

Specific Claims Tribunal Canada

Tribunal des revendications particulières Canada

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October 25, 2010.

Message from the Chair

This message is intended to update the public, including First Nations, on progress made thus far towards the commencement of Tribunal operations. It also addresses our expectations for the current fiscal year (April 1, 2010 – March 31, 2011), and the following fiscal year.

In our initial website posting, dated April 1, 2010, we reported, in part, as follows:

There is much work to be done before the Tribunal can be fully constituted to commence its adjudicative role. The task at present is to lay the foundation for a fully functioning Tribunal.

This foundational work includes the following:

- 1. establish the process for taking claims from filing in the registry, through to hearing and disposition*
- 2. formulate rules to govern proceedings before the Tribunal*
- 3. assess the workload that will be faced by the fully constituted Tribunal*
- 4. identify the physical, human, and technological resources as required to manage the workload*
- 5. establish principles of governance and funding that assure the reality and appearance of Tribunal independence*

Once this work is completed, the stage will be set for the appointment of the roster of between 6 and 18 justices as members of the Tribunal, as called for by

s. 6(2) of the Act. The Superior Court judges who volunteer, and are designated by their respective Chief Justices, will be available for appointment to the Tribunal.

Once the roster is established, the Tribunal will be positioned to schedule pre-hearing procedures and hearings.

Despite the efforts of members of the Tribunal, the Registrar, and registry staff, we are not, at this moment, ready to commence operations. The Chairperson's report to the Minister of Indian Affairs and Northern Development, as required by Section 40 of the *Specific Claims Tribunal Act*, was provided to the Minister on September 30, 2010. This report speaks of the work undertaken from the date of our appointments to the Tribunal, November 27, 2009, to the date of presentation of the report to the Minister. It also addresses our plans for the remainder of the current and following fiscal year. Section 40 of the *Act* calls upon the Minister to table the Chairperson's report in both houses of parliament within 30 days of receipt.

A brief report on the status of our efforts to bring the Tribunal into operation, and the relationship between several of the tasks identified in our first message from the Chair, follows:

Workload Assessment

We have received information on both the number and magnitude of claims that qualify for filing.

There are, at present, at least 74 claims that qualify for filing with the Tribunal on the basis of rejection by the Minister. There are 577 claims in the process administered by the specific claims branch of the Ministry. Of these, 181 are categorized as in "active or inactive" negotiation. There are 396 claims at various stages of assessment. Historical acceptance/rejection rates suggest that a significant number of these may,

based on rejection, became eligible for filing with the Tribunal. As of October 2011, as many as 87 claims could become eligible based on failure to conclude a settlement after three years from the date of acceptance.

While this information helps toward an assessment of workload, we have concluded that it will not be possible to fully assess the future workload until after the Tribunal commences operation.

The regional distribution of claims presented to the Specific Claims Branch of the Ministry suggests that at least one half of claims that may be filed with the Tribunal arise in Western Canada. At least 40% of such claims arise in the Province of British Columbia. The *Act* requires that the Registry of the Tribunal be located in Ottawa. The Registry, including its offices, support staff, and tribunal hearing facilities, were established in Ottawa before the appointment of Justices to serve as Tribunal Members. Questions remain around the provision of resources for Tribunal operations in Ontario and other provinces.

The magnitude of claims that are eligible for filing with the Tribunal varies considerably. Some may raise complex issues of law or fact; others may not. All are important to the First Nations claimants.

It will not be possible to fully assess the workload of the Tribunal, and the resources that may be required to service the workload, until some time after the Registry opens for the filing of Specific Claims, and the Tribunal commences case management of such claims. An ongoing assessment of these requirements will inform us on the number of Justices required to manage the workload, the location of offices, hearing facilities, staff, and ongoing requirements for financial support.

We have, since our appointments late in 2009, been in consultation with government officials and federal court administrators concerning:

1. Access to hearing venues across the country;

2. The status of arrangements for use by Tribunal Members of resources available in several provinces, for office accommodation and support staff provided to them in their capacity as Justices of the Superior Courts;
3. Adequate fiscal support for Tribunal operations for the 2011-2012 fiscal year.

The assurance of adequate resources for the Tribunal to carry out its work is vital to the Tribunal's functioning as an independent adjudicative body.

Administration and Staffing

At present, all but one of the 10 persons employed in the Registry, are primarily involved in its corporate affairs. These include the procurement of office and hearing facilities and all materials including computer hardware and software.

Additional staff are required to provide direct support services to members of the Tribunal in the Tribunal's roles as case managers, adjudicators, and, where the parties to claims consent, mediators. The definition of these employment roles must be coordinated with the development of the Tribunal Rules of Practice and Procedure. Both are in progress.

Rules of Practice and Procedure

A first draft of the rules was made public on June 29, 2010.

Further reports concerning the development of the rules were made on August 13, 2010 and on September 27, 2010.

On October 5, 2010, the Tribunal met with representatives from numerous interested parties, all of whom had made submissions in response to the initial draft.

The Tribunal is working on a thorough revision of the first draft, and anticipates that the Rules will be in place before the end of the 2010 calendar year. As the Rules are made under the authority of federal legislation, the Rules must be reviewed under the process established under the *Statutory Instruments Act*. This process is not within the control of the Tribunal.

The definition of employment roles for support of the work of Tribunal Members, and the technology for operation of the claims registry and hearings, proceeds in parallel with the development of the rules. Employment roles must be defined and filled in compliance with federal laws, regulations, and guidelines.

Summary

An accurate forecast of the magnitude of the work facing the Tribunal cannot be made until sometime after operations commence. We anticipate that the Registry will open for the formal filing of claims, and case management, by the end of the current fiscal year, March 31, 2011.

The Tribunal must, however, have a reasonable level of confidence that it will be in a position to service claims filed after the registry is open. We have assessed the requirements for physical plant, support staff, materials, and the related funding needs for the April 1, 2011 – March 31, 2012 fiscal year. Assuming adequate resources, operations will, we hope, commence as indicated.

We will need to re-assess the operational requirements for the longer term in the course of the 2011-2012 fiscal year. This will include assessments of:

1. The practicality and efficiency of full time and part time judicial terms, as members of the Tribunal;
2. The number of justices needed from each region;

3. Requirements for offices, hearing facilities, and support staff in Ottawa and other locations;
4. Ongoing funding to meet operational and capital needs.

The term of the appointments of the present members of the Tribunal expire on November 27, 2010. All have volunteered for extended terms of appointment.

Appointments are at the discretion of the Governor in Council.

Sincerely,

Justice Harry Slade

Chairperson, Specific Claims Tribunal