

From: Grant McLeod
Sent: Wednesday, June 30, 2010 9:48 AM
To: Alisa Lombard
Subject: FW: Draft Rules of Practice and Procedure

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From: Jeff Scott [mailto:jd.scott@sasktel.net]
Sent: Wednesday, June 30, 2010 9:43 AM
To: SCT RULES
Subject: Draft Rules of Practice and Procedure

Justice Harry A. Slade, Chairperson, The Specific Claims Tribunal:

My name is Jeff Scott. I am a lawyer from Regina, Sask.

I followed with interest the introduction and passage in the House of Commons of **The Specific Claims Tribunal Act**. I have been following with interest the creation of The Specific Claims Tribunal.

By way of introduction, in the mid 1990's I was retained by a number of former residents of the Gordon's Indian Residential School ("Gordon's) located near Punnichy, Saskatchewan. My clients claimed that when they were residents of Gordon's they were sexually assaulted by the former administrator of Gordon's. On behalf of my clients I commenced the first in Saskatchewan of the Indian Residential School lawsuits. Those actions were amongst the first in Canada of the actively prosecuted Indian Residential School actions. For many of those actions, I retained experts to assist me in advancing my clients' actions.

Although it has been over ten years since I was retained as counsel in the Indian Residential School lawsuits, I remain interested in the issues facing First Nations people including, for example, land claims. When I was retained as plaintiffs' counsel in the Indian Residential School litigation, I regretted the fact that there was not a more culturally sensitive, less expensive and quicker way to resolve the Residential School claims. Since then the Federal Government, in consultation with various interest groups, have set up an alternative means by way to resolve the claims of former residents of Indian Residential School claims.

I am pleased that the Federal Government recognized the need for a more speedy resolution of outstanding land claims and established The Specific Claims Tribunal.

In your letter dated June 8, 2010, posted on the Tribunal's website, you invited submissions on the content of the draft Rules of Practice and Procedure for The Specific Claims Tribunal. I would like to respond to your invitation. I respectfully provide you with the following comments concerning the draft Rules insofar as Expert Evidence is concerned:

Expert Evidence Draft Rules

112. A party who intends to introduce evidence of an expert witness at the hearing shall, at least 60 days before the commencement of the hearing, serve the report of the expert witness on the

opposing party and any intervenors.

113. A party who intends to introduce the responding report of an expert shall, at least 40 days before the commencement of the hearing, serve a responding expert report on each other party and any intervenors.

114. The applicant may, at least 30 days before the commencement of the hearing, serve an expert reply report on each other party and any intervenors.

115(1) Unless otherwise ordered during case management, an expert report shall be filled with proof of service on all opposing parties at least 60 days before the commencement of the hearing.

For the past 10 years I have restricted my practice to medical negligence. I represent only plaintiffs. Medical negligence lawsuits are largely driven by expert opinion evidence.

Given my experience in working with many expert witnesses (Indian Residential School litigation and medical negligence litigation) from all across Canada, I do know that expert witnesses have many demands on their time. Given the demands on their time, it is often difficult to expect to receive a quick turn around or response from experts. Consequently, the timelines contained within the draft Rules for the receipt of expert reports might be too short.

Specifically, where an expert report is not served until 60 days before the hearing date an opposing party, who wants to serve a "responding" expert report, might find it impossible to obtain a commitment from an expert to prepare and finalize a "responding" report within 20 days in order to meet the 40 day service requirement as set out in Rule 113. Consequently, I suggest that some fine tuning of the time requirements for the receipt of expert reports might be considered. For example:

Rule:

112 change from 60 days to 90 days

113 change from 40 days to 60 days

114 leave at 30 days.

I am assuming that parties will assess fairly early on in the process whether expert opinion evidence will be required for their case. It should not, therefore, create undue difficulty for the parties to request the report from their expert well in advance of the hearing date (90 days instead of 60 days). That amendment along with the suggested change to Rule 113 from 40 to 60 days will provide the "responding" expert with 30 days to prepare the "responding" report. The service requirement of 30 days for the "Reply" report, as set out in Rule 114, should not be onerous since I am assuming that typically there would not be many "new" issues identified in the "responding" expert report.

Thank you for your invitation for submissions concerning the draft Rules and Practice.

I do sincerely wish you and your fellow Tribunal members all the best with respect to the future operations of the Tribunal. I will follow with interest the future operations of the Tribunal.

Jeff Scott

Jeffrey D. Scott Legal Professional Corporation

3066 Rae Street

Regina, Saskatchewan

S4S 1R7

Telephone: 1-306-546-4728

Fax: 1-306-546-4729

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