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## Rules of Procedure

Whereas, pursuant to subsection 12(1) of the *Specific Claims Tribunal Act*, the Chairperson of the Specific Claims Tribunal has appointed a committee of Tribunal members for the making of rules governing the practice and procedures of the Tribunal;  
Therefore, the committee of Tribunal members, pursuant to subsection 12(1) of the *Specific Claims Tribunal Act* hereby makes the annexed *Specific Claims Tribunal Rules of Practice and Procedure*.

Ottawa, June 1 , 2011

The Honourable Harry Slade

The Honourable Patrick Smith

The Honourable Johanne Mainville

*Committee Members*

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S.C. 2008, c. 22

Specific Claims Tribunal Rules of Practice and Procedure

### INTERPRETATION

**1.** The following definitions apply in these Rules.

“Act”

« *Loi* »

“Act” means the *Specific Claims Tribunal Act*.

“Chairperson”

« *président* »

“Chairperson” means the superior court judge who is appointed as the Chairperson of the Tribunal under subsection 6(3) of the Act.

“file”

« *déposer* »

“file” means to file with the registrar.

“legal counsel”

« *conseiller juridique* »

“legal counsel” means a person who is a member of a provincial or territorial Bar.

“letter size paper”

« *papier format lettre* »

“letter size paper” means paper that is 21.5 cm by 28 cm (8½ in. by 11 in.).

“registrar”

« *greffier* »

“registrar” means the registrar referred to in subsection 10(2) of the Act.

“representative”

« *représentant* »

“representative” means, in respect of a party, a First Nation or a person, their legal counsel or their representative permitted under subrule 7(2).

## PART 1

### GENERAL RULES

#### GENERAL

##### General principle

**2.** These Rules must be interpreted and applied so as to secure the just, timely and cost-effective resolution of specific claims while taking the cultural diversity and the distinctive character of specific claims into account.

##### Orders

**3.** The Tribunal may make any order that is necessary to secure the just, timely or cost-effective resolution of the specific claim.

##### Varying , dispensing with and supplementing Rules

**4.** (1) The Tribunal may vary a Rule, dispense with compliance with a Rule, or supplement a Rule, when the Tribunal considers it is necessary to do so in order to secure the just, timely or cost-effective resolution of the specific claim.

##### Directions — technological problems

(2) If a document is required by these Rules to be filed or served by email, and technological problems arise that prevent that from occurring, the Tribunal may provide directions, as necessary, regarding the filing or service of that document in the circumstances.

Matters not provided for

**5.** The Tribunal may provide for any matter of practice or procedure not provided for in these Rules by analogy to the *Federal Courts Rules*.

#### TIME LIMITS

Interpretation Act

**6.** A time limit set out in these Rules, or in an order of the Tribunal, must be determined in accordance with sections 26 to 29 of the *Interpretation Act*, except that Saturday is also considered to be a holiday.

#### REPRESENTATION

Legal counsel required

**7.** (1) Subject to subrules (2) and (3), all parties, First Nations and persons must be represented in the proceedings by legal counsel.

Exception — First Nations

(2) The Tribunal may, in special circumstances, grant leave for a claimant or other First Nation to be represented in the proceedings by someone who is not legal counsel.

Exception — individuals

(3) An individual is not required to be represented in the proceedings by legal counsel.

Ceasing representation

**8.** A person ceases to be a representative under these Rules when they file written notice to that effect and serve it on each party.

#### ORDER AND STAGES OF HEARINGS

Order of hearings

**9.** The Chairperson may determine the order in which specific claims are to be heard without regard to the order in which they were filed.

Hearing in stages

**10.** If validity of the specific claim and any compensation arising from it are both at issue, the Chairperson may order that the hearing of those matters proceed in separate stages.

#### ADJOURNMENTS

**11.** A party who seeks to adjourn all or part of the proceedings must make an application requesting that relief.

#### UNDERTAKINGS AND AGREEMENTS

In writing

**12.** All undertakings given by a party and all agreements entered into between parties, must be made in writing.

## PART 2

### FILING OF DOCUMENTS

#### GENERAL

Registry file

**13.** For each specific claim, the registrar must create and maintain a file that contains a paper copy of the declaration of claim, the response and any application filed in relation to the claim.

List of documents

**14.** Documents that are being filed must be accompanied by a list that identifies each document and provides a brief description for each of them.

Filing after 17:00

**15.** A document that is filed by email or fax after 17:00 Ottawa local time is deemed to have been filed on the next day that is not a holiday.

Deemed original

**16.** A document that is filed by email or fax is deemed to be the original of that document.

#### ELECTRONIC FILING

Means

**17.** (1) Subject to Rule 18, parties and intervenors must file their documents by email.

Format

(2) A document must be filed in PDF (Portable Document Format) or any other electronic format that allows the document to be converted for printing on letter size paper.

Sworn Statements

(3) If a sworn statement is filed by email, the person filing it must retain the original paper copy of that sworn statement and, if requested, provide it to the Tribunal.

Time stamp

(4) The registrar must apply a stamp, indicating the date and time of filing, to each document that is filed.

#### ALTERNATE FILING

### Leave required

**18.** The Tribunal may grant leave for a document to be filed in paper or by fax if doing so would be just, timely or cost-effective in the circumstances.

### Format

**19.** (1) A document that is filed in paper or by fax must be printed on letter size paper. However, a document that is being filed in paper may be filed in its existing format if it cannot be printed on letter size paper.

### Page numbers

(2) The pages of a document that is filed in paper or by fax must be consecutively numbered.

### Fax cover sheet

**20.** A document that is filed by fax must have a cover sheet that sets out

(a) the name, address and telephone number of the person filing the document;

(b) the date and time of the transmission;

(c) the total number of pages transmitted, including the cover page; and

(d) the name and telephone number of a person to be contacted in the event of a transmission problem.

## PART 3

### SERVICE OF DOCUMENTS

#### GENERAL

### Means

**21.** A document must be served personally or by email, fax or registered mail.

### Effective on delivery

**22.** (1) A document is served when it is delivered to

(a) in the case of a party, the party's representative; and

(b) in the case of an intervenor, their representative, or if they are not represented, to them personally.

### Service after 17:00

(2) However, a document that is served by email or fax after 17:00 at the recipient's local time is deemed to have been delivered on the next day that is not a holiday.

#### SERVICE BY FAX

### Format

**23.** A document that is served by fax must be printed on letter size paper.

### Limit

**24.** A document that is more than 50 pages in length is not to be served by fax without the recipient's prior consent.

### Cover sheet

**25.** A document that is served by fax must have a cover sheet that sets out

(a) the name, address and telephone number of the person serving the document;

(b) the date and time of the transmission;

(c) the total number of pages transmitted, including the cover page; and

(d) the name and telephone number of a person to be contacted in the event of a transmission problem.

## SERVICE BY EMAIL

### Format

**26.** A document that is served by email must be in PDF (Portable Document Format) or any other electronic format that allows the document to be converted for printing on letter size paper.

### Cover page

**27.** A document that is served by email must be accompanied by an electronic message that sets out

(a) the name, address and telephone number of person serving the document;

(b) a description of the document that is being served;

(c) the date and time of the transmission; and

(d) the name, telephone number and email address of a person to be contacted in the event of a transmission problem.

## PROOF OF SERVICE

### Form

**28.** (1) Proof of the service of a document must be given by

(a) an affidavit of service; or

(b) by the admission of the party served.

### Delivery receipt

(2) An affidavit of service for a document that was served by email, fax or registered mail must include a receipt confirming that the document was successfully delivered to the recipient.

## PART 4

### APPLICATIONS

#### GENERAL

##### Application

**29.** This Part applies to applications referred to in the Act, these Rules and any other application made by a party for the resolution of a procedural or evidentiary issue by the Tribunal.

##### Leave required

**30.** Except for an application referred to in the Act, subrule 60(2) or Part 11, leave of the Tribunal is required before an application can be made to the Tribunal.

##### Format

**31.** An application must be made in writing unless the Tribunal grants leave for it to be made orally.

##### Presiding tribunal member

**32.** (1) Each application and each request for leave to make an application must be heard by:

(a) the Tribunal member who presides over the case management conference, if the application or request is to be heard before the day on which the pre-hearing conference is to be held; or

(b) the Tribunal member who presides over the hearing, if the application or request is to be heard on or after that day.

##### Exception

(2) However, if the Tribunal member who is required to hear the application or request is unavailable, the application may be heard by any other Tribunal member.

##### Directions

**33.** The Tribunal member may provide directions to the parties regarding the time and manner in which he or she will hear their arguments and receive evidence in relation to the application.

### WRITTEN APPLICATIONS

##### Notice of application

**34.** An application is made by filing a notice of application that

(a) sets out the relief sought by the party and the grounds for the application; and

(b) indicates whether any parties have consented to the relief sought.

## Response

**35.** Within 10 days after the day on which a party is served with a notice of application, the party may file a response that sets out their position regarding the relief sought by the other party.

## Service

**36.** A party who files a notice of application or a response must serve every other party with a copy of that document within 14 days after the day on which it is filed.

## Format

**37.** A notice of application and a response must be no more than 20 pages in length, be legible and be printed

(a) single-sided on letter size paper; and

(b) in type that is 12 points or larger.

## EX PARTE APPLICATIONS

### Ex parte applications

**38.** Rules 33 and 36 do not apply to *ex parte* applications.

## PART 5

### PLEADINGS

#### GENERAL

### No evidence

**39.** A declaration of claim and a response must not contain any evidence to support the facts set out in that document.

## Service

**40.** A party who files a declaration of claim or a response must serve every other party with a copy of that document within 30 days after the day on which it is filed.

## DECLARATION OF CLAIM

### Content

**41.** A specific claim begins when a First Nation files a declaration of claim that sets out the following information in consecutively numbered paragraphs:

(a) the identity of the First Nation and identification of which paragraph of the definition "First Nation", in section 2 of the Act, applies to that First Nation;

(b) the name, address and telephone number of the First Nation's representative, and his or her email address for the service of documents;

- (c) the conditions precedent to filing a claim with the Tribunal, set out in subsection 16(1) of the Act, that have been fulfilled;
- (d) the paragraphs in subsection 14(1) of the Act that provide the grounds for the specific claim;
- (e) a brief statement of the facts that form the basis for the specific claim; and
- (f) a statement that, for the purpose of the specific claim, the claimant does not seek compensation in excess of \$150 million.

## RESPONSE

### Content

**42.** Within 30 days after the day on which the Crown is served with the declaration of claim, the Crown must file a response that sets out the following information in consecutively numbered paragraphs:

- (a) a statement indicating whether the Minister decided not to negotiate the specific claim, in whole or in part and, if so, the date of that decision;
- (b) the Crown's position with respect to the validity of the specific claim;
- (c) if the Crown's position is that the specific claim is valid, which of paragraphs 20(1)(e) to (h) of the Act may provide the basis for the Tribunal to award compensation;
- (d) for each fact set out in the declaration of claim, a statement indicating whether the Crown admits, denies or has no knowledge of that fact;
- (e) a brief statement of the facts that are related to the specific claim;
- (f) the relief sought by the Crown; and
- (g) an email address for the service of documents.

## PART 6

### ADDITION OF PARTIES AND INTERVENORS

#### Notification

**43.** Notification made by the Tribunal under subsection 22(1) of the Act must be in writing and be served personally or by registered mail.

#### Late application

**44.** If a person makes an application for party status, or for leave to intervene, more than 60 days after the day on which they were served with the notice under subsection 22(1) of the Act, the Tribunal must, in deciding whether or not to grant the application, consider whether the person took all reasonable efforts to make the application in a timely manner.

#### Application for leave to intervene

**45.** In addition to the information required under Rule 34, the notice of application for an application for leave to intervene must set out

- (a) the name, address and telephone number of the person and their representative, if any;
- (b) a description of the manner in which they propose to participate in the proceedings and how their participation could assist the Tribunal in resolving the issues in relation to the specific claim;
- (c) the name of the party, if any, whose position that person intends to support; and
- (d) the language to be used by that person in the proceedings.

#### Directions

**46.** The Tribunal may provide an intervenor with directions regarding their role in the proceedings and the procedures to be followed, if doing so assists the just and timely resolution of the specific claim. However, before providing directions, the Tribunal must provide the parties with an opportunity to make submissions regarding possible directions.

## PART 7

### CASE MANAGEMENT

#### CASE MANAGEMENT CONFERENCE

#### Notice

**47.** When a case management conference is scheduled, the registrar must provide the parties with notice of that conference.

#### Attendance

**48.** (1) A party's representative must attend each case management conference in person.

#### Exception

(2) However, a party's representative may, with leave of the Tribunal, attend a case conference in another manner.

#### First case management conference

**49.** (1) The following matters must be discussed at the first case management conference:

- (a) the condition precedent set out in subsection 16(1) of the Act that gave rise to the filing of the specific claim;
- (b) the Crown's position with respect to the validity of the specific claim;
- (c) the degree to which the parties have prepared their cases respecting compensation;
- (d) whether any of the parties are intending to enter oral history evidence;
- (e) whether the interests of a province, First Nation or person might be significantly affected by a

decision of the Tribunal described in subsection 22(1) of the Act;

(f) whether the parties are interested in pursuing a mediated settlement of all or part of the specific claim; and

(g) how best to conduct the proceedings so that they remain proportionate to the amount in dispute and the importance and complexity of the issues involved.

All case management conferences

(2) At every case management conference, the parties must be prepared to discuss any matter that may assist in the just, timely and cost-effective determination of an issue in relation to the specific claim, including:

(a) protocols for the entering of oral history evidence and expert evidence;

(b) the nature of the evidence that the parties intend to enter and whether any of that evidence will be oral history evidence, expert evidence or evidence that was not disclosed while the claim was filed with the Minister;

(c) procedural matters related to applications;

(d) cultural diversity matters that should be considered in applying these Rules;

(e) matters related to the disclosure of documents and any related issues of privilege or confidentiality;

(f) identification of issues in relation to the specific claim that have been resolved between the parties and those that remain to be decided by the Tribunal;

(g) identification and status of other claims that are based on similar facts or that involve the same lands or assets as the specific claim;

(h) matters related to the testimony of potential witnesses; and

(i) the procedural timeline.

Settlement discussions

**50.** Except with the written consent of all parties, all statements made and all documents disclosed at a case management conference in respect of the settlement of all or part of an issue in relation to the specific claim are made and disclosed without prejudice.

Electronic record

**51.** Each case management conference must be recorded electronically. However, the content of that record cannot be used in the proceedings unless leave is granted by the Tribunal or the content is incorporated in an order of the Tribunal.

## MEDIATION

Availability

**52.** Parties may, at any time during the proceedings and on terms that are mutually agreeable to them, enter into mediation of any of the issues in relation to the specific claim.

Mediator

**53.** (1) The mediator must be either a member of the Tribunal or a private mediator that is jointly selected by the parties.

Limit

(2) Mediation by a Tribunal member is subject to the availability of the member and the resources of the Tribunal.

Limit

(3) If the mediator is a member of the Tribunal, that member cannot preside over the hearing unless the parties consent.

Without prejudice

**54.** Except with the written consent of the parties, all statements made and all documents disclosed during the mediation are made and disclosed without prejudice. However, documents disclosed during the mediation can be used at the hearing if they are otherwise available to the parties or the Tribunal in accordance with these Rules.

#### PRE-HEARING CONFERENCE

Pre-hearing conference

**55.** Before the day on which the hearing is scheduled to begin, a pre-hearing conference must be held between the parties' representatives and the Tribunal member who will preside at the hearing.

Matters to be discussed

**56.** (1) At the pre-hearing conference, the parties must be prepared to discuss any matter that may facilitate the hearing, including

- (a) whether any directions or pre-hearing orders may be required;
- (b) the use of electronic technology at the hearing;
- (c) procedural matters relating to oral history evidence and expert evidence;
- (d) the daily and weekly schedules of the hearing;
- (e) the parties' compliance with orders of the Tribunal;
- (f) logistical matters related to the holding of the hearing;
- (g) the identity of witnesses who will be called at the hearing, and whether they have consented to testify or whether subpoenas will be required; and
- (h) whether any of the parties intend to introduce demonstrative evidence at the hearing and whether

any parties have consented to its introduction.

Oral history evidence

(2) A party that intends to enter oral history evidence must be prepared to discuss the following matters at the pre-hearing conference:

- (a) the First Nation's practices with respect to safeguarding the integrity of its oral history;
- (b) the First Nation's protocols with respect to who is entitled to be custodian and speaker of its oral history; and
- (c) the status of any pre-hearing disclosure ordered under Rule 84.

## PART 8

### DISCLOSURE

#### APPLICATION FOR DISCLOSURE

Application

**57.** A party may make an application for the disclosure of

- (a) any documents or information, or category of documents or information, that are relevant to the proceedings and that are in the possession, power or control of another party; or
- (b) the identity of any witness that is expected to give evidence on behalf of another party at the hearing.

Claim of confidentiality

**58.** (1) If a party claims confidentiality with respect to a document or information, or a category of documents or information, that is subject to an application for disclosure the party must, in addition to the information required under Rule 35, set out the following in its response:

- (a) the nature of the confidentiality claimed; and
- (b) the specific and direct harm that would result from the disclosure.

Inspection by Tribunal

(2) If a party claims confidentiality with respect to a document or information, or a category of documents or information, that is subject to an application for disclosure, the Tribunal may inspect them in order to determine

- (a) whether they are relevant to the proceedings; or
- (b) whether the claim of confidentiality is valid.

Draft disclosure order

(3) If a party claims confidentiality with respect to documents or information, or a category of

documents or information, but consents to their disclosure under certain conditions, the party must, together with its response, file a draft order that

(a) identifies the documents or information, or category of documents or information, for which there is consent to disclosure; and

(b) sets out the conditions for their disclosure, including

(i) the parties that are to have access to them, and

(ii) for each document for which there is consent to disclosure,

(A) the number of copies that are to be provided to the parties,

(B) the limitations imposed with respect to their reproduction, and

(C) instructions for their return or destruction at the conclusion of the proceedings.

#### Claim of privilege

**59.** (1) If a party claims privilege with respect to a document or information, or a category of documents or information, that is subject to an application for disclosure the party must, in addition to the information required under Rule 35, set out the nature of the privilege claimed in its response.

#### Inspection by Tribunal

(2) If a party claims privilege with respect to a document or information, or a category of documents or information, that is subject to an application for disclosure, the Tribunal may inspect them in order to determine whether the claim of privilege is valid.

## PART 9

### EXAMINATIONS BEFORE THE HEARING

#### GENERAL

#### Application

**60.** (1) A party may make an application to examine a person before the hearing

(a) for the purpose of discovery;

(b) for the purpose of cross-examining the person on their affidavit; or

(c) for the purpose of taking the person's evidence for use at the hearing.

#### On consent

(2) Leave is not required to make the application if all parties consent to the examination.

#### Additional information

(3) In addition to the information required under Rule 34, the notice of application must set out the

following information:

- (a) whether the examination is proposed to be conducted orally, in writing or both;
- (b) whether the person or party proposed to be examined has consented to the examination; and
- (c) whether any other parties have consented to the examination.

Considerations

**61.** When deciding an application made under paragraph 60(1)(c), the Tribunal must consider the following factors in relation to the person proposed to be examined:

- (a) whether they will be absent during the time of the hearing;
- (b) their age or infirmity;
- (c) the distance they reside from the place of the hearing; and
- (d) the expense of having them attend the hearing.

Directions

**62.** If the Tribunal permits the examination to be conducted, it may provide the parties with directions regarding

- (a) the format and location of the examination; and
- (b) in the case of an oral examination, the means by which it is to be recorded.

Designated person

**63.** (1) When the Crown or a First Nation is examined for discovery, it must designate a person to be examined on its behalf.

Substitute

(2) On the application of the examining party, the Tribunal may order that a person other than the one designated be examined.

Duty of witness

**64.** The witness must, to the best of their knowledge, information and belief, answer every question posed to them that is relevant to the specific claim.

Oath

**65.** Examinations must be conducted under oath.

## ORAL EXAMINATIONS

Recording

**66.** Oral examinations must be recorded by a person who is qualified to record examinations.

#### Interpreter

**67.** (1) If the witness understands neither French nor English, or is hearing or speech impaired, the examining party must arrange for the attendance of an independent and competent person to accurately interpret everything said during the examination.

#### Interpreter's oath

(2) Before providing services at the examination, the interpreter must take an oath that they will accurately interpret everything said during the examination.

#### Production of documents

**68.** At the examination, the party whose witness is being examined must produce for inspection all documents that are relevant to the examination and which have been ordered to be disclosed under Part 8.

#### Objections

**69.** (1) A party who objects to a question that is asked in an examination must briefly state the grounds for the objection for the record.

#### Answer

(2) The witness may answer a question for which an objection is made subject to the right to having the propriety of the question determined, by application to the Tribunal, before the answer is used at the hearing.

#### Limiting an examination

**70.** On the application of a party, the Tribunal may limit an examination that it considers to be oppressive, vexatious, repetitive or otherwise unnecessary.

#### Application for directions

**71.** (1) A party may suspend an examination and make an application for directions if they believe that their witness is being subjected to an excessive number of questions or to improper questions, or that the examination is being conducted in bad faith or in an abusive manner.

#### Application for directions

(2) The examining party may suspend the examination and make an application for directions if

(a) they believe that the answers being provided by the witness are evasive; or

(b) documents have not been produced under Rule 68.

#### Costs of examination

**72.** The examining party must pay the following costs:

- (a) all fees and disbursements related to the recording of the examination;
- (b) if an interpreter was required, the fees and disbursements of the interpreter; and
- (c) the reasonable travel expenses incurred by the witness.

## WRITTEN EXAMINATIONS

### Written examinations

**73.** If an examination is to be conducted in writing, the examining party must serve the party whose witness is being examined with a list of concise, separately numbered questions for the witness to answer.

### Timing and format for answers

**74.** The witness must, within 30 days after the day on which the questions are served, serve each party with an affidavit setting out their answers to the questions.

### Objections

**75.** If a party objects to a question that is posed in a written examination, the examining party may make an application to compel the witness to answer the question.

## SANCTIONS

### Sanction

**76.** On the application of a party, the Tribunal may award costs against any person or party whose conduct necessitated the making of an application under Rule 70 or subrule 71(1) or who unnecessarily suspended an examination under subrule 71(2).

### Sanction

**77.** If a person fails to attend an examination or refuses to take an oath, answer a proper question, produce documents under Rule 68 or to comply with an order of the Tribunal, the Tribunal may, on the application of a party,

- (a) order the person to attend or re-attend the examination at their own expense;
- (b) order the person to answer a question for which an improper objection was made and any proper question arising from that answer;
- (c) strike all or part of the person's evidence, including any affidavit made by that person; or
- (d) order the party on whose behalf the person is being examined to pay the costs of the examination.

## PART 10

## EVIDENCE

### Evidence Taken Before the Hearing

### *Discovery Evidence*

#### Witness unavailable

**78.** With leave of the Tribunal, a party may introduce all or part of an examination for discovery of a person as evidence at the hearing if

- (a) the person has died;
- (b) the person is unable to testify at the hearing because they are ill or infirm; or
- (c) the person cannot be compelled to attend the hearing.

#### Introduction of evidence

**79.** A party may introduce as its own evidence at the hearing any part of its examination for discovery of a person, whether or not that person has already testified.

#### Order to introduce

**80.** If a party only introduces part of the examination for discovery, the Tribunal may order the party to introduce any other part of that examination that the Tribunal considers relevant.

#### Use for impeachment

**81.** A party may use any part of its examination for discovery of a person as evidence to impeach the credibility of that person as a witness at the hearing. However, the party must first ask the person the questions posed to them in that part of the examination.

### *Evidence Taken for Use at Hearing*

#### Entering of evidence

**82.** Evidence taken in an examination referred to in paragraph 60(1)(c) may be entered into evidence by any party at the hearing.

### ORAL HISTORY EVIDENCE

#### Notice

**83.** A party that intends to enter oral history evidence at the hearing must provide every other party with written notice of that intention at least 90 days before the day on which the hearing begins.

#### Disclosure order

**84.** The Tribunal may order a party who intends to enter oral history evidence to make pre-hearing disclosure of that evidence to every other party if it is necessary to ensure a just and expeditious hearing.

### EXPERT EVIDENCE

#### *Expert Reports*

## Expert report

**85.** A party that intends to have an expert witness give evidence at the hearing must, at least 120 days before the day on which the hearing begins, serve every other party with a copy of the expert's report.

## Responding expert report

**86.** A party that intends to have an expert witness give evidence in response to an expert report served under Rule 85 must, at least 60 days before the day on which the hearing begins, serve every other party with a copy of their expert's report.

## Supplementary expert report

**87.** In reply to any report served on them under Rule 86, the party who filed the report under Rule 85 may, at least 30 days before the day on which the hearing begins, serve every other party with a copy of a supplementary expert report prepared by their expert.

## Content of expert report

**88.** An expert report referred to in this Part must be signed and dated by the expert and include the following information and documents:

- (a) the name, business address and email address of the expert;
- (b) the expert's *curriculum vitae* and a statement indicating how their training, education and experience qualify them to produce the report;
- (c) any matters addressed in the report that fall outside the expert's area of expertise;
- (d) an account of the nature of the request to prepare the report and of any directions the expert has received for its preparation;
- (e) a summary of the opinions expressed in the report;
- (f) the facts and assumptions on which the expert's opinions are based;
- (g) any caveats or qualifications that are necessary to render the report complete and accurate;
- (h) identification of any literature or other materials that the expert relied on in support of the opinions expressed in the report; and
- (i) if the report is prepared in response or in reply to another expert's report, identification of the points of agreement and disagreement with that other report.

## *Tribunal-appointed Expert*

## Appointment

**89.** (1) The Tribunal may appoint an independent expert to inquire into and report on any question of fact or opinion that is relevant to an issue in relation to the specific claim.

## Appointment order

(2) The order appointing the expert must contain the following information:

- (a) the expert's name and qualifications;
- (b) the directions given to the expert regarding the preparation of the report;
- (c) the questions posed to the expert;
- (d) the date on which the expert's report is to be provided to the Tribunal;
- (e) the nature and extent of the expert's participation in the proceedings; and
- (f) the remuneration to be paid to the expert.

#### Service and filing

**90.** The expert's report must be filed and the registrar must serve a copy of the report on each party.

#### Submissions

**91.** Within 14 days after the day on which they are served with the expert's report, a party may make submissions to the Tribunal with respect to the admissibility of the report.

#### Responding expert report

**92.** Within 60 days after the day on which they are served with a report under Rule 90, a party that intends to have an expert give evidence in response to that report must file a responding expert report and serve a copy of it on every party.

### *Admission into Evidence*

#### Expert's testimony

**93.** (1) A party who wishes to enter an expert's report into evidence at the hearing must call the expert as a witness unless the expert was examined before the hearing under Part 9.

#### Limit

(2) The expert's testimony cannot consist of reading his or her report into evidence; however, the expert may provide a concise summary of the report's key points.

### AFFIDAVITS

#### Format

**94.** An affidavit must be drawn in the first person and be sworn to be true by the affiant.

#### Certification

**95.** The person before whom the affidavit is sworn must certify, on the affidavit, that the affidavit was read to, and apparently understood by, the affiant.

#### Translation

**96.** (1) If an affidavit is written in a language that is not understood by the affiant, the affidavit must be translated orally into the affiant's language by an independent and competent person who will accurately translate the content of the affidavit.

#### Translator's oath

(2) Before providing services, the translator must take an oath that they will accurately translate the content of the affidavit.

#### Evidence

**97.** Except for evidence relating to oral history, the evidence in an affidavit must be confined to facts that are within the affiant's personal knowledge.

#### Exhibits

**98.** Each exhibit referred to in an affidavit must be identified by an endorsement on the exhibit, or on a certificate that is attached to the exhibit, that is signed by the person before whom the affidavit is sworn.

#### Cross-examination

**99.** A party who cross-examines an affiant concerning their affidavit must order and pay for a transcript of that cross-examination and must provide a copy of the transcript to every other party.

### WITNESS TESTIMONY

#### Under oath

**100.** Each witness called to testify at the hearing must give their testimony under oath.

### DOCUMENTARY EVIDENCE

#### Transmission to registrar

**101.** If a party enters a document as evidence at the hearing and that document can be converted into PDF (Portable Document Format) or any other electronic format that allows the document to be converted for printing on letter size paper, the party must transmit the document to the registrar in that format.

## PART 11

### SUMMONING OF WITNESSES

#### Issuance of subpoena

**102.** A party may make an *ex parte* application to the Tribunal for the issuance of a subpoena for the attendance of a witness or for the production of documents at the hearing.

#### Application to set aside

**103.** A person who is subject to a subpoena may, under Part 4, make an application to have it set

aside.

## PART 12 HEARING PROCEDURE

Order of presentation

**104.** The order of presentation at the hearing is the following:

- (a) the claimant must make an opening address and then enter evidence;
- (b) after the claimant's evidence is concluded, the Crown must make an opening address and then enter its evidence; and
- (c) after the Crown's evidence is concluded, the claimant may enter evidence in reply.

Exhibits

**105.** All exhibits entered in evidence must be numbered and marked.

Order of argument

**106.** (1) After the parties have been given an opportunity to put in their respective cases, they must be heard in argument in the same order as that in which they entered evidence.

Reply

(2) A party may reply to the arguments of an adverse party and, if the reply raises a new point of law, the adverse party may answer on that point.

## PART 13 OFFERS TO SETTLE

Offer

**107.** A party may make an offer to settle to another party at any time.

Content

**108.** An offer to settle must be made in writing and set out

- (a) the amount of compensation offered, if any;
- (b) the period of time during which the offer will remain open for acceptance; and
- (c) any conditions that apply to acceptance of the offer.

Disclosure to Tribunal

**109.** The fact that an offer to settle has been made, and any details of the offer, can only be revealed to the Tribunal member presiding at the hearing

- (a) with the written consent of the parties to the offer; or
- (b) during an application for costs.

## PART 14

### COSTS

#### Costs — applications

**110.** (1) After the hearing of an application, the Tribunal may award costs in relation to that application.

#### Costs — proceedings

(2) After the hearing of the specific claim, the Tribunal may award costs in relation to the proceedings.

#### Factors to be considered — general

**111.** (1) When deciding whether award of costs under subrule 110(2), the Tribunal must consider the following factors:

- (a) whether a party has acted in bad faith;
- (b) whether a party has failed to comply with an order of the Tribunal; or
- (c) whether a party has refused a reasonable offer to settle.

#### Factors to be considered — claimant

(2) When deciding whether to award costs to the claimant under subrule 110(2), the Tribunal must also consider the following factors:

- (a) whether the claimant's costs are reasonably incurred but are disproportionate to the amount of compensation awarded; and
- (b) whether the issues in relation to the specific claim are complex or contain elements that are of general public importance.

### COMING INTO FORCE

#### Registration

**112.** These Rules come into force on the day on which they are registered.

Date Modified: 2011-06-14