



Specific Claims Tribunal Canada

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PRACTICE DIRECTION # 12

October 12, 2018

EARLY CASE PLANNING CASE MANAGEMENT CONFERENCE

Rule 49 of the Specific Claims Tribunal Rules of Practice and Procedure sets out requirements for the Tribunal’s first Case Management Conference (CMC) and for all CMCs. This Practice Direction is in addition to those requirements.

The Tribunal has all of the powers, rights and privileges that are vested in a superior court of record based on subsection 13(1) of the Specific Claims Tribunal Act (SCTA). The Tribunal also has a mandate to resolve matters in a just, expeditious and cost effective manner. Accordingly, this Practice Direction sets out a framework for an Early Case Planning CMC to be held at a date set by the Tribunal after both parties have filed their pleadings.

1. At the first CMC, the parties will, in addition to the requirements of Rule 49, be prepared to plan for an Early Case Planning CMC at which the matters set out in sections 2-5 of this Practice Direction will be canvassed in detail.
2. The Early Case Planning CMC will, subject to direction by the Tribunal, be held in person, and may, if requested by the claimant and with leave of the Tribunal, be held in the First Nation’s community or a place accessible to the community.
3. To optimize travel and time for the Tribunal and the parties, scheduling the Early Case Planning CMC along with hearing of community evidence (witnesses to events and oral history) and site visit, if intended by the claimant, is desirable.
4. Unless otherwise directed by the Tribunal, the parties must file individual briefs, or a joint brief, ten (10) business days prior to the Early Case Planning CMC, to include the following:
 - 4.1 A copy of the Statement of Claim as presented to the Minister and any supplementary material provided to the Minister setting out facts and grounds for the claim.
 - 4.2 An explanation of the basis on which the claim was not accepted for negotiation or was accepted in part.
 - 4.3 From the claimant, a list and copies of all historical documents relied upon in preparation of the above Statement of Claim.
 - 4.4 From the respondent, a list and copies of all historical documents obtained in the course of the review and assessment of the claims as presented for ministerial approval.
 - 4.5 From each party, a list of expert reports, if any, shared in the process of assessment by the Specific Claims Branch and a description of subject matter.

4.6 The parties may augment the above information with such further information as they, respectively, consider necessary to inform the Tribunal of changes in the factual basis and grounds for the claim, and the basis for rejection or partial rejection, arising subsequent to the review of the claim by the Specific Claims Branch.

4.7 Where the claim was accepted for negotiation, the parties may set out in summary form their joint or separate perspectives on the reason for the failure of negotiations to resolve the claim.

4.8 A description of matters in issue currently known for which expert evidence is or may be needed, including information on the present state of retention of experts and anticipated time required to prepare expert reports.

4.9 A description of issues currently known which may be conducive to the joint retention of an expert by the parties or retention of an expert by the Tribunal.

4.10 Whether oral history evidence is anticipated.

4.11 A preliminary assessment of the tasks and work plan for preparation for hearing, including estimates of the time required for documentary investigation and production, preparation of expert reports and scheduling of community evidence (witnesses to events and oral history).

4.12 Whether the parties wish to bifurcate the claim into validity and compensation phases.

5. At the Early Case Planning CMC, the Tribunal may, after hearing the parties by their counsel, make directions or orders:

5.1 Setting a timetable for the steps to be taken.

5.2 Bifurcating the claim into validity and compensation phases.

5.3 With respect to experts:

a. That the expert evidence on any one or more issues be given by one jointly-instructed expert.

b. Respecting the number of experts a party may call.

c. Requiring that the parties' experts confer before filing their respective reports with the Tribunal in order to attempt to minimize areas of disagreement.

5.4 Any other matter that the Tribunal considers would contribute to the just, expeditious and cost effective resolution of the claim.

6. Materials presented by the parties shall not be considered as filed within the meaning of the term in subsection 38(1) of the SCTA and will, for greater certainty, be deemed received on application pursuant to subsection 38(2) of the SCTA.

Honourable Harry Slade, Chairperson
Specific Claims Tribunal