

Bill C-31, Part 4, Division 5: Informal Procedure Thresholds

Written submission to the Standing Senate Committee on Legal and Constitutional Affairs · Canadian Institute for Tax Controversy Studies · October 2, 2026

“The Crown is not a private party and tax litigation is not a dispute like others between two Canadians. This is the government effectively pursuing one of its citizens.” — *Jolly Farmer Products Inc. v. The Queen*, 2008 TCC 693, at para. 26

SUMMARY

As drafted, the higher Informal Procedure thresholds are not ready to take effect. The measure has not been assessed for its effect on taxpayers or the Tax Court. If Parliament proceeds, the safeguards below need to take effect with it.

The Department of Justice told the committee the measure “will help improve access to justice.” That effect has not been assessed, and no institution in the legislative pathway is assigned to assess it. Justice also said the measure “supports... the government’s priorities... to spend less on government operations,” while the same bill expands the CRA’s audit powers. No estimate of savings, evidence from taxpayers or evaluation plan was put before the committee.

We ask the committee to:

1. State in its report that the higher thresholds take effect only with the safeguards below.
2. Recommend that the thresholds come into force by order in council, on the same day as those safeguards.
3. Request a government response under rule 12-23 of the Rules of the Senate.

WHAT THE CHANGE DOES

The Informal Procedure was designed as the Tax Court’s small claims court; the Department of Justice called it “similar to Small Claims Court process.” It has no discovery, no document lists and no binding precedent, a trade that makes sense for small disputes. Bill C-31 doubles the amounts it covers. The change was developed through the budget pathway, which evaluates fiscal effect, not the effect on taxpayers or the Court.

The amounts are larger than they appear. The limit applies to each year in issue, with no limit on the number of years, as the Department of Justice confirmed. It counts only amounts assessed under the *Income Tax Act*, so interest and provincial tax are excluded (*Tax Court of Canada Act*, s. 2.1). Three years at \$50,000 of federal tax can reflect \$450,000 or more of income. The result is no longer a small claims court: it will hear larger amounts than Ontario’s Small Claims Court, with less disclosure, where one party holds the file and the other carries the burden of proof (Appendix A).

The asymmetry is structural, and it begins at audit. The CRA can compel documents and information from the taxpayer and third parties (*Income Tax Act*, ss. 231.1 and 231.2), and Bill C-31 adds to those powers: a notice of non-compliance carrying a penalty of \$50 a day, and suspension of the reassessment period while a notice is outstanding. The CRA builds its case with these tools and holds the resulting file. In the Informal Procedure, the taxpayer then carries the burden of disproving the Crown’s assumptions, cannot examine the CRA before trial, and is often represented by an accountant, or no one, against Department of Justice counsel. Many taxpayers arrive expecting to take apart the Crown’s case, when they must build their own; Mr. Ryan told the committee this drives late adjournments.

These effects compound, and they are not the only forces that do; others fall outside the scope of this submission. The same bill expands the CRA’s means to build its case and narrows the taxpayer’s means to test it. By trial, much of the record is set. The pre-hearing stage is where the Crown’s case can still be tested, and Bill C-31 removes it for more taxpayers.

There are ways to spend less on government operations that do not remove taxpayer safeguards. Within its existing mandate, the Crown can reduce its own costs by narrowing issues early, disclosing its case and resolving positions unlikely to be sustained (safeguard 8), without expanding a procedure whose limits fall on the taxpayer alone. Proportionate pre-hearing steps cost a fraction of full discovery and make earlier settlement possible, which is where the savings are.

SAFEGUARDS TO TAKE EFFECT WITH THE HIGHER THRESHOLDS

Each responds to questions senators raised on October 1 (Appendix B).

1. **Informed election.** A neutral, plain-language statement of what the Informal Procedure offers, what it gives up, and what the taxpayer must prove. Written by the independent group in item 5 and sent by the CRA with the notice that ends the objection.
2. **Advance disclosure of the Crown's case.** Before the hearing, the Crown serves every document it will rely on, a witness list with a will-say statement for each witness, the audit and appeals officer's reports, and a short outline of its argument and authorities.
3. **A short pre-hearing examination, at the taxpayer's request.** The taxpayer may examine the Crown's representative for a fixed time. The right runs one way: the CRA has already tested the taxpayer's account at audit, and where cost is the concern, the Crown need not examine the taxpayer.
4. **Assistance funded from the savings.** The government states the savings it expects and commits a fixed share to duty counsel or a pro bono session for every appeal within the new limits.
5. **An independent voice.** Taxpayers, their advisers and the Taxpayers' Ombudsperson assess the change. The CRA and the Department of Justice are parties to every appeal it affects, and their mandates do not include assessing taxpayer experience. The Institute is willing to lead or take part.
6. **An independent observer and taxpayer questionnaire.** An observer attends a sample of informal hearings and reports to Parliament each year. Every taxpayer who completes an informal appeal receives an independent questionnaire on how the process worked for them.
7. **A three-year pilot, with a way back.** The higher thresholds lapse unless renewed against conditions set now: savings demonstrated, taxpayer success at or above the baseline, statutory timelines met, questionnaire results meeting a set standard, and the safeguards in place throughout. They are withdrawn sooner if those conditions are not met. Savings and safeguards are measured together.
8. **Principles respecting the Crown's conduct, in both procedures.** The Attorney General of Canada implements shared principles for how the CRA and the Department of Justice conduct tax disputes in both the Informal and General Procedures: proportionality, defensibility, reasons and early narrowing of issues. The *Directive on Civil Litigation Involving Indigenous Peoples* shows this can be done within existing authority. The cost is low, and the value is highest where procedural safeguards are thinnest. See the Institute's pre-budget submission, *Principles Respecting Conduct in Canada's Tax Dispute System*:
<https://www.countertax.ca/institute/overview/tax-litigation-conduct-framework>
9. **A ceiling across years.** Above an aggregate amount per appeal, items 2 and 3 apply automatically, so that several years at \$50,000 each cannot bring \$200,000 or more of federal tax into a procedure without disclosure.

SUGGESTED WORDING FOR THE COMMITTEE'S OBSERVATIONS

The committee is concerned that the increase in the Informal Procedure thresholds proceeds without an assessment of its effect on the Tax Court of Canada, without evidence from taxpayers and without a stated estimate of savings, while the same bill expands the CRA's audit powers. Doubling the amounts heard without discovery or disclosure risks widening the existing structural asymmetry between the Crown and the taxpayer, who bears the burden of proof. The committee urges the Government not to bring the higher thresholds into force until advance disclosure of the Crown's case, a pre-hearing examination at the taxpayer's request, independent information for taxpayers before they elect, and funded assistance are in place; to treat the change as a three-year pilot with conditions for renewal set in advance; and to develop shared principles for the conduct of the CRA and the Department of Justice in tax disputes.

Canadian Institute for Tax Controversy Studies, the independent research and policy arm of Counter LLP (Appendix C). Contact: Natalie Worsfold, Communications Lead, nworsfold@tax-institute.ca

APPENDIX A: ONTARIO SMALL CLAIMS COURT COMPARED

	Ontario Small Claims Court	Informal Procedure after Bill C-31
Amount	Up to \$50,000 per claim	Up to \$50,000 of federal tax and penalties per year, for any number of years; \$100,000 for GST/HST and losses
Burden of proof	On the party making the claim	On the taxpayer, although the CRA started the dispute
Before the case	Ordinary dealings between private parties	A CRA audit with powers to compel information; the taxpayer does not see the file
Documents	Attached to the claim and defence, or served 14 days before the settlement conference (rr. 7.01(2), 9.02(1), 13.03(2))	No disclosure required
Witnesses	List served 14 days before the settlement conference (r. 13.03(2))	No list required
Settlement conference	Required in every defended action (r. 13.01(1))	None

Ontario rules: *Small Claims Court Rules*, O. Reg. 258/98.

APPENDIX B: WHAT SENATORS ASKED, AND WHICH SAFEGUARDS ANSWER IT

Senator	What was raised on October 1	Safeguards
Batters	Tax Court workload never assessed; risk of delay	6, 7
Miville-Dechêne	Self-represented taxpayers; Mr. Ryan's disclosure proposal	1, 2, 4
Simons	Self-represented taxpayers; duty counsel	4
Clement	What the Tax Court said; a middle track; tools for the unrepresented; broader consultation	1, 5, 7, 8
Dhillon	Non-binding informal decisions; no metrics to show the change works	6, 7
Dalphond	Disclosure of the auditor's and appeals officer's reports; multi-year appeals; consultation	2, 5, 8, 9
Pate	Other options considered; cost and effectiveness	4, 7, 8
Arnot (Chair)	Time to judgment; taxpayer success rates; review of the Tax Court	6, 7, 8

APPENDIX C: ABOUT THE INSTITUTE AND FURTHER READING

The Canadian Institute for Tax Controversy Studies is the independent research and policy arm of Counter LLP. Its work focuses on system design, governance, and accountability in tax dispute resolution. The Institute produces independent research to surface system patterns, strengthen understanding, and inform principled improvements in Canada's tax dispute system. Counter Tax Litigators LLP helps private companies navigate complex disputes with the Canada Revenue Agency across the audit, objection and Tax Court appeal stages.

- The Architecture Gap in Canada's Tax Dispute System
<https://www.countertax.ca/institute/overview/tax-dispute-architecture-gap>
- Institutional Options for a Coherent Tax-Dispute System
<https://www.countertax.ca/institute/overview/tax-dispute-design-options>
- A Framework for Accountable and Principled Conduct in Tax Disputes
<https://www.countertax.ca/institute/overview/tax-litigation-conduct-framework>