



Specific Claims Tribunal Canada

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Practice Directions

PRACTICE DIRECTION # 14

October 12, 2018

MEDIATION

Rules 52, 53 and 54 of the Specific Claims Tribunal Rules of Practice and Procedure set out requirements for mediation by the Tribunal or by a private mediator. 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. 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 mediation by a Tribunal member, or other suitable person (including a judge, retired judge, member of the Bar experienced in binding arbitration, or mediator).

1. The Tribunal may, upon request of the parties, provide for mediation by a member of the Tribunal. The member that mediates a claim will not subsequently preside over a hearing of the same issues that formed the subject of the mediation.
2. The member assigned to the claim may serve as mediator if the parties consent to another member presiding over the hearing of the claim.
3. Without limiting the generality of section 1 of this Practice Direction, a member that serves as a mediator of any or all issues in the validity stage may preside over a compensation phase of the claim without the consent of the parties.
4. Nothing in this Practice Direction prevents the parties from appointing a private mediator without leave of the Tribunal.

Objective of Mediation

5. The objective is to establish a Memorandum of Understanding between the designated representatives of the parties on terms that provide for a final resolution of the claim.

Preparatory Meeting

6. The Tribunal may convene a conference with the parties and their counsel to assist them in preparing for mediation by a member.
7. At the preparatory meeting, the Tribunal will consult with the parties:
 - 7.1 To identify the list of issues for mediation.
 - 7.2 To determine whether there are issues for which expert reports may be required or exist and could be used by the parties or a party.

- 7.3 To discuss whether the subject matter of a report would be suitable for the joint appointment of an expert or the retention of an expert by the Tribunal.

Preparation for Mediation

8. In advance of mediation, the parties must enter into a Mediation Agreement in a form satisfactory to the parties and the mediator, that will provide for confidentiality undertakings from the participants.

Representation at Mediation

9. Each party will appoint, as their representative in the mediation, a person having the authority to agree on terms of settlement subject to such processes internal to the party as may be required to enter a binding agreement.

Mediation Briefs

10. The parties must, unless varied by the Tribunal, file Mediation Briefs with the Tribunal not less than fourteen (14) days in advance of the date scheduled for the mediation.
11. The Mediation Briefs shall include the following:
 - 11.1 The names and roles of the individuals who will attend the mediation.
 - 11.2 Identification of the factual and legal issues on which the parties are in agreement.
 - 11.3 Identification of the factual and legal issues in dispute and the position and interests of the party making the statement.
 - 11.4 Where the claim was (wholly or partially) accepted for negotiation and filed with the Tribunal due to inability to reach settlement, a general description of the unresolved issues that resulted in the failure to establish terms of settlement.
 - 11.5 Any documents a party considers of central importance to the claim.

Mediation Materials, Expert Reports, and Proceedings before the Tribunal

12. Subject to sections 13 and 14 of this Practice Direction, the proceedings in or related to the mediation, including material disclosed by a party in the course of preparation for and conduct of the mediation will, unless otherwise required by law or permitted by agreement of the parties to be available to the public, be confidential.
13. A party may apply under Rule 4(1), to vary Rule 54 to permit, without the consent of the other party or parties, the introduction in evidence of an expert report it has produced in mediation, provided that it waives privilege in relation to the expert report.
14. A party may, in proceedings before the Tribunal, apply to the Tribunal under Rule 4(1) for directions with respect to the admissibility in evidence and confidentiality of portions of or an entire expert report.

Caucusing

15. The mediator may, after informing the parties of his or her intention to do so, communicate with each party separately. The mediator shall not disclose to a party information relevant to the mediation received from another party without that party's consent.

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