

SPECIFIC CLAIMS TRIBUNAL OF CANADA: Rules of Practice and Procedure

Preamble

WHEREAS

The Specific Claims Tribunal Act calls for the creation of an independent tribunal designed to adjudicate specific claims in accordance with law,

A decision of the Tribunal on the legal validity of a specific claim is, by the operation of s. 34(2) of the Specific Claims Tribunal Act "...final and conclusive between the parties in all proceedings in any court or tribunal arising out of the same or substantially the same facts...",

Fairness to the parties, and the public interest, is served by Rules of Procedure that ensure that all processes for the discovery of relevant evidence is available to the parties, within a transparent adjudicative process that will result in findings of fact based on an evidentiary foundation that reflects full disclosure,

Section 13(1) of the Specific Claims Tribunal Act vests in the Tribunal, in relation to the production and inspection of documents, and generally, "...all the powers, rights and privileges that are vested in a superior court of record...",

The Specific Claims Tribunal Act, ss. 13(1)(c), calls for the resolution of specific claims as a means of promoting reconciliation between First Nations and the Crown, and mandates the Tribunal to take into consideration cultural diversity in developing and applying its rules of practice and procedure,

The Specific Claims Tribunal enacts these rules of practice and procedure to allow for the just and timely adjudication of specific claims of First Nations in a culturally sensitive and fair manner:

Short Title

1. These Rules may be cited as the *Specific Claims Tribunal Rules*.

Application and Interpretation

2. (1) These Rules apply to all proceedings before the Specific Claims Tribunal.
(2) In the event of any inconsistency between these Rules and an Act of Parliament or a regulation made under such an Act, that Act or regulation prevails to the extent of the inconsistency.

Definitions

3. (1) The following definitions apply in these Rules.

“Act” means the Specific Claims Tribunal Act, 2008, c. 22;

“Address for Service” means;

(a) in respect of a party who has no counsel of record;

(i) the address shown on the last document filed by the party that indicates an address in Canada, or

(ii) where the party is the Crown or the Attorney General of Canada, the office of the Deputy Attorney General of Canada in Ottawa; and

(b) in respect of a party who has a counsel of record, the address of the solicitor of record shown on the last filed document that indicates an address.

“Applicant” means a party who has filed an application as defined by these rules;

“Application” means any procedure by which a party, or such others as permitted by the Act, applies to the Tribunal for a decision or order on any matter, prior to the final disposition of the case;

“Case File” means the file maintained by the Registrar of the Tribunal;

“Case Management Tribunal” means a Member of the Tribunal constituted pursuant to s. 6(2) of the Act, and assigned by the Chair to manage the progress of the claim and hear procedural applications;

“Certified Copy”, in respect of a document in the custody of the Registry, means a copy of the document certified by an officer of the Registry;

“Chair” means the Member of the Tribunal who is designated as Chairperson of the Tribunal by the Governor in Council;

“Christmas Recess” means the period beginning on December 21 in a year and ending on January 7 in the following year;

“Claim” means the Declaration of Claim filed in the Registry to initiate a Proceeding before the Tribunal, together with the Particulars;

“Claimant” means a First Nation that has filed a Specific Claim;

“Claims Registrar” means the person appointed to that office by Process Rule ____;

“Claims Registry” means the registry prescribed by Process Rule 57;

“Conference” means a meeting in oral, electronic or written form, or in any combination thereof, of persons or of the parties with a Member of the Tribunal prior to a hearing to consider any issue pertaining to the claim or hearing of the claim;

“Counsel” means the lawyer representing a party to the proceedings;

“Crown” is defined in section 2 of the Act;

“Declaration of claim” means the document required to be filed by Rule 20;

“Document” includes all forms, correspondence, memoranda, files, books of account, agreements, reports, charts, graphs and any other written, pictorial communication, a sound recording, videotape, photograph, map, plan, film survey or like thing, and any information recorded or stored by means of any device;

“Electronic Hearing” means a hearing held by telephone conference or other form of electronic means that allows persons to see and/or hear one another;

“Expanded Hearing” means a hearing provided for in Rule ____;

“File” means to deliver a document to the claims registrar, and, where the document is a document for which service is required under these rules, to deliver proof of Service of the document to the claims registrar;

“Filed”, in respect of a document, means accepted for filing by the Claims Registrar;

“Filed Claim” means a specific claim asserting one or more of the grounds provided for in s. 14 of the Act;

“Hearing” means a hearing conducted by the Tribunal and may include an oral hearing, a written hearing or an electronic hearing in any combination;

“Holiday” means a Saturday, Sunday or any other day defined as a holiday in subsection 35(1) of the Interpretation Act;

“Issue” means a question of law or fact that arises in a Specific Claim;

“Member” means a person appointed pursuant to section 6 of the Act;

“Minister” means the Minister of Indian Affairs and Northern Development;

“Oath” includes a solemn affirmation within the meaning of subsection 14(1) of the Canada Evidence Act;

“Opening Address” means an oral presentation of the perspective of the First Nation on the significance of the specific claim, made by one or more elders or other members of the First Nation claimant;

“Oral Hearing” means a hearing at which the parties and their counsel or representative attend before the Tribunal in person;

“Order” includes a final judgment or decision of the Tribunal; and a decision or other disposition of the Tribunal other than a final judgement or decision;

“Particulars” means the material required by subrules 20(2) and 21(2) of the declaration of claim and the response;

“Pleading” includes a declaration of claim, response, and particulars;

“Proceeding” means the process for the hearing of a specific claim or an issue;

“Process Rule” means the rule of the Tribunal establishing the functional independence of the claims registry from the Registry;

“Registrar” means the person appointed as a registrar pursuant to section 10 of the Act, and who, as a Deputy Head within the meaning of the Financial Administration Act, has the responsibilities and authority of that office;

“Registry” means the registry of the Tribunal established pursuant to section 10(1) of the Act and, as a department under the Financial Administration Act, is presided over by the Minister;

“Response” means the document required to be filed by Rule 21;

“Rules” means these Rules of Practice and Procedure;

“Serve” means to deliver a document to any person, party or to a representative of the person or party in the manner prescribed by these rules;

“Specific Claim” means a claim brought by a First Nation against the Crown in Right of Canada for compensation, based on one or more of the grounds set out in s. 14(1)(a)-(f) of the Act, and filed;

“Tribunal” means, for the purpose of these Rules:

- (a) the Case Management Tribunal
- (b) the Member of the Tribunal assigned by the Chair to hear the specific claim on the merits

(c) any Member of the Tribunal who hears any application permitted by the Rules,

except where the context indicates a reference to the Tribunal at large;

“Written Hearing” means a hearing conducted by means of the exchange of documents in written form or electronic form;

(2) A word or phrase used in these Rules that is defined in the Act bears the definition contained in the Act;

PART 1 - GENERAL RULES AND PROCEDURES

Cultural diversity

4. (1) The Tribunal shall take into account cultural diversity in applying its rules of practice and procedure. With respect to making any orders or directions this may include:
 - (a) directing that oral history evidence be taken in settings with which the witnesses are familiar, and in a manner respectful of the witnesses’ language and the culture and traditions of the First Nation;
 - (b) arranging for the oral hearing to take place within the community of the claimant First Nation ;
 - (c) arranging for the pre-hearing taking and preservation of oral history, oral tradition, or other evidence sought to be adduced by a party.
 - (d) arranging for translation services;
 - (e) other directions as may appear necessary to preserve oral history that might, but for such measures, not be available at the hearing of the claim.

Objective of Rules

5. (1) These Rules shall be liberally construed to secure the just and expeditious determination of every proceeding on its merits and in a manner that ensures that cases proceed in a manner that is just, timely and adapted to the distinctive character of specific claims.
 - (2) The Tribunal may provide for any procedural matter not provided for in these Rules or in an Act of Parliament by analogy to these Rules or by reference to the practice of the Superior Court of the province to which the subject-matter of the proceeding most closely relates.

(3) The Tribunal may make procedural orders not specifically provided for in the Rules, and may provide for a more expeditious or informal process, as the circumstances and considerations of procedural fairness permit.

(4) Where these Rules require that a form be used, the form may, with the approval of the Claims Registrar, incorporate any variations that the circumstances require.

(5) A person or party may, at any time, bring an application before the Tribunal for directions concerning the procedure to be followed under these Rules.

Defects in form and procedure

6.
 - (1) An application or a pleading shall not be set aside only on the sole ground of a defect in form.
 - (2) A party may by application challenge any step taken by another party for non-compliance with these Rules.
 - (3) An application under subrule (2) shall be brought as soon as practicable after the applicant obtains knowledge of the irregularity.
 - (4) Where, on an application, the Tribunal finds that a party has not complied with these rules, the Tribunal may, by order,
 - (a) dismiss the application, where it was not brought within a reasonable time after the applicant became aware of the irregularity;
 - (b) grant any amendments required to address the irregularity; or
 - (c) set aside the proceeding, in whole or in part.
7. Non-compliance with any of these Rules does not render a proceeding, a step in a proceeding or an order void, but instead constitutes an irregularity, which may be addressed by application to the Tribunal.
8. At any time before judgment is given in a proceeding, the Tribunal may draw the attention of a party to any gap in the proof of its case or to any non-compliance with these Rules and permit the party to remedy it on such conditions as the Tribunal considers just.

Representation by Legal Counsel

9. All persons and parties to proceedings before the Tribunal shall be represented by legal counsel except with leave of the Tribunal. Such leave will be granted only in exceptional circumstances, and only when the Tribunal is satisfied that the proposed representative has sufficient experience and

skills to adequately represent the First Nation in advancing the specific claim before the Tribunal.

Counsel of record

10. (1) A counsel who signs a document filed pursuant to these Rules on behalf of any party shall be the counsel of record for the party commencing on the date of filing and continuing until a change, if any, is made.

(2) A party in a proceeding may change the party's counsel of record by;
 - (a) filing with the claims registry a Notice of Change of counsel of record signed by the new counsel;
 - (b) serving a copy of the Notice on the former counsel and every other party in the proceeding; and
 - (c) filing with the claims registry proof of service of the Notice.
11. (1) Where a counsel of record ceases to act for a party and the party has not changed its counsel, the Tribunal may, on application of the counsel, order that the counsel be removed from the record.

(2) An application under subrule (1) shall be served on the party formerly represented by the counsel.

(3) An order made under subrule (1) removing a counsel of record of a party shall be served on all parties to the proceeding.

(4) An order under subrule (1) does not take effect until proof of its service has been filed.
12. A party is deemed not to be represented by a counsel if the party does not appoint a new solicitor after its counsel of record
 - (a) dies; or
 - (b) ceases to act for the party because of
 - (i) appointment to a public office incompatible with the counsel's profession;
 - (ii) suspension or disbarment as a counsel, or
 - (iii) an order made under Rule 11.
13. Where, without leave of the Tribunal, a party is not represented by counsel, all proceedings are stayed pending the appointment of counsel or order of the Tribunal.

Combining Proceedings

14. The Tribunal may, on its own initiative or application by a party, combine two or more proceedings .

Computation, Extension and Abridgement of Time

15. (1) Subject to subrules (2) and (3), the computation of time under these rules, or under an order of the Tribunal, is governed by sections 26 to 30 of the Interpretation Act.

(2) Where a period of less than seven days is provided for in these rules or fixed by an order of the Tribunal, a day that is a holiday shall not be included in computing the period.

(3) Unless otherwise directed by the Tribunal, a day that falls within the Christmas recess shall not be included in the computation of time under these rules for filing, amending or serving a document.
16. (1) Subject to subrules (2) and (3), a period provided by these rules may be extended once by filing the consent in writing of all parties.

(2) An extension of a period under subrule (1) shall not exceed one half of the period sought to be extended.

(3) No extension may be made on consent of the parties in respect of a period fixed by an order of the Tribunal without leave of the Tribunal.

(4) On application, the Tribunal may extend or abridge a period provided by these rules or fixed by an order.

(5) An application for an extension of time may be brought before or after the end of the period sought to be extended.

(6) If it is fair and equitable to do so, the Tribunal may extend or abridge the time limits fixed by these rules or otherwise fixed by the Tribunal, either before or after their expiry.

Directions on Procedure

17. Where, in any proceeding, a question of procedure arises to which these rules do not provide an answer, or the answer they do provide is incomplete, the question shall be disposed of, consistently with such, if any, of these rules as are applicable, in such manner as the Tribunal directs.

Communications with the Tribunal

18. Unless directed otherwise, written communications to the Tribunal shall take place only through the Claims Registrar, and shall be copied to all parties or their representatives. Oral communications with the Tribunal about a proceeding shall take place only in the presence of all parties, or with the consent of any party not present.
19. The Tribunal shall not be copied on correspondence exchanged by parties, unless the Tribunal has given prior approval to such copying.

PART 2 - PLEADINGS

Initiation of Proceedings by filing Declaration of Claim

20. (1) A proceeding shall be commenced by filing a document in Form ____ (“Filed Claim”), in the claims registry. The document shall contain: a heading “Declaration of Claim”, the text of which shall set out, in numbered paragraphs:
 - (a) that the claimant is a First Nation within the meaning of s. 2 of the Act;
 - (b) that the claim is made against Her Majesty the Queen in Right of Canada as represented by the Minister of Indian Affairs and Northern Development;
 - (c) the ground or grounds for the specific claim, as set out in s. 14(1)(a)-(f) of the Act;
 - (d) the cause or causes of action asserted by the claimant;
 - (e) allegations of fact which, if proven, would establish a cause of action in law;
 - (f) the basis, under s. 20(1)(e)-(h) of the Act on which compensation is sought to be determined.
 - (g) that the First Nation has complied with the requirements of s. 16(1) of the Act;
- (2) in a schedule to the Declaration of Claim, further details, in conformity with the minimum standard established by the Minister pursuant to s. 16(2)(a) of the Act, including:
 - (a) a list of allegations based on one or more of the grounds related to the validity of the claim, as set out in the specific claims policy;
 - (b) legal arguments supporting each allegation;

- (c) a statement of the facts supporting the allegations;
 - (d) a statement that compensation is being claimed;
 - (e) a list of authorities with citations, including treaties, statutes, case law and law journal articles, that support the allegations (copies not required);
 - (f) a historical report, including references to supporting documents, outlining the factual circumstances surrounding the allegations;
 - (g) complete copies of primary documents and relevant excerpts of secondary documents relied upon to support the allegations included in the claim document and referred to in the historical report;
- (3) The First Nation shall, on filing the Declaration of Claim, file an original or certified true copy of a resolution of the Council of the First Nation that the claim is submitted on the authority of the Council of the First Nation on behalf of the First Nation.

Response

21. (1) The Minister shall, within 30 days after the date of the filing of the Declaration of Claim, file a Response in Form ____.
- (2) The Response must include:
- (a) a general statement setting out the following:
 - (i) whether the claim, as filed with the Minister, has been accepted for negotiation;
 - (ii) whether, for the purpose of the proceeding, the claim is accepted subject to reaching agreement on compensation, and, if so, which of the compensation criteria set out in s. 20(1)(e)-(h) the Minister considers applicable;
 - (b) particulars, including:
 - (i) a statement whether the Crown admits or denies the allegations of fact set out in the Declaration of Claim;
 - (ii) a statement of alleged facts relied on by the Crown to answer the claimants' allegations of fact
 - (iii) legal arguments in support of the position taken by the Crown on the applicability to the facts of the cause or causes of action asserted by the claimant;

(iv) a list of authorities with citations, including treaties, statutes, case law and law journal articles, that support the allegations relied on by the Crown (copies not required);

(v) where previously obtained by the Minister, a historical report, including references to supporting documents, outlining the factual circumstances alleged by the Crown to answer or respond to the allegations set out in the Declaration of Claim and claimants' particulars;

(vi) complete copies of primary documents and relevant excerpts of secondary documents relied upon to refute the allegations contained in the Declaration of Claim.

Amendments

22. (1) The Tribunal may, on application, allow a party to amend a Declaration of Claim or Response, on such terms as will ensure procedural fairness to the parties.

(2) A claimant may not amend a Declaration of Claim to raise any ground for the claim not previously set out in the claim filed with the Minister, except where such ground relies on substantially the same facts as the claim presented to the Minister pursuant to s. 16(3) of the Act.

(3) No amendment shall be allowed under subrule (1) during or after a hearing unless:

(a) the purpose is to make the pleading accord with the issues at the hearing;

(b) a new hearing is ordered; or

(c) the other parties are given an opportunity to prepare to meet any new or amended allegations.

(4) Unless the Tribunal orders otherwise, where these Rules provide for doing an act or taking a step in a proceeding within a prescribed period after the service or filing of a document and that document is subsequently amended in accordance with these Rules, the period shall be calculated from the day of service or filing of the amended document, as the case may be.

PART 3 - FILING AND SERVICE OF DOCUMENTS

23. (1) The Declaration of Claim, Response, and other documents provided for by these rules, must be filed with the claims registry, The Specific Claims Tribunal, 427 Laurier St. W., 4th floor, Ottawa, Ontario.

- (2) The parties shall file their documents by electronic transmission.
- (3) The parties shall also file with the claims registry a paper copy of:
 - (a) by the claimant, that part of the Declaration of Claim provided for in Rule 20(1);
 - (b) by the Crown, that part of the Response provided for in Rule 21(2).
- (4) Documents filed by electronic transmission shall, subject to Rule 24, constitute the original.
- (5) An intervenor shall use the same medium (electronic or paper) as required of the parties.
- (6) Subject to subrule (7), only those paper documents that are printed on 21.5 cm x 28 cm (letter size) paper and that have numbered pages may be filed.
- (7) A paper document that is not printed on 21.5 cm x 28 cm paper and that cannot reasonably be converted to that format by the person filing it may be filed in its existing format.

Facsimile filing

24. (1) If a document is, with leave of the Claims Registrar or Tribunal, filed by facsimile transmission, it is deemed to be the original.
- (2) The following documents shall not be filed by facsimile transmission:
 - (a) the Declaration of Claim and Response;
 - (b) a document that is filed in multiple copies; and
 - (c) a document that contains, to which is appended or that is accompanied by a document containing confidential information.
- (3) A document filed by facsimile transmission shall include a cover page setting out
 - (a) the name, address and telephone number of the sender;
 - (b) the name of the person or the counsel to whom a copy of the document is sent;
 - (c) the date and time of the transmission;
 - (d) the total number of pages transmitted, including the cover page; and

(e) the name and telephone number of the person to contact if transmission problems occur.

(4) A document filed by facsimile transmission after 17:00 hours Ottawa local time is deemed to be filed on the next day that is not a holiday or Saturday.

Format for electronic filing

25. (1) An electronic version of a document in PDF (Portable Document Format) or any other format allowed by the Tribunal shall be filed in a manner directed by the Claims Registrar.

(2) All documents filed by electronic transmission shall be electronically time stamped.

(3) Any document transmitted electronically after 17:00 hours Ottawa local time is deemed to be filed on the next day that is not a holiday or Saturday.

Irregularity or defect

26. At any time before judgment is given in a proceeding, the Tribunal may draw the attention of a party to any irregularity or defect relating to an electronic version of a document and permit the party to remedy it on any conditions that the Tribunal considers fair.

Electronic sworn statement or solemn affirmation

27. A statement made under oath may be filed electronically, by filing a scanned version of the document that includes a handwritten signature and the following: "The document that is being electronically submitted to the Tribunal is an electronic version of a paper document that has been signed by the affiant. The signed document in paper copy is available and will be produced if requested by the Tribunal."

Maintenance of document

28. (1) All documents referred to in these rules must be maintained in paper form by the party or intervenor filing the document until one year after the hearing or settlement of the claim.

(2) Upon request of the Tribunal, the party or intervenor filing the statement made under oath must provide the original signed document for review.

Alternative Means for Filing

29. Upon the request of a party or intervenor, the Tribunal may order a different method for the electronic filing of a statement made under oath, or may order other means for filing the document.

Electronic certified copy

30. If a document is filed electronically, and a certified copy of the document is requested from the Tribunal, the Tribunal may provide an electronic copy of the document stamped “certified”.

Public access

31. Subject to any confidentiality order, the public is entitled to access the documents filed or received in evidence on the public record, in the format in which they were received by the claims registry.

Without confidentiality order

32. A party or intervenor who wishes to assert confidentiality in a document to be filed that is not covered by a confidentiality order shall
 - (a) file a public version of the document that does not include the confidential information;
 - (b) provide the registry with a version of the document marked “confidential” that includes and identifies the confidential information that has been deleted from the public version filed under paragraph (a); and
 - (c) bring an application to the Tribunal for an order allowing it to file the confidential version.

With confidentiality order

33. A party or intervenor who wishes to file a document containing information that has already been made subject to a confidentiality order shall file a public version that does not include the confidential information and a confidential version with each page clearly marked “confidential”. The confidential version shall identify the confidential material that has been deleted from the public version and the date on which the material was deleted.

General

34. No document required to be served shall be filed without proof that it has been served within the time and in the manner provided for by these rules.
35. (1) Where a document is submitted for filing, the Claims Registrar shall:
 - (a) accept the document for filing; or
 - (b) where the Claims Registrar is of the opinion that a document presented for filing is materially non-compliant with the form required by

these Rules, the Claims Registrar shall forthwith refer the document to a Member of the Tribunal.

(2) On receipt of a document referred under paragraph 35(1)(b) the Tribunal may direct the Claims Registrar to:

(a) accept or reject the document; or

(b) accept the document subject to such conditions as the Tribunal may direct.

36. Documents may be filed with the Tribunal by any of the methods provided in this rule, but the date and time of filing will be the date and time of the acceptance of the document by the Claims Registrar for filing.

37. Documents delivered or served by facsimile shall not exceed fifty pages in length unless prior permission is obtained from the recipient.

Service on the Crown

38. Service of a Declaration of Claim on the Crown is sufficient if served on the Deputy Attorney General of Canada in accordance with subsection 23(2) of the Crown Liability and Proceeding Act.

Service on the Attorney General of a Province or Territory

39. Service of a document on the Attorney General of a province or territory may be served at the office of the Attorney General, or mailed by registered mail to the office of the Attorney General for the province or territory.

Service on a First Nation

40. A document that is required to be served on a claimant First Nation shall be served in one of the following ways:

(a) delivered to or served directly on the Chief of the First Nation;

(b) sent by regular first class mail, registered mail, or courier, including priority post, addressed to the address of the First Nation's administrative office;

(c) sent by transmission of a facsimile of the document to the last known facsimile telephone number of the First Nation's administrative office;

Service of Other Documents

41. Service of a document other than a Declaration of Claim or Response shall be effected

- (a) by leaving a copy of the document at the counsel's business address;
- (b) by sending a copy of the document to the counsel by facsimile transmission;
- (c) by sending a copy of the document to the counsel by registered mail and by obtaining an acknowledgement of receipt signed and dated by the counsel or by someone on behalf of the counsel;
- (d) by electronic transmission to the counsel, who shall within 24 hours send an acknowledgement of receipt; or
- (e) in any other manner that the Tribunal may order.

Service by fax

- 42. A document that is served by facsimile transmission shall include a cover page setting out
 - (a) the name, address and telephone number of the sender;
 - (b) the name of the person or the counsel to whom a copy of the document is sent;
 - (c) the date and time of the transmission;
 - (d) the total number of pages transmitted, including the cover page; and
 - (e) the name and telephone number of the person to contact if transmission problems occur.

Service by electronic transmission

- 43. A document that is served by electronic transmission shall be accompanied by an electronic message setting out
 - (a) the name, address, telephone number and e-mail address of the sender;
 - (b) the name of the person or the counsel to whom the document is sent;
 - (c) the date and time of the transmission;
 - (d) the title of the document transmitted; and
 - (e) the name, telephone number and e-mail address of the person to contact if transmission problems occur.

Proof of service

44. Proof of service of a pleading shall be made by an affidavit of service.

By certificate

45. Proof of service of a document other than a pleading can be made by a certificate by a counsel or the person designated by the counsel.

Service by mail

46. In the case of service by registered mail, a signed and dated acknowledgement of receipt shall be attached to the affidavit of service or the counsel's certificate, as the case may be.

PART 4- JOINDER OF NECESSARY PARTIES

General Rule

47. (1) Every person whose presence is necessary to enable the Tribunal to adjudicate effectively and completely on the issues in a proceeding, subject to each such person coming within the jurisdiction of the Tribunal, shall be joined as a party to the proceeding.

(2) A claimant who claims relief to which any other person alleges being jointly entitled with the claimant shall join, as a party to the proceeding, each person so entitled.

(3) Where:

(a) two or more claimants assert, whether jointly, severally or in the alternative, any claims to relief arising out of the same transaction or occurrence, or series of transactions or occurrences;

(b) a common question of law or fact may arise in relation to two or more claims; or

(c) the joining of two or more claims in the same proceeding may promote the convenient administration of justice;

the claims may be joined in the same proceeding.

(4) Two or more persons may be joined as respondents where,

(a) there are asserted against them, whether jointly, severally or in the alternative, any claims to relief arising out of the same transaction or occurrence, or series of transactions or occurrences;

- (b) a common question of law or fact may arise in the proceeding;
- (c) there is doubt as to the person or persons from whom the claimant is entitled to relief;
- (d) damage or loss has been caused to the same claimant by more than one person or party, whether or not there is any factual connection between the several claims apart from the involvement of the claimant, and there is doubt as to the person or persons from whom the claimant is entitled to relief or the respective amounts for which each may be liable; or
- (e) it appears that their being joined in the same proceeding may promote the convenient administration of justice.

(5) The Tribunal may order that any person or party who ought to have been joined as a party or whose presence as a party is necessary to enable the Tribunal to adjudicate effectively and completely on the issues in the proceeding shall be added as a party.

(6) At any stage of a proceeding the Tribunal may by order add, delete or substitute a party or correct the name of a party incorrectly named, on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

Proceeding not to be Defeated by Misjoinder or Non-Joinder

48. No proceeding shall be defeated by reason of the misjoinder or non-joinder of any party and the Tribunal may, in a proceeding, determine the issues in dispute so far as they affect the rights of the parties to the proceeding and pronounce judgment without prejudice to the rights of all persons who are not parties.

Relief Against Joinder

49. Where the joinder of multiple claims or parties in the same proceeding may unduly complicate or delay the hearing or cause undue prejudice to a party, the Tribunal may,
- (a) order separate hearings;
 - (b) require one or more of the claims to be asserted, if at all, in another proceeding;
 - (c) order that a party be compensated by costs for having to attend, or be relieved from attending, any part of a hearing in which the party has no interest;

(d) stay the proceeding against a respondent, pending the hearing of the proceeding against respondent, on condition that the party against whom the proceeding is stayed is bound by the findings made at the hearing against the other respondent; or

(e) make such other order as is just.

Notice When Third Party Interests Affected

50. (1) If the Tribunal's decision of an issue in relation to a specific claim may significantly affect the interests of a third party including a province, First Nation or person, the Tribunal shall so notify them. The parties may make submissions to the Tribunal as to whose interests might be affected.
- (2) Failure to provide notice does not invalidate any decision of the Tribunal.
- (3) The Tribunal has jurisdiction with respect to a province only if the province consents to and is granted party status.
51. If the Crown alleges that a province that has been notified is wholly or partly at fault for the claimant's losses, the Tribunal shall grant the province party status provided that the province certifies in writing that it has taken the steps necessary for it to be bound by decisions of the Tribunal.
52. If the Crown does not allege that a province that has been notified is wholly or partly at fault for the claimant's losses, the Tribunal may, on application by the province, grant the province party status if the Tribunal considers it a necessary or proper party and provided that the province certifies in writing that it has taken the steps necessary for it to be bound by decisions of the Tribunal.
53. The Tribunal may, on application by a First Nation to whom notice is provided, grant the First Nation party status if the Tribunal considers it a necessary or proper party.
54. (1) A First Nation or person to who notice is provided may, with leave of the Tribunal, intervene before it, to make representations in respect of any matter that affects the First Nation or person.
- (2) In exercising its discretion under subrule (1), the Tribunal shall consider all relevant factors, including the effect that granting intervenor status would have on the cost and length of the hearing.

PART 5 - SCOPE OF HEARINGS

General

55. (1) The hearing of all claims will, unless otherwise ordered by the Case Management Tribunal, be conducted as oral hearings.
- (2) Counsel for the claimant shall, in all hearings, provide written submissions setting out, in numbered paragraphs, a summary of the evidence relied on by the claimant to support allegations of fact, and legal argument in support of the relief claimed.
- (3) Counsel for the Crown shall, in all hearings, provide written submissions setting out, in numbered paragraphs, a summary of the evidence relied on by the Crown to support allegations of fact, and legal argument in opposition to the relief claimed.
- (4) The parties may, by joint application, request that the Tribunal proceed by way of a hearing on the record without an oral hearing. Where such a request is granted, the claimant may present a written address in lieu of an Opening Address.

Hearing on the Record

56. (1) For the purpose of this rule “record” includes:
- (a) the Declaration of claim;
 - (b) the Response;
 - (c) any amendments to the Declaration of claim or Response, and all material provided pursuant to Rules 20 and 21;
 - (d) such further evidence, not included in the claim presented to the Minister, as the Tribunal may, on application, permit;
 - (e) written submissions on the facts and the law as related to the subject matter of the claim, the grounds under s. 14 of the *Act*, and any asserted cause or causes of action.
- (2) All evidence included in subrules (1)(a)-(d), including, without limitation:
- (a) evidence of oral history and tradition;
 - (b) expert evidence, and ;
 - (c) hearsay evidence;

is presumptively admissible for the purposes of a Written Hearing and an Expanded Hearing.

(3) In all cases in which there is a hearing on the record, each party will serve on every other party an affidavit deposing that it has, to the full extent of that party's knowledge, information and belief, disclosed to all other parties all documents relevant to any matter in issue in the specific claim that are or have been in that party's possession, control or power.

(4) The Tribunal hearing the claim on the record may accord to each piece of evidence the weight it considers appropriate.

(5) A party may apply to the Tribunal to rule on the admissibility of evidence presumed admissible by subrule (2).

(6) A party bringing an application under subrule (5) shall file:

(a) full and detailed written grounds for the application, and any evidence relied on in support of such grounds, and

(b) where evidence is relied on that is not included in the Declaration of Claim or the Response, an affidavit setting out the additional evidence relied on by the applicant.

(7) The Tribunal may make any order it considers necessary to facilitate the expeditious setting of an early date for the hearing of the claim on the record.

(8) The claimant may make an oral presentation at the commencement of the oral hearing.

(9) Evidence that does not form part of the record shall not be introduced at a hearing on the record.

(10) The Tribunal shall convene a case management conference for submissions from the parties on which of rules set out in Parts 8-12 will apply to a claim to be heard on the record.

Expanded Hearing

57. (1) "Expanded Hearing" means a process that provides for:

(a) the hearing of *viva voce* evidence, including oral history

(b) formal filing of historical or other written records

(c) expert reports and testimony

(d) cross-examination.

(2) A party may apply to the Tribunal for an order that the hearing of a claim proceed as an expanded hearing.

(3) The provisions of Rule 55 apply, except where inconsistent with Rule 56, to an expanded hearing.

(4) Hearsay evidence is admissible if it meets the test of necessity and reliability, to a standard that takes into account the circumstances and time at which the events giving rise to the claim took place.

(5) Documentary evidence that contains the opinions of persons directly involved in the transactions asserted by the claimant to give rise to a cause of action, may be admitted in evidence by the Tribunal.

(6) The Tribunal shall convene a case management conference for submissions from the parties on which of rules set out in Parts 8-12 will apply to a claim heard by way of an expanded hearing.

PART 6 - CASE MANAGEMENT

Case Management

58. (1) The Tribunal shall, as soon as is practicable after a claim is filed, contact the parties to schedule a case management conference.

(2) Written notice of the conference shall be given by the Claims Registrar to the parties and to such other persons as the Tribunal presiding over the case management considers appropriate.

Matters to address under case management

59. Matters that may be addressed during case management include the following:

(a) scope of the hearing, including the application of Rules 56 and 57;

(b) Identification of the proper parties and intervenors, if any;

(c) Simplification, elimination or settlement of issues;

(d) Facts and documents that may be agreed upon by the parties;

(e) Any pending or anticipated applications and a date for the hearing of motions.

(f) The presentation of oral and written argument by each party;

- (g) The use of mediation or alternative dispute resolution mechanisms within a framework, including time line;
- (h) The official language to be used for the pleadings and the hearing, as well as the language in which each witness called by the First Nations claimant shall testify;
- (i) Translation and interpretation, including simultaneous interpretation at the hearing;
- (j) The application and timing of processes for discovery of documents, examinations for discovery and interrogatories;
- (k) The intention of parties to adduce expert evidence, and the timing for exchange of expert reports;
- (l) The submission of oral history evidence;
- (m) Matters relating to confidentiality of documents or of oral proceedings;
- (n) The method of retaining or recording evidence for the purposes of ensuring that a complete written hearing record can be assembled in case of judicial review;
- (o) Proportionality of pre-hearing procedures to the apparent monetary value of the claim, including the application of the rules set out in Parts 8-12;
- (p) Any other matters that may assist in the just and expeditious disposition of the issues in the proceedings.

60. The scheduling framework that a Tribunal may order may include:

- (a) Dates for the completion of the pleadings, the hearings of applications, examinations, answering undertakings, pre-hearing discovery and any other procedural issues that will require determination by the Court.
- (b) Time-line for the exchange of serving and filing of the various documents related to the hearing, including affidavits of documents, joint briefs of authorities and agreed books of documents;
- (c) Time-line to be followed by the intervenors;
- (d) The scheduling of the experts and of the oral history witnesses.
- (e) Start date, duration as well as the time allotted for various stages within the hearing;

(f) Location of the hearing, which may include the claimant community, and notably:

(i) the availability of a suitable hearing room;

(ii) the facilitation of access by members of the community (ies) affected by the claim;

(iii) the availability of suitable accommodation for the Tribunal, Tribunal staff, counsel, witnesses, and other necessary participants in the hearing;

(iv) responsibility for costs associated with the conduct of hearings;

(v) any other relevant factors.

61. The Tribunal shall deal with all matters that arise prior to the hearing on its merits and may:

(a) give any directions that are necessary for the just, most expeditious and cost effective determination of the proceeding;

(b) notwithstanding any period provided for in these Rules, fix the period for completion of subsequent steps in the proceeding;

(c) fix and conduct any pre-hearing conferences that the case requires and provide for, on consent of the parties, any alternative dispute measures, including mediation; and

(d) hear and determine all applications arising prior to the hearing of the claim.

62. A case management conference may be held orally, in writing, or electronically or in any combination thereof, as directed by the Tribunal.

63. Each party shall submit a written case management brief.

64. The Tribunal shall issue directions with respect to the scheduling of case management conferences.

65. Unless the Tribunal or the presiding judge directs otherwise, the counsel of record for the parties, and the parties or their authorized representative, shall participate in a case management conference. The participation of intervenors at case management conferences is at discretion of the Tribunal.

66. Unless the Tribunal grants leave for an application to be heard by another Member of the Tribunal, all applications shall be brought before the Case Management Tribunal.

67. Unless the parties consent in writing, all statements made at a conference in relation to the settlement of any or all issues shall be made without prejudice and shall not be communicated to the Member of the Tribunal who presides at the hearing in the proceedings.
68. Unless the parties consent in writing, the Case Management Tribunal shall not preside at hearing of the matter.
69. Unless otherwise ordered, proceedings at a case management conference shall be recorded, but no part of that recording may be available to or used by any person without an order from the Tribunal.
70. Undertakings and agreements made by the parties at a conference with respect to the proceedings before the Tribunal shall be in writing, and may be incorporated into an order of the Tribunal.

PART 7 - MEDIATION

Application for Stay Pending Mediation

71. The parties may, by jointly filing an application in Form ____, request of the Tribunal that proceedings before the Tribunal be stayed, in whole or in part, pending the conclusion of a process of mediation.
72. Mediation may be conducted by a Member of the Tribunal so designated pursuant to Rule 74 or by such other person agreed upon by the parties.

Mediation by Member of Tribunal

73. (1) The parties may, by jointly filing an application in Form ____, request mediation of the claim by the Tribunal;
(2) The application for an order for the appointment of a mediator under subrule (1) will be heard by the Case Management Tribunal;
(3) The Tribunal Member designated as the mediator shall not be a Case Management Tribunal Member in relation to the claim, or the Tribunal Member who, in the event a settlement is not achieved through mediation, the Tribunal Member who adjudicates the claim.

General

74. (1) The mediation shall, whether conducted by a Member of the Tribunal or another mediator named by the parties, unless the Case Management Tribunal orders otherwise, address all issues that arise in relation to the claim, including the provisions of any settlement agreement;

- (2) An order for a stay of proceedings pending mediation may include:
- (a) a requirement that the process of mediation be attended, or that each party have direct access to, a representative of each party authorized to bind the party to make binding offers of settlement and written terms of any settlement concluded in the course of mediation;
 - (b) a requirement for a formal mediation agreement;
- (3) The Tribunal may stay further proceedings, in whole or in part, pending the conclusion of the mediation. In that event, the Tribunal will, by order:
- (a) name the mediator;
 - (b) establish the period of the stay;
 - (c) provide for periodic reporting by the parties to the Case Management Tribunal on the mediation schedule, and their respective assessments whether progress is being made.

Settlement

75. (1) Where a settlement of all or part of a claim is reached at a mediation, or at any time,
- (a) it shall be reduced to writing and signed by the parties or their solicitors;
- and
- (b) a notice of settlement shall be filed within 10 days after the settlement is reached.
- (2) Where a settlement of only part of a proceeding is reached, the Tribunal shall make an order setting out the issues that have not been resolved and giving such directions as he or she considers necessary for their adjudication.
- (3) Where no settlement can be reached at a mediation, the Tribunal shall record that fact on the Tribunal file.

Confidentiality of Mediation

76. Discussions in a mediation conference and documents prepared for the purposes of such a conference are confidential and shall not be disclosed to the Case Management Tribunal or Tribunal Member presiding over the hearing.

PART 8 - DISCLOSURE

Documents

77. (1) Every document relevant to any matter in issue in a claim that is or has been in the possession, control or power of a party to the claim shall be disclosed whether or not privilege is claimed in respect of the document.
- (2) Unless otherwise ordered by the Tribunal, disclosure shall include at least disclosure of all documents on which a party proposes to rely at a hearing, including any expert reports.
- (3) At any stage in the proceedings, the Tribunal, whether through the case management presiding judge or the hearing presiding judge, may make orders with respect to disclosure, including the production of documents, summaries of what potential witnesses are expected to say, or pre-hearing examination of one or more potential witnesses.
- (4) Unless the Tribunal otherwise orders or directs, a party must disclose to the other parties the documents on which it proposes to rely:
- (a) at the time it files the claim or defence, if the document already exists;
 - (b) within ten days of the document's finalization, if the document did not exist at the time of filing the claim or defence;
 - (c) in any event, at least sixty days before the hearing.
- (5) Disclosure to a party's legal counsel or representative is deemed disclosure to the party.

Affidavit of Documents

78. (1) A party shall serve on every other party an affidavit of documents disclosing to the full extent of the party's knowledge, information and belief all documents relevant to any matter in issue in the claim that are or have been in the party's possession, control or power.
- (2) The affidavit shall list and describe, in separate schedules, all documents relevant to any matter in issue in the claim,
- (a) that are in the party's possession, control or power and that the party does not object to producing;
 - (b) that are or were in the party's possession, control or power and for which the party claims privilege, and the grounds for the claim; and

(c) that were formerly in the party's possession, control or power, but are no longer in the party's possession, control or power, whether or not privilege is claimed for them, together with a statement of when and how the party lost possession or control of or power over them and their present location.

(3) The affidavit shall also contain a statement that the party has never had in the party's possession, control or power any document relevant to any matter in issue in the claim other than those listed in the affidavit.

(4) Legal counsel for each party shall certify on the affidavit of documents that he or she has explained to the deponent,

(a) the necessity of making full disclosure of all documents relevant to any matter in issue in the claim; and

(b) what kinds of documents are likely to be relevant to the allegations made in the pleadings.

(5) An affidavit of documents shall not be filed unless it is relevant to an issue on a pending application or at the hearing of the claim.

Inspection of Documents

79. (1) A party who serves on another party a request to inspect documents is entitled to inspect any document that is not privileged and that is referred to in the other party's affidavit of documents as being in that party's possession, control or power.

(2) A request to inspect documents may also be used to obtain the inspection of any document in another party's possession, control or power that is referred to in the originating claim, pleadings or an affidavit served by the other party.

(3) A party on whom a request to inspect documents is served shall forthwith inform the party making the request of a date within five days after the service of the request to inspect documents and of a time between 9:30 a.m. and 4:30 p.m. when the documents may be inspected at the office of the lawyer of the party served, or at some other convenient place, and shall at the time and place named make the documents available for inspection.

(4) Unless the parties agree otherwise, all documents listed in a party's affidavit of documents that are not privileged and all documents previously produced for inspection by the party shall, without notice, summons or order, be taken to and produced at,

(a) the examination for discovery of the party or of a person on behalf or in place of or in addition to the party; and

(b) the hearing of the claim.

(5) The Tribunal may at any time order production for inspection of documents that are not privileged and that are in the possession, control or power of a party.

(6) Where privilege is claimed for a document, the Tribunal may inspect the document to determine the validity of the claim.

(7) Where a document is produced for inspection, the party inspecting the document is entitled to make a copy of it at the party's own expense, if it can be reproduced, unless the person having possession or control of or power over the document agrees to make a copy, in which case the person shall be reimbursed for the cost of making the copy.

(8) Where a document may become relevant only after the determination of an issue in the claim and disclosure or production for inspection of the document before the issue is determined would seriously prejudice a party, the Tribunal on the party's application may grant leave to withhold disclosure or production until after the issue has been determined.

Disclosure Not an Admission

80. The disclosure or production of a document for inspection shall not be taken as an admission of its relevance or admissibility.

Omission of Document From Affidavit of Evidence or Improper Claim of Privilege

81. Where the Tribunal is satisfied that a relevant document in a party's possession, control or power may have been omitted from the party's affidavit of documents, or that a claim of privilege may have been improperly made, the Tribunal may,

(a) order cross-examination on the affidavit of documents;

(b) order service of a further and better affidavit of documents;

(c) order the disclosure or production for inspection of the document, or a part of the document, if it is not privileged; and

(d) inspect the document for the purpose of determining its relevance or the validity of a claim of privilege.

82. Where a party, after serving an affidavit of documents,

(a) comes into possession or control of or obtains power over a document that relates to a matter in issue in the claim and that is not privileged; or

(b) discovers that the affidavit is inaccurate or incomplete,
the party shall forthwith serve a supplementary affidavit specifying the extent to which the affidavit of documents requires modification and disclosing any additional documents.

Failure to Disclose or Produce Document

83. (1) Where a party fails to disclose a document in an affidavit of documents or a supplementary affidavit, or fails to produce a document for inspection in compliance with these rules, an order of the Tribunal or an undertaking,
- (a) if the document is favourable to the party's case, the party may not use the document at the hearing, except with leave of the hearing judge; or
 - (b) if the document is not favourable to the party's case, the Tribunal may make such order as is just.
- (2) Where a party fails to serve an affidavit of documents or produce a document for inspection in compliance with these rules or fails to comply with an order of the Tribunal, the Tribunal may,
- (a) revoke or suspend the party's right, if any, to initiate or continue an examination for discovery;
 - (b) dismiss the claim, if the party is a claimant, or strike out the response, if the party is a defendant; and
 - (c) make such other order as is just.

Privileged Document Not to be Used Without Leave

84. Where a party has claimed privilege in respect of a document and does not abandon the claim by giving notice in writing and providing a copy of the document or producing it for inspection at least 60 days before the commencement of the hearing, the party may not use the document at the hearing, except to impeach the testimony of a witness or with leave of the Tribunal conducting the hearing.
85. (1) The Tribunal may order that a document or information in a document be treated as confidential and make any order that it deems appropriate,
- (a) upon the application of a party who has served an affidavit of documents; or
 - (b) upon the application of a party or intervenor who has filed or will file the document.

- (2) For greater certainty, the Tribunal may issue a single confidentiality order to cover the documents or information under paragraphs (1)(a) and (b).
86. The party or intervenor making an application shall
- (a) include in the grounds for the application details of the specific, direct harm that would allegedly result from unrestricted disclosure of the document or information; and
 - (b) include in the application a draft confidentiality order including the following elements, namely,
 - (i) a description of the document or information or the category of documents or information for which the person seeks the confidentiality order,
 - (ii) the identification of the person or category of persons who are entitled to have access to the confidential document or information,
 - (iii) any document or information or category of documents or information to be made available to the person or category of persons referred to in subparagraph (ii),
 - (iv) any written confidentiality agreement to be signed by the person or persons referred to in subparagraph (ii) and the provisions of that agreement,
 - (v) the number of copies of any confidential document to be provided to the person or persons referred to in subparagraph (ii) and any limitation on subsequent reproduction of that document by that person or those persons, and
 - (vi) the disposal of the confidential document following the final disposition of the proceeding.

Production From Non-Parties Without Leave

87. (1) The Tribunal may, on application by a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged where the judge is satisfied that,
- (a) the document is relevant to a material issue in the claim; and
 - (b) it would be unfair to require the applicant to proceed to hearing without having discovery of the document.

(2) Where privilege is claimed for a document, or where the Tribunal is uncertain of the relevance of or necessity for discovery of the document, the Tribunal may inspect the document to determine the issue.

Document Deposited for Safekeeping

88. The Tribunal may order that a relevant document be deposited for safe keeping with the Claims Registrar and thereafter the document shall not be inspected by any person except with leave of the Tribunal.

PART 9 - WRITTEN AND ORAL EXAMINATION

89. "Examination" means, for the purposes of rules governing oral examination:
- (a) an examination for discovery;
 - (b) the pre-hearing taking of evidence for use at the hearing; or
 - (c) a cross-examination on an affidavit;

Manner of examination

90. (1) A party may conduct an examination for discovery by way of both an oral and a written examination with leave of the Court or with the consent of the person being examined and all other parties entitled to examine that person.
- (2) The Tribunal may order that an examination be recorded by video recording or conducted by video-conference or any other form of electronic communication.
- (3) Unless the parties agree, the Tribunal may order that an examination take place in the claimant's community, if the circumstances requires it and notably when the persons to be examined is an elder.
- (4) Where two or more parties are entitled to examine a person, the examination for discovery shall be by way of an oral examination, except with leave of the Court or with the consent of the person being examined and all other parties entitled to examine that person.

Single examination

91. Except with leave of the Tribunal, a party may examine for discovery any adverse party only once.

When examination may be initiated

92. (1) Subject to subrule (2), a party may examine an adverse party for discovery only if

(a) the pleadings are closed and the examining party has served its affidavit of documents;

(b) the pleadings are closed and the adverse party consents to the examination being conducted before the examining party has served its affidavit of documents;

or

(c) the adverse party is in default of serving and filing its pleadings and leave of the Court has been obtained.

(2) A defendant may examine a plaintiff at any time after the Declaration of Claim is filed.

Representative selected

93. (1) A First Nation that is to be examined for discovery shall select a representative to be examined on its behalf.

(2) Where the Crown is to be examined for discovery, the Attorney General of Canada shall select a representative to be examined on its behalf.

(3) The Tribunal may, on the application of a party entitled to examine a person selected under subrule (1) or (2), order that some other person be examined.

Scope of examination

94. A person being examined for discovery shall answer, to the best of the person's knowledge, information and belief, any question that

(a) is relevant to any unadmitted allegation of fact in a pleading filed by the party being examined or by the examining party; or

(b) concerns the name or address of any person, other than an expert witness, who might reasonably be expected to have knowledge relating to a matter in question in the claim.

Direction to attend

95. (1) A party who intends to conduct an oral examination shall serve a direction to attend on the person to be examined and a copy thereof on every other party.

(2) A direction to attend may direct the person to be examined to produce for inspection at the examination

(a) in respect of an examination for discovery, all documents and other material in the possession, power or control of the party on behalf of whom the person is being examined that are relevant to the matters in issue in the claim;

(b) in respect of the taking of evidence for use at hearing, all documents and other material in that person's possession, power or control that are relevant to the matters in issue in the claim;

(c) in respect of a cross-examination on an affidavit, all documents and other material in that person's possession, power or control that are relevant to the Application.

(3) A direction to attend an oral examination shall be served

(a) where the person to be examined is an adverse party, at least six days before the day of the proposed examination;

(b) where the person to be examined is not a party to the proceeding, at least 10 days before the day of the proposed examination;

or

(c) where the person is to be cross-examined on an affidavit filed in support of an application, at least 24 hours before the hearing of the application.

Oath

96. A person to be examined on an oral examination shall be sworn or affirmed before being examined.

Examined party to be better informed

97. (1) Where a person being examined for discovery as a representative of a party to a proceeding is unable to answer a question, the examining party may require the person to become better informed and may conclude the examination, subject to obtaining answers to any remaining questions.

(2) A person being examined who is required to become better informed shall provide the information sought by the examining party by submitting to a continuation of the oral examination for discovery in respect of the information or, where the parties agree, by providing the information in writing.

(3) Information provided under subrule (2) is deemed to be part of the examination for discovery.

Examining party to provide interpreter

98. (1) Where a person to be examined on an oral examination understands neither French nor English or is deaf or mute, the examining party shall arrange for the attendance and pay the fees and disbursements of an independent and competent person to accurately interpret everything said during the examination, other than statements that the attending parties agree to exclude from the record.
- (2) Where an interpreter is required because the examining party wishes to conduct an oral examination and the person to be examined wishes to be examined in an other language than the one chosen by the examining party, the examining party shall, subject to any order of the Case Management Tribunal, pay the fees and disbursements of an independent and competent interpreter.
- (3) Before aiding in the examination of a witness, an interpreter shall take an oath as to the performance of his or her duties.

Production of documents on examination

99. (1) Subject to subrule (2), a person who is to be examined on an examination or the party on whose behalf that person is being examined shall produce for inspection at the examination all documents and other material requested in the direction to attend that are within that person's or party's possession and control, other than any documents for which privilege has been claimed or for which relief from production has been granted.
- (2) On application, the Tribunal may order that a person to be examined or the party on whose behalf that person is being examined be relieved from the requirement to produce for inspection any document or other material requested in a direction to attend, if the Tribunal is of the opinion that the document or other material requested is irrelevant or, by reason of its nature or the number of documents or amount of material requested, it would be unduly onerous to require the person or party to produce it.

Objections

100. (1) A person who objects to a question that is asked in an examination shall briefly state the grounds for the objection for the record.
- (2) A person may answer a question that was objected to in an examination subject to the right to have the propriety of the question determined, on application, before the answer is used at hearing.

Objection permitted

101. (1) A person may object to a question asked in an examination for discovery on the ground that
- (a) the answer is privileged;
 - (b) the question is not relevant to any unadmitted allegation of fact in a pleading filed by the party being examined or by the examining party; or
 - (c) the question is unreasonable or unnecessary;

Improper conduct

102. (1) On application, the Tribunal may limit an examination for discovery that it considers to be oppressive, vexatious, repetitive, or otherwise unnecessary.
- (2) A person being examined may adjourn an examination and bring an application for directions if the person believes that he or she 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.
- (3) A person conducting an examination may adjourn the examination and bring an application for directions if the person believes answers to questions being provided are evasive or if the person being examined fails to produce a document or other material requested.
- (4) On an Application under this rule, the Tribunal may sanction, through costs, a person whose conduct necessitated the application or a person who unnecessarily adjourned the examination.

Failure to attend or misconduct

103. Where a person fails to attend an examination or refuses to take an oath, answer a proper question, produce a document or other material required to be produced or comply with an order, the Tribunal may
- (a) order the person to attend or re-attend, as the case may be, at his or her own expense;
 - (b) order the person to answer a question that was improperly objected to and any proper question arising from the answer;
 - (c) strike all or part of the person's evidence, including an affidavit made by the person;
 - (d) dismiss the proceeding or give judgment by default, as the case may be; or

(e) order the person or the party on whose behalf the person is being examined to pay the costs of the examination.

Contempt order

104. A person who does not comply with an order made under rule 103 or 104 may be found in contempt.

Written examination

105. (1) A party who intends to examine a person by way of a written examination shall serve a list of concise, separately numbered questions for the person to answer.

(2) A person who objects to a question in a written examination may bring an application to have the question struck out.

(3) A person examined by way of a written examination shall answer by way of an affidavit.

(4) An affidavit referred to in subrule (3) shall be in Form _____ and be served on every other party within 30 days after service of the written examination.

General

106. (1) A party requesting an oral examination shall pay the fees and disbursements related to recording the examination.

(2) An oral examination that takes place in Canada shall be recorded by a person authorized to record examinations for discovery under the practice and procedure of a Superior Court in Canada.

(3) An oral examination that takes place in a jurisdiction outside Canada shall be recorded by a person authorized to record Court proceedings in that jurisdiction;

(4) A person who records an oral examination shall record it word for word, including any comment made by counsel, other than statements that the attending parties agree to exclude from the record.

(5) No person is required to attend an oral examination unless reasonable travel expenses have been paid or tendered to the person.

PART 10 - PRESERVATION OF EVIDENCE BEFORE COMMENCEMENT OF A HEARING

107. (1) On application, the Tribunal may order the examination of a person for the purpose of recording evidence for use at a hearing of the specific claim.

(2) In making an order under subrule (1), the Tribunal may consider

- (a) the expected absence of the person at the time of hearing;
- (b) the age or any infirmity of the person;
- (c) the distance the person resides from the place of hearing;
- (d) the expense of having the person attend at hearing, and
- (e) the language, culture and traditions of the witness.

(3) In an order under subrule (1), or on the subsequent application of a party, the Tribunal may give directions regarding the time, place, manner and costs of the examination, notice to be given to the person being examined and to other parties, the attendance of witnesses and the production of requested documents or material.

(4) On application, the Tribunal may order the further examination, before him or her or before a person designated by him or her, of any witness examined under subrule (1), and if such an examination is not conducted, the Tribunal may refuse to admit the evidence of that witness.

(5) Unless the Tribunal orders otherwise, evidence obtained on an examination under subrules (1) or (4) may, without further proof, be used in evidence by any party.

PART 11- ORAL HISTORY AND EXPERT EVIDENCE

Oral history evidence

108. The Tribunal conducting the hearing may issue directions that establish procedures for assessing the admissibility of oral history evidence to be given by a witness. Among other things, the Tribunal may require the counsel to outline that traditions of the people they represent relating to the questions of:
- (a) How the oral history, stories, legends, customs and traditions are preserved;
 - (b) Protocol governing the identity of persons who keep and are entitled to relate oral history or traditions;
 - (c) The community practice with respect to safeguarding the integrity of its oral history or traditions, stories, legends and traditions;
 - (d) Personal information concerning the attributes of the witness relating to his or her ability to recount hearsay evidence of oral history or traditions, practices, events, customs or traditions;

- (e) Evidence of the sources of the witness, his or her relationship to those sources and the general reputation of the source;
- (f) Who will be called at hearing to relate such evidence, and the reasons they are being called to testify;
- (g) Pre-hearing disclosure of such evidence;
- (h) The presentation of oral history or traditions by witnesses at hearing, including the manner in which objections may be made by opposing counsel;
- (i) Any other information that might bear on the reliability of the proposed evidence relating to oral history or tradition.

Expert Evidence

- 109. Experts' reports shall include or be accompanied by supplementary material that includes the following :
 - (a) the expert's acknowledgement that the duty of the expert is to advise the Tribunal impartially on matters within the expert's area of expertise, and that this duty overrides any duty to the party to the proceeding;
 - (b) the expert's resume, and a statement as to how his or her training, education and experience qualifies him or her to produce the report;
 - (c) an account of the nature of the request or any directions received from any party to prepare the report;
 - (d) the facts and assumptions on which the report's conclusion is based;
 - (e) if the report is a response to another expert report, an indication of the points of agreement and disagreement;
 - (f) disclosure of any matters that fall outside the expert's area of expertise;
 - (g) identification of any literature or other materials specifically relied upon in support of the opinions;
 - (h) any caveats or qualifications necessary to render the report complete and accurate.
- 110. At the hearing, the expert's evidence shall ordinarily consist of submitting the written report, providing a concise summary of the key points, and shall not involve reading the report into the record. The expert shall be subject to cross examination.

111. The Tribunal presiding over the hearing may determine whether expert testimony, including cross examination, may be submitted to the Tribunal by way of transcript or electronic recording.
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.

Responding Report

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.

Reply Report

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.

Filing of Expert Reports

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

(2) The Tribunal may read the report provided, unless a party makes a valid objection.

(3) The report shall not form part of the record until it is received in evidence at the hearing.

Examination of expert witness

116. A report referred to in this rule shall not be read aloud at the hearing but the expert witness may be examined in chief for the purpose of summarizing or highlighting the evidence contained in the report and may be cross-examined and re-examined.

Tribunal-appointed expert

117. (1) The Tribunal may, at any time, by order appoint one or more independent experts to inquire into and report on any question of fact or opinion relevant to an issue in a proceeding.

(2) The parties may jointly recommend an expert to the Tribunal.

(3) The parties may make submissions about the terms of the order.

(4) The order shall contain the following information:

- (a) the name of the expert being appointed and the expert's qualifications;
 - (b) the instructions given to the expert with respect to the preparation of the report;
 - (c) the questions to be posed to the expert;
 - (d) the date on which the report of the expert is to be provided to the Tribunal;
 - (e) the nature and extent of the expert's participation in the proceeding; and
 - (f) the remuneration to be paid to the expert.
- (5) The Claims Registrar shall serve a copy of the report on every party and any intervenor.
- (6) The report shall be made part of the case record.
- (7) Any party may file a written response to the expert's report and may examine the expert. The order and nature of such examinations shall be determined by the Tribunal.
- (8) The Tribunal may order the expert to make a further or supplementary report, and subrules (4) to (7) apply to that report.
- (9) The liability for payment of the remuneration of the expert shall be determined by the Tribunal at any time after the conclusion of the hearing following receipt of submissions on that issue.

PART 12 - AFFIDAVITS

Affidavit, Evidence and Examination

118. (1) Affidavits shall be drawn in the first person.
- (2) Where an affidavit is made by a deponent who is blind or illiterate, the person before whom the affidavit is sworn shall certify that the affidavit was read to the deponent and that the deponent appeared to understand it.
- (3) Where an affidavit is written in French or in English language for a deponent who does not understand that language, the affidavit shall be translated orally for the deponent in the language of the deponent by a competent and independent interpreter who has taken an oath as to the performance of his or her duties, and contain a jurat in Form _____.

- (4) Where an affidavit refers to an exhibit, the exhibit shall be accurately identified by an endorsement on the exhibit or on a certificate attached to it, signed by the person before whom the affidavit is sworn.
119. Affidavits shall be confined to facts within the personal knowledge of the deponent, except in case of evidence relating to oral history or tradition.
120. Unless the Tribunal orders otherwise, a party who conducts a cross-examination on an affidavit shall order and pay for a transcript thereof and send a copy to each other party.

PART 13 - ADJUDICATIVE HEARING: MANAGEMENT CONFERENCE

121. (1) Unless the Tribunal directs otherwise, a case management conference shall be scheduled before the Tribunal Member who will preside at the hearing.
122. (1) The parties shall, not later than 30 days from the commencement date of the hearing, file a memorandum accompanied by a copy of all documents that may be of assistance for the Tribunal.
- (2) The memorandum shall contain:
- (a) a concise statement of the nature of the proceeding;
 - (b) any admission of the party;
 - (c) the factual and legal contentions of the party;
 - (d) a statement of the issues to be determined at the hearing;
 - (e) a list of matters that the parties would like to address;
 - (f) a certification by counsel of a party proposing to call oral history evidence that pre-hearing disclosure of such evidence is complete and that each witness who will give such evidence has been advised of their role in the proceeding;
 - (g) a list of the name of the witnesses, the object of their testimony and the language in which each of them will testify;
 - (h) a list of exhibits disclosed to the other parties.
123. (1) During the conference the Tribunal may address any issues that can be resolved in advance of the hearing or to facilitate the process during the hearing, including:
- (a) Directions for hearing of an issue;

(b) Directions to facilitate the conduct of a hearing by the use of any electronic or digital means of communication or storage or retrieval of information, or any other technology it consider appropriate.

(c) Directions concerning the treatment of oral history evidence at the hearing;

(d) Directions to establish procedures governing the tendering of oral history evidence by witnesses at the hearing, including the manner objections are made by the opposing counsel, cross-examination of such witnesses;

(e) Hearing schedule: daily / weekly schedule, including the scheduling of breaks in the hearing, scheduling of experts, etc.

(f) Any other issues that the presiding Member and the parties consider appropriate.

(2) The Tribunal conducting the hearing may make any orders respecting the conduct of the claim.

PART 14 - EVIDENCE AT HEARING

Testimony of Witnesses

124. (1) Unless the Tribunal orders otherwise, witnesses at a hearing shall be examined orally and in an open session.

(2) The witnesses shall testify under oath.

125. The Tribunal may, at any time, order that any fact be proven by affidavit.

Demonstrative Evidence

126. Except with leave of the Tribunal, no plan, photograph, model or other demonstrative evidence prepared or obtained for use at a hearing is admissible in evidence at the hearing, other than in the course of cross-examination, unless at least 30 days before the commencement of the hearing all other parties have been given an opportunity to inspect it and consent to its admission without further proof.

Use of Examination for discovery

127. A party may introduce as its own evidence at the hearing any part of its examination for discovery of an adverse party or of a person examined on behalf of an adverse party, whether or not the adverse party or person has testified.

128. The Tribunal may order a party who uses part of an examination for discovery as its own evidence to introduce into evidence any other part of the examination for discovery that the Tribunal considers is so related that it ought not to be omitted.
129. The Tribunal may permit a party to use all or part of an examination for discovery of a person, other than a non-party or an expert, examined as evidence at the hearing if the person is unable to testify at the hearing because of his or her illness, infirmity or death or because the person cannot be compelled to attend;
130. 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 hearing only if the party first puts to the person the questions asked in that part of the examination.

PART 15 - COSTS

131. (1) The Tribunal shall have full discretionary power over the amounts and allocation of costs and the determination of by whom they are to be paid.

(2) In exercising its discretion, the Tribunal shall take into consideration the rules of the Federal Court respecting costs, the case law applicable in such matters, and the particular circumstances of each case.

(3) Costs may be taxed before the Claims Registrar.