



Specific Claims Tribunal Canada

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PRACTICE DIRECTION # 15

October 12, 2018

STAY OF PROCEEDINGS

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. The Tribunal also has a mandate to resolve matters in a just, expeditious and cost effective manner. Accordingly, this Practice Direction sets out requirements for a stay of proceedings which may be granted when parties have entered into a written agreement to enter into negotiations for the resolution of a claim or wish to have the claim or a portion of the claim mediated.

1. Parties may jointly apply for a stay of proceedings where they have entered into a written agreement to enter into negotiations for the resolution of a claim or wish to have the claim or a portion of the claim mediated.
2. The joint application shall include the following information:
 - 2.1 A summary of the progress to date toward a negotiated resolution of the claim, including particulars of:
 - a. Whether without prejudice settlement offers have been made and responded to, with dates.
 - b. Whether expert reports, separate or joint, have been commissioned or obtained including description of subject matter and dates.
 - c. Any remaining contentious issues.
 - d. Whether mediation has been utilized.
 - e. Whether a Memorandum of Understanding on the terms of settlement between negotiators has been achieved, and, if so, the date on which this was achieved.
 - 2.2 A summary of the measures presently planned to advance the negotiation during the period for which the proposed stay remains in effect, including:
 - a. If a Memorandum of Understanding has been achieved, the steps each party will take to secure ministerial and claimant community approval, and anticipated timelines for approvals.
 - b. Agreed dates for delivery of expert reports, if any.
 - c. Schedule of meeting dates.
 - d. Agreed dates, if any, for presentation of offers and counter-offers.
 - 2.3 Whether either or both parties would be in favour of mediation by the Tribunal.

3. The Tribunal will convene a Case Management Conference (CMC) at which the parties may speak to the application.
4. The Tribunal may grant a stay of proceedings if, in its opinion, a stay will facilitate the resolution of the claim through negotiation within a reasonable period of time. The grant of a stay is discretionary and will specify the period of time in which it will remain in effect. A stay may impose conditions on which it will remain in effect.
5. If the parties, by joint application, apply to extend the stay of proceedings the foregoing will apply, mutatis mutandis, to an application for an extension. The Tribunal will convene a CMC at which the parties may speak to the application.
6. If, based on joint status reports and proposed work plans filed by the parties, the Tribunal is satisfied that the parties have made diligent progress in negotiations and that the parties will diligently use time granted in a further extension to continue to make timely progress in negotiations, the Tribunal may extend the stay for a further specified period of time. Parties may apply more than once under this section.
7. An application for a second or subsequent stay will, unless the Tribunal orders otherwise, impose a condition that the parties enter mediation of unresolved issues generally or discrete issues that have impaired the progress of the negotiation.
8. If upon the hearing of a second or subsequent application for a stay of proceedings the Tribunal is not satisfied that the parties or either party have proceeded diligently in negotiations to establish a Memorandum of Understanding setting out the terms of settlement it may dismiss the application and convene a CMC to establish dates for completion of all remaining pre-hearing processes and set the claim down for hearing commencing on a specified date.
9. If the parties have entered into a Memorandum of Understanding setting out the terms of settlement they may apply by joint application for a further extension of indeterminate duration to obtain their respective internal approvals. In the event of an extension, the respondent must at three month intervals inform the Tribunal by letter of progress to date on the steps taken to seek financial approvals and a timeline for further steps to be taken. The claimant must inform the Tribunal by letter of the internal measures required for approval of the settlement on the terms of the Memorandum of Understanding, the timeline for securing approval and, at three month intervals, the steps taken and those remaining.
10. The Tribunal may, at the request of a party, or on its own initiative, convene a CMC during the period of the stay to obtain approvals. The Tribunal may make Orders and provide Directions, including Orders for the resumption of pre-hearing measures and the setting of a hearing date.

Honourable Harry Slade, Chairperson
Specific Claims Tribunal