

Court Act, the Crown Liability Act, the Supreme Court Act and other acts in consequence thereof.

The bill's overall objective is to improve the civil justice system at the Federal Court level. To this end, the major proposals relate to improving the Federal Court's jurisdiction to supervise the activities of federal boards and tribunals and to removing some of the existing impediments to bringing damage claims against the federal Crown.

The proposed reforms regarding the court's supervisory jurisdiction accomplish two objectives: first, they respond to the inadequacies of the present regime to be found in sections 18 and 28 of the Federal Court Act. Second, they go beyond simply correcting these deficiencies and introduce a simple, comprehensive and clear process, making it easier for the ordinary Canadian, and lawyers too, to apply to the court for judicial review.

With respect to existing inadequacies, right now sections 18 and 28 present a very confusing system for supervising federal boards and tribunals. Section 18 begins by providing that the trial division has exclusive original jurisdiction to supervise all federal tribunals. Section 28, however, then proceeds to provide a more limited remedy in the narrower circumstances described in that provision and to require that that remedy can only be granted by the court of appeal. Where the court of appeal has jurisdiction under section 28, the trial division's section 18 jurisdiction is excluded. This has led to a great deal of confusion and expensive litigation on the question of whether the trial division or the court of appeal has jurisdiction over a particular matter. The big losers here, of course, are the ordinary citizen and respect for Canada's justice system.

The bill will get rid of these confusing and costly jurisdictional splits. The first step is to confer on one division of the court alone all the jurisdiction necessary to supervise all of the activities of a particular federal tribunal. Under the proposals, generally, that jurisdiction will be conferred on the trial division. In the case of a few tribunals, including those that are constituted a "court of record" by statute or are composed in whole or in part by superior court judges, that jurisdiction will be exercisable by the court of appeal.

But the bill goes well beyond this minimum repair job and establishes a comprehensive and self-evident scheme on the face of the legislation for reviewing federal tribunals. That scheme is composed of the following elements: first, there is the application for judicial review, representing a single, one-step procedure for obtaining all the supervisory relief available from the division of the court with jurisdiction over the tribunal in question. Second, the relief available from the court will no longer depend on the arcane appreciation of what such ancient remedies as *certiorari*, prohibition and *mandamus* signify but, rather, on what is described and defined in clear, plain, everyday language.

Honourable senators, another very important feature of Bill C-38 would give the Federal Court and the provincial courts concurrent jurisdiction with respect to claims against the Crown.

At the moment claims for relief against the federal Crown, generally speaking, can only be brought in the Federal Court. This exclusive jurisdiction includes ordinary actions in contract, property and tort—that is, negligence, trespass to property, and nuisance—against the Crown. One very serious problem that has arisen is where, in such an action, the Crown, as defendant, wishes to counterclaim against the claimant or to bring third-party proceedings. The Supreme Court of Canada has confirmed the validity of the statutory provision conferring on the Federal Court exclusive jurisdiction over claims against the Crown, but has concluded that counterclaims and third-party proceedings by the Crown can only be brought in provincial courts. The cases are: *Quebec North Shore Paper, McNamara Construction* and *Thomas Fuller Construction*.

• (1800)

(Translation)

These Supreme Court decisions mean that all matters arising from a dispute cannot always be settled in one proceeding. The Federal Court has jurisdiction for some matters, while others are in provincial jurisdiction. The result is clearly inefficient and costly, both for the parties concerned and for the Canadian judicial system.

The bill before us resolves this problem by giving the Federal Court and provincial courts jurisdiction in claims against the Crown. The most immediate advantage of this change is to allow proceedings to be taken in a provincial court where the Crown can make counter-claims or lay charges. That way, all matters can be heard and decided in one proceeding. The plaintiff will no longer be able to sue the Crown in Federal Court to prevent it from making a counter-claim because the court could then suspend the proceedings and give the plaintiff an opportunity to do so in the appropriate provincial court.

Honourable senators, because of this overlapping jurisdiction between the Federal Court and provincial courts, Bill C-38 brings together the various provisions on proceedings involving the Crown which we now find in the Crown Liability Act and the Federal Court Act.

For historic reasons, honourable senators, these two laws contain several identical provisions concerning such proceedings. Under common law, the Crown cannot be sued for tort. Exceptions to this principle had already been specifically provided in various laws when the Crown Liability Act was passed in 1953. This Act provided that the Crown could be sued for tort and that claims not exceeding \$1,000 could be taken to a provincial court. It therefore became necessary to devise a special procedural scheme to govern the proceedings instituted against the Crown before a Provincial Court. This scheme exists under the Crown Liability Act. At the same time, the Exchequer Court and later on the Federal Court of Canada were given exclusive jurisdiction to hear most of the other claims against the Crown. Accordingly, provisions dealing with the proceedings in all cases where relief is claimed against the Crown were previously incorporated in the Exchequer Court Act and now in the Federal Court Act.