

Reference: October 5, 2010 meeting of Tribunal and Advisory Committee

Introduction

We look forward to a productive meeting toward the development of the Rules of Practice and Procedure of the Tribunal.

This posting addresses the following:

1. Organization and representation;
2. Perspective of the Tribunal on subject matters for discussion;
3. In response to enquiries directed to the Registrar, some thoughts on mediation, and the integration of mediation within the process before the Tribunal.

Discussion

Organization and Representation

We have asked the AFN to assume a role in organizing the members of the Advisory Committee who wish to present on matters related to the presentation of claims on behalf of First Nations. This would include First Nation's organizations, and legal counsel engaged in the representation of First Nations in the Specific Claims process. We appreciate the contribution that the AFN is making in this regard.

We emphasize that, unless the above participants in the Advisory Committee agree on representation by the AFN or any other participant, each will be afforded the opportunity to speak to its concerns.

Presentations are anticipated from the Department of Justice on behalf of the Crown, and any neutral participant such as the Canadian Bar Association.

Where consensus has been reached in relation to any matter by some or all members of the Advisory Committee, we welcome a presentation by a representative of the group that has achieved consensus.

We have heard the concerns of all sectors over the court-like process reflected in the initial draft Rules of Practice and Procedure. As this appears to be a matter around which a consensus has been formed, we hope that presentations on this subject will be brief, and limited to the basis for this concern. An appropriate limitation will be one presentation that reflects the claimant's perspective, and a presentation of the perspective of the Crown. It would be helpful to the Tribunal if notice is taken of the

discussion under the heading “Court-Like Process” in the website posting dated August 13, 2010. The processes set out in parts 8 to 12 of the draft Rules will be revised. These will be applied only to the extent ordered by the Tribunal in the course of case management.

We invite suggestions from the Advisory Committee on agenda items. These may be directed by:

- (1) E-mail to the following address: sctrules@sct-trp.ca
- (2) By facsimile transmission to: 613.943.0586
- (3) By mail, hand delivery, or courier to: Rules Committee
427 Laurier Avenue West,
4th Floor
Box/C.P. 31
Ottawa, ON
K1R 7Y2

Matters for Discussion

We ask that the discussion with members of the Advisory Committee focus on matters of substance. The meeting is not intended to be an exercise in drafting by Committee.

Our website posting of August 13, 2010, identifies major areas of concern that were advanced in the written submissions that were presented after the posting of the draft Rules. Our preliminary views on the direction we may take on each major concern are discussed. We hope to receive the views of members of the Advisory Committee on these identified areas of concern. We would, of course, welcome any presentation on matters that, from the perspective of any member of the Advisory Committee, are of concern.

Mediation

We are committed to active case management of claims filed with the Specific Claims Registry. One objective of case management is to narrow the issues and assist the parties toward a resolution of core issues by agreement and orders entered by consent. We will, through case management, seek to elicit from the parties the full context surrounding the presentation of a Specific Claim to the Tribunal.

Some issues, for example compensation, may lend themselves to resolution through mediation. Mediation may only take place with the consent of both parties. The Tribunal would retain jurisdiction over any matter referred for mediation, whether by a Tribunal Member or an outside mediator. Timelines, and periodic reporting to the

Tribunal Member presiding over case management, would be required. Submissions from members of the advisory committee are welcomed.

Please raise any proposed agenda items at your earliest convenience. We hope to post and circulate an agenda for the Oct. 5 meeting by Thursday, September 30, 2010.

We look forward to the October 5th meeting.

Justice Harry Slade,

Chair