolidating the registries of the Federal Court and the Tax Court would result in significant savings and would greatly facilitate improved planning and use of resources. The better utilization of currently underused courtrooms was cited as an example of an increased efficiency. The Auditor General also recommended a merger of the judicial function of both Courts. This was opposed by the Tax Court and counsel appearing before it who believed that the hearing of tax cases requires a specialized court. A further recommendation was that serious consideration be given to establishing a separate Federal Court of Appeal so that appeals of Federal Court – Trial Division decisions would not be made to the same court.

D. R. v. Valente

In 1985, the Supreme Court of Canada made an important ruling on the issue of judicial independence. In the case of *Valente v. The Queen*,⁽¹⁾ the question arose whether the provincially appointed judges of Ontario's Provincial Court (Criminal Division) were disqualified from performing their duties by reason of their inability to presume an accused person innocent until proven guilty. This right is guaranteed by section 11(d) of the *Canadian Charter of Rights and Freedoms*. The argument was made that the degree of control exercised by the provincial Attorney General over the judges raised a reasonable apprehension that the judges would be biased in favour of the Crown. Judges were said to be subjected to the executive power by three factors: they had been appointed by the Attorney General; the Attorney General had the power to authorize leaves of absence and paid extra-judicial work; and judges' salaries were fixed by regulation, not by statute.

The Supreme Court rejected the challenge to the jurisdiction of the Provincial Court (Criminal Division). The Court determined that the judges enjoyed the essential conditions of judicial independence for three main reasons:

- The judges enjoyed security of tenure which required that a judge be removable only for cause related to the capacity to perform judicial functions.
- The judges enjoyed financial security which simply required that the right to salary or pension be established by law and not be subject to arbitrary interference by the executive power.
- Most importantly from the perspective of Bill C-30, judicial independence required an institutional independence with respect to matters of administration bearing directly on the exercise of a court's judicial function. This did not preclude involvement by the Attorney General in the administration of the courts, but it did require that the judges control the assignment of judges, sittings of the court, and court lists.

DESCRIPTION AND ANALYSIS

Bill C-30 consists of 199 clauses and one Schedule. The following discussion highlights selected aspects of the Bill and does not review every clause.

A. Purpose of the Act

Clause 2 describes the Bill's three purposes:

- to facilitate coordination and cooperation among the Federal Court, the Tax Court and the Court Martial Appeal Court for the purpose of ensuring the effective and efficient provision of administrative services to the courts;
- to enhance judicial independence by placing the administrative services of the courts at arm's length from the Government of Canada and by affirming the roles of chief justices and judges in the management of the courts; and
- to enhance accountability for the use of public money in support of court administration while safeguarding judicial independence.

B. Clauses 3 and 4: Courts Administration Service

Clauses 3 and 4 of the Bill create the Courts Administration Service ("Service") as a portion of the public service of Canada, with its principal office in the National Capital Region.

C. Clauses 5, 6 and 7: Chief Administrator

Clause 5 indicates that the Chief Administrator of the Service will be appointed by the Governor in Council for a term up to five years and can be re-appointed. The Minister of Justice is required to consult with the four Chief Justices with respect to the appointment or the termination of the Chief Administrator's appointment. The Chief Administrator will have the rank and status of a deputy head of a department.

Clause 7 sets out the powers and duties of the Chief Administrator, who is described as the "chief executive officer" of the Service. The Chief Administrator is furnished with all the powers necessary for the overall management and administration of all court services, including court facilities and libraries, corporate services and staffing. Budget submissions are made after consultation with the Chief Justices. Clause 7(4), however, emphasizes that the powers of the Chief Administrator do not extend to any matter assigned by law to the judiciary. This again underscores the separation between the judicial function carried out by the courts and the Government of Canada.

D. Clauses 8 and 9: Chief Justices

Clause 8(1) emphasizes the fact that the four Chief Justices are responsible for the judicial function of their courts. This is reinforced by clause 9(1), which states that a chief justice may issue binding directions in writing to the Chief Administrator with respect to any matter within the Chief Administrator's authority. Again, this is to make clear the judicial independence of the courts from any government control.

E. Clauses 10 and 11: Staff of the Courts Administration Service

Clause 10 states that the staff of the Service is to be appointed under the *Public Service Employment Act*. Clause 11 gives the Chief Administrator the power to employ experts and specialists on a temporary basis.

F. Clause 12: Report to Parliament

Clause 12 provides that the Chief Administrator shall, within six months after the end of each fiscal year, send a report on the Courts Administration Service's activities for that year to the Minister of Justice. The clause also requires that the Minister table the report before both Houses of Parliament.

G. Clauses 13 to 58: Amendments to the *Federal Court Act*

Clause 16 of the Bill ends the split of the Federal Court of Canada into two divisions: the Federal Court of Appeal and the Federal Court – Trial Division. Instead, this clause amends the *Federal Court Act* [now to be called the *Federal Courts Act*] so that there will henceforth be two separate courts. These will be known as the Federal Court of Appeal and the Federal Court. Both courts are continued as additional courts of law, equity and admiralty in and for Canada and as superior courts of record having civil and criminal jurisdiction. Each of the courts has its own Chief Justice. Judges are appointed by the Governor in Council if they meet the criteria set out in this clause. There is a requirement that at least four of the judges of the Federal Court of Appeal (out of a total of ten judges) be from the Province of Quebec and that at least six of the judges of the Federal Court (out of a total of 19 judges) be from Quebec.

Most of the other amendments to the *Federal Court Act* simply change its wording to reflect the establishment of two separate courts. However, there are some new provisions. Clause 19 adds section 10.1 to the *Act* making it a requirement that the judges of the Federal Court of Appeal and the Federal Court meet at least once a year in order to consider the *Federal Courts Act*, the Rules of the Court, and the administration of justice. Clause 34(3) adds a list of the grounds under which an appeal lies to the Federal Court of Appeal from a final judgement of the Tax Court of Canada under certain sections of the *Tax Court of Canada Act*. The judicial review jurisdiction of the Federal Court over the decisions of the Tax Court is removed since the Tax Court is now a superior court. Clause 43 changes the composition of the rules committee; in future, it will be made up of the following members: the Chief Justice of the Federal Court of Appeal and of the Federal Court, a selection of judges from the two courts, the Chief Administrator of the Courts Administration Service, and five members of the bar of any province.

H. Clauses 59 to 81: Amendments to the *Tax Court of Canada Act*

The key amendment in this Bill to the *Tax Court of Canada Act* is found in clause 60, which states that the Tax Court of Canada is to be a superior court of record. Superior courts are established by section 96 of the *Constitution Act, 1867*. The judges of superior courts are appointed and paid by the Government of Canada. No constraints are imposed on the jurisdiction that can be conferred on a superior court. A superior court is subject to the maximum constitutional protection; this includes the security of tenure of superior court judges during "good behaviour" granted by section 99 of the *Constitution Act, 1867*. By contrast, inferior court judges are appointed and paid by the provinces and their decisions are subject to the superintendence of the superior courts on appeal or judicial review.

Clause 77 adds sections 19.1 and 19.2 to the *Act*. Section 19.1 deals with vexatious proceedings. It provides that, if a person is found to have used the Tax Court in a vexatious manner, that person must be granted leave of the Court to continue or bring any further proceedings. Section 19.2 deals with constitutional questions. It provides that, if the constitutional validity, applicability or operability of an Act of Parliament or its regulations is in question before the Tax Court, the Act or regulations shall not be judged to be invalid, inapplicable or inoperable unless notice has been served on the Attorney General of Canada and the Attorney General of each province. The Attorneys General are given the right to adduce evidence and make submissions to the Court in respect of the constitutional question.

Clause 78 provides that the rules committee may make rules designating an act or omission of a person to be in contempt of court. The committee may also make rules respecting the procedure to be followed in proceedings for contempt and establishing penalties for a finding of contempt. Clause 80 sets up the new administrative structure for the Tax Court. The Chief Justice now may designate an employee of the Courts Administration Service as the Judicial Administrator of the Court. The Judicial Administrator carries out the non-judicial administrative work of the Tax Court that may be delegated to him or her by the Chief Justice.

I. Clauses 82 to 111: Amendments to the *Judges Act*

The amendments to the *Judges Act* reflect the changes made to the names and positions of the Chief Justices of the Federal Court of Appeal, the Federal Court and the Tax Court. The amendments also take into account the fact that the Tax Court of Canada is now to be a superior court of record. Clause 109 of the Bill repeals section 76 of the *Judges Act* which provided that the Commissioner for Federal Judicial Affairs could appoint a deputy to carry out his

or her responsibilities to the Federal Court of Appeal, the Federal Court and the Tax Court. With the repeal of this section, the Chief Administrator will assume the current responsibilities of the Administrator of the Federal Court and the Registrar of the Tax Court.

J. Clauses 112 to 184: Related and Consequential Amendments

These amendments to many different pieces of legislation reflect the creation of the Federal Court of Appeal and the Federal Court as separate courts, of the Tax Court as a superior court, and the creation of the Courts Administration Service.

K. Clauses 185 to 192: Transitional Provisions

Clause 185 states that the Chief Justice of the (current) Federal Court of Canada will continue in office as the Chief Justice of the Federal Court of Appeal. The Associate Chief Justice of the Federal Court of Canada will continue in office as the Chief Justice of the Federal Court. Similarly, the judges of the Federal Court – Appeal Division and the Federal Court – Trial Division will continue as judges of the Federal Court of Appeal and the Federal Court, respectively. Other officers of the Federal Court of Canada – such as the prothonotaries, sheriffs and commissioners for taking oaths – will also continue to hold their positions. Similar provisions are made for the Chief Justice and Associate Chief Justice of the Tax Court of Canada. In addition, the rules of practice and procedure in the Federal Court of Canada remain in force until amended.

L. Clauses 193 to 198: Coordinating Amendments

If the Bill receives Royal Assent, these clauses make coordinating amendments to the following Bills and Statutes:

- Bill S-23, *An Act to amend the Customs Act and to make related amendments to other Acts*;
- Bill C-11, the *Immigration and Refugee Protection Act*;
- Bill C-14, the *Canada Shipping Act, 2001*;
- Bill C-16, the *Charities Registration (Security Information) Act*;⁽²⁾ and
- Bill C-23, *An Act to amend the Competition Act and the Competition Tribunal Act*.

M. Clause 199: Coming Into Force

The provisions of the Bill, other than the coordinating amendments set out in clauses 193 through 198, will come into force on a day to be fixed by order of the Governor in Council.

COMMENTARY

Bill C-30 may be considered to be a "technical" measure dealing with legal administrative matters. No public reaction to Bill C-30 has been noted to date.

*_ Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) [1985] 2 S.C.R. 673.

(2) Bill C-16 was referred to the Standing Committee on Finance before Second Reading on 1 May 2001. On 15 October 2001, the House of Commons unanimously agreed that the order of reference to the Standing Committee for this bill be discharged and that Bill C-16 be withdrawn.