

Penny Wise, Pound Foolish? Federal Government Proposes to Combine “Back-Office” Work of Eleven Federal Tribunals and Boards into One New “Mega” Administrative Agency

Buried deep in the Federal Government’s Omnibus 2014 Budget Implementation Bill, is a plan to merge the administrative staff of a number of federal tribunals and boards into one umbrella agency, to be named the Administrative Tribunals Support Service of Canada (“ATSSC”). ATSSC would combine the staff of eleven independent tribunals, which currently operate with their own subject matter expertise and established operating processes. These include:

- i. The Canadian Cultural Property Expert Review Board;
- ii. The Canadian Human Rights Tribunal;
- iii. The Canada Industrial Relations Board;
- iv. The Competition Tribunal;
- v. The Review Tribunal;
- vi. The Canadian International Trade Tribunal;
- vii. The Transportation Appeal Tribunal of Canada;
- viii. The Social Security Tribunal;
- ix. The Public Servants Disclosure Protection Tribunal;
- x. The Specifics Claim Tribunal; and
- xi. The Public Service Labour Relations and Employment Board.

The Government's goal is to save money by creating efficiencies through the elimination of duplication of facilities, resources and processes. The plan would consolidate the facilities, human resources, research, analysis, investigation services and budgets for approximately 450 public servants. The ATSSC would be managed centrally by a Deputy Minister reporting to the Minister of Justice. The Deputy Minister, under the title of Chief Administrator, would be appointed by the Federal Government to serve "at pleasure" for five year terms that can be renewed.

The wisdom of creating the new agency has been raised in the House of Commons and by practitioners and legal academics. A number of concerns have been noted.

The proposal requires greater deliberation

The proposal for this new "mega" agency is buried within an omnibus budget bill and has not received sufficient debate and analysis. Members of Parliament have frequently remarked that legal experts, academics and practitioners, ought to be given an opportunity to discuss and comment on the potential effects arising from amalgamation of the administrative functions of the eleven very different agencies into one all-encompassing administrative government agency. The overarching concern is that the proposal will not receive proper consideration because it is contained within the budget bill.

The ATSSC would create conflicts of interest

Representatives of the Canadian Bar Association have warned at Parliamentary hearings that inclusion of the Canadian International Trade Tribunal (the "CITT") could expose decisions to allegations of conflicts of interest. Foreign trading partners and domestic industry claimants who appear before the CITT often have Department of Justice lawyers opposing them. CITT staff who collect data, conduct investigatory research and assist in drafting the decisions would now be employed by the Department of Justice. This could lead to an unsuccessful CITT claimant

seeking judicial review in Canada, or seeking a remedy through the World Trade Organization or other international bodies. If a Canadian Court or international body were to conclude that the ATSSC processes create a conflict of interest, any cost savings intended by the creation of the ATSSC would be lost in unwinding the merger.

The ATSSC would lose the knowledge base and efficiencies already developed

The new agency would combine the administrative functions of what are currently independent judicial or quasi-judicial bodies. These entities have been governing their own processes since their enactment in statutory instruments. Each has amassed a wealth of specialized expertise, and developed systems to ensure efficient operations. The ATSSC would, however, now become the sole provider of staff for eleven very different administrative tribunals, including facilities and support, registry, administrative, research and analysis services. The ATSSC would receive and process files ranging from competition law to human rights to labour relations to transportation. Many practitioners would agree that these currently-independent entities have developed specialized expertise in their fields. The Canadian International Trade Tribunal and the Competition Bureau, for example, have over 80 years of combined experience. The very nature of administrative matters often requires timely responses, or may otherwise be subject to tight statutory timelines. The concern is that a centralized body would dilute the expertise needed by these specialized bodies. With a wide variety of cases on different topics, dealing with different statutes, it would be difficult at best to ensure an allocation of resources that would be as proficient in each subject matter field as is currently the case.

The appointment of the head of the ATSSC would politicize the tribunals

These eleven boards and tribunals are judicial and quasi-judicial bodies and, as such, are intended to be completely independent of

the government. A difficulty arises as the head of the ATSSC, the Chief Administrator (who has the rank and status of a Deputy Minister), is to be appointed by Cabinet to hold office “at pleasure” for a five-year (renewable) term. While the head of the ATSSC will not be deciding cases, he/she will have significant decision-making power in relation to the budgets, expenditures and resources available to the tribunals. A government appointed head of the ATSSC that holds the purse strings may cross the line between independent entities serving quasi-judicial roles and strategic politics. This could jeopardize the independence of these federal administrative tribunals. In particular, this may give rise to a constitutional concern for those bodies that have the status of superior courts of record.

Conclusion

The lengthy Omnibus Bill (nearly 400 pages) is currently in second reading in the House of Commons. Unfortunately, very little time will be accorded to this administrative agency in debate, as the Bill contains many other issues of concern to Canadians. The Government has not forecast a date when the final bill will be released. The hope has been expressed by many legal experts and practitioners that the administrative tribunals section of the Bill will at least be split-out and dealt with on its own. This would allow the proposal to receive sufficient analysis and debate to ensure the efficiency and expertise that these tribunals currently possess is not lost in the Administrative Tribunal Support Service of Canada.

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[a cautionary note](#)

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