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Bar warns of conflict if tribunals merged under Bill C-31

By BILL CURRY

The government's omnibus budget bill calls for shrinking 11 independent tribunals into one agency under the direction of the federal Justice Minister

Independent experts are calling for several sections to be removed from the Conservative government's sweeping omnibus budget bill as an expanding number of provisions come under fire, including a move to shrink 11 independent tribunals into one "mega agency."

The latest appeal for changes came Tuesday from the Canadian Bar Association, which is calling for the government to scrap sections of the bill that would merge the staffing of 11 independent tribunals and place the new entity under the direction of the federal Justice Minister.

The group representing lawyers and judges warned at parliamentary hearings this new "mega agency" would undermine the independence of bodies such as the Public Servants Disclosure Protection Tribunal, damaging whistle-blower protection. Meanwhile, the inclusion of the Canadian International Trade Tribunal could have international repercussions, by exposing Canada to accusations from trading partners that its processes are unfair.

"It's Canada's international reputation that is at stake," said Cyndee Todgham Cherniak, a tax and trade specialist with the CBA, during an appearance before the Senate national finance committee.

The concern is that whether it is a foreign country or an individual taking a case to tribunal, they are usually opposed by government lawyers from the Department of Justice. The CBA warns there would be a conflict in having tribunal staff who also work under the Justice Department.

Ms. Cherniak, an international trade lawyer, predicted "it will not be long" before someone challenges this before the World Trade Organization or other bodies. That, she said, could lead the WTO to impose penalties that would wipe out any potential savings from merging the tribunals. Another potential consequence is that other countries could respond with increased duties on Canadian goods, which would hurt manufacturers.

The section of the budget bill would merge the back-office work of 11 independent tribunals into a new entity called the Administrative Tribunals Support Service of Canada. The government has said the shared work would include corporate services such as human resources, as well as research, analysis and investigation services.

"The objective of this organization is to allow better use of the resources and better control of the costs and to improve services that will be delivered to the tribunals," France Pégeot, special adviser to the deputy minister of justice, recently told the Senate committee. Ms. Pégeot said tribunals will still have independence from the Justice Department.

Tuesday's Senate hearing is just the latest example of strong concerns being raised by independent non-partisan experts about provisions of the budget bill that the government insists are relatively minor. Business groups are opposing the bill's changes to trademark law – with the Canadian Chamber of Commerce warning they may be unconstitutional – while lawyers from across the country have signed a letter calling for that section to be scrapped. The government says its trademark changes are designed to comply with international treaties but critics say they create many unintended consequences because industry was not properly consulted.

The budget bill, C-31, is still before the House of Commons but Senate committees are holding pre-studies of the bill. The timeline suggests the government wants the bill passed into law before the summer recess in June. It would be highly unusual for the government to accept amendments to a budget bill.

In the House finance committee, MPs heard several experts weigh in Tuesday with concern over the bill's sweeping provisions related to the sharing of tax information with the U.S. under the American Foreign Account Tax Compliance Act, or FATCA.

"The deal is a bad deal for Canada," said Queen's University law professor Arthur Cockfield, who said the U.S. is "treating us like we're the Cayman Islands."

The 11 affected tribunals are the Canada Agricultural Review Tribunal, the Canadian Industrial Relations Board, the Canadian Cultural Property Export Review Board, the Canadian Human Rights Tribunal, the Canadian International Trade Tribunal, the Competition Tribunal, the Public Servants Protection Tribunal, the Public Service Labour and Employment Board (which itself is a new merger of two tribunals), the Specific Claims Tribunal and the Social Security Tribunal.

Gregory Thomas, federal director of the Canadian Taxpayers Federation, told senators Tuesday that merging the tribunals is a positive step for government efficiency. But he also sided with critics who say the Conservatives are putting too many measures inside budget bills.

"What we're dealing with now – these omnibus bills – aren't in the public interest," he said. "they aren't serving the public, they aren't serving Parliament and we're opposed to them on principle."

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