

ANNUAL REPORT

For Presentation to the Honourable John Duncan
Minister of Aboriginal Affairs and Northern Development Canada

September 30, 2011

Section 40 of the *Specific Claims Tribunal Act*, S.C. 2008, c. 22, (the *Act*) provides that:

40.(1) The Chairperson shall submit an annual report on the work of the Tribunal in a fiscal year and its projected activities for the following fiscal year to the Minister within six months after the end of that fiscal year, including the financial statements of the Tribunal and any report of them of the Auditor General of Canada.

(2) The annual report may include a statement on whether the Tribunal had sufficient resources, including a sufficient number of members, to address its case load in the past fiscal year and whether it will have sufficient resources for the following fiscal year.

(3) The Minister shall submit a copy of the report to each House of Parliament on any of the first 30 days on which that House is sitting after the report is submitted to the Minister.

This is the Report made pursuant to section 40, subsections (1) and (2) of the *Act*, for the 2010-11 fiscal year.

Tribunal Membership

The present members of the Tribunal remain those initially appointed by Order in Council on November 27, 2009. They are Justice Johanne Mainville, Quebec Superior Court, Justice Patrick Smith, Ontario Superior Court, and myself, Justice Harry Slade, British Columbia Supreme Court.

The initial appointments were for a term of 1 year.

The above-named Justices volunteered for reappointment, with the approval of their respective Chief Justices. Justice Mainville was appointed for a further term of one year, and Justice Smith for a term of two years. I was reappointed, as a member and Chairperson, for a further period of five years.

Section 6(2) of the *Act* calls for the establishment of "... a roster of 6 to 18 Superior Court Judges to act as members of the Tribunal." The present members were appointed to the roster and then from the roster to the Tribunal. There remain three Superior Court Judges on the roster, Justice Barbara Fisher, Justice Paul Pearlman, both of the British Columbia Supreme Court, and Justice Larry Whalen of the Ontario Superior Court.

Registry Personnel

The Registry of the Tribunal is a Department within the meaning of that term in the *Financial Administration Act*. The Registrar, as the senior officer of the Registry, is the Deputy Head of the Department, also as provided for in the *Financial Administration Act*.

The position of Registrar is now occupied by Mr. Raynald Chartrand. Mr. Chartrand also serves as Registrar and Deputy Head of the Competition Tribunal.

Mr. Chartrand's wealth of experience in the Federal Courts and Competition Tribunal has been of great value in developing the foundation for the operation of the Specific Claims Tribunal. Concerns over employment roles that I raised in my Annual Report dated September 30, 2010 have been addressed. Job descriptions tailored to the needs of an adjudicative tribunal, including front-line registry officers, have been developed, and employment roles filled with well qualified persons.

Rules of Practice and Procedure

On June 8, 2010, the Tribunal posted the first draft of the *Specific Claims Tribunal Rules of Practice and Procedure* for discussion purposes, on the Registry website. Interested persons and organizations were invited to make submissions.

Written submissions were subsequently provided by the following:

- Anishnabek Nation
- Assembly of First Nations
- Canadian Bar Association
- Conseil Tribal Mamuitun
- Department of Justice, Government of Canada
- Federation of Saskatchewan Indian Nations
- Hutchins Legal Inc.
- Indigenous Bar Association

- Jeffrey D. Scott, Legal Professional Corporation
- Ratcliff & Company, lawyers
- Union of BC Indian Chiefs and Nlaka'pamuux Nation Tribal Council

Section 12(2) of the *Act* empowers the Rules Committee of the Tribunal to establish "...an advisory committee of interested parties to advise it in the development of the *Tribunal's Rules of Practice and Procedure...*" Those parties that made submissions in response to the first draft were constituted as an Advisory Committee on August 13, 2010.

After consultation with the Advisory Committee, the initial draft was extensively revised.

The *Statutory Instruments Act* governs the enactment of regulations made by authorized federal authorities. Compliance with the *Statutory Instruments Act* was required to give the *Tribunal's Rules of Practice and Procedure* legal force.

On November 10, 2010, the Tribunal's draft *Rules of Practice and Procedure* was presented, in both official languages, to the Headquarter Regulations section of the legislative services branch at the Attorney General of Canada as required by s. 3 of the *Statutory Instruments Act*.

After extensive consultation with those members of the Department of Justice responsible for drafting regulations in compliance with federal standards, the final version of the *Rules of Practice and Procedure*, rendered in both official languages, was published in the Canada Gazette on June 22, 2011, and the Rules are now in force. Several Practice Directions have also been posted.

Technology

The Tribunal will employ technology to minimize paper filing and production of documents. To this end, e-filings of both Claim and responding material is called for by the Rules. To the fullest practicable extent, documents produced in the course of case management and the hearing of Claims will be in electronic format. Computer hardware and software has been acquired to support this objective. Livelink, a records management system, has been installed and configured to handle all records and documents to allow for a user-friendly e-filing system.

A Tribunal website has been established; www.sct-trp.ca. The *Rules of Practice and Procedure* and Practice Directions, together with other material of interest to the public, are posted. All documents filed in the Registry have been posted on the website to permit public access and ensure transparency.

Commencement of Operations, Filed Claims

The Tribunal announced the opening of the Registry for Claims filings on June 1, 2011. Three specific claims have been filed to date, and Case Management has commenced. Challenges to the eligibility of two of the filed claims have been raised by the Crown.

The transitional provisions of the *Act*, in particular s.42 and 43, have the effect of delaying the eligibility date for filing of many claims previously filed with the Specific Claims Branch of the Ministry of Aboriginal Affairs (SCB), until

October 16, 2011. That date marks the third anniversary of the *Act* coming into force (October 16, 2008).

S.43 appears to exclude all claims rejected by the Minister before October 16, 2008 from presentation to the Tribunal unless the claim is re-submitted to the Minister after that date.

This would subject previously rejected claims, where re-submitted, to a second review by the SCB for a determination whether the claim should be rejected or accepted for negotiation. This determination would presumably include the Department of Justice, as acceptance is based on the perceived existence of a breach of lawful obligation.

S.42 calls for an examination by the Minister of all claims in the SCB process as of October 16, 2008, except those previously rejected, to assess whether they comply with the Minimum Standard established under s.16(2). This assessment could determine the effective date of the filing of the claim with the Minister, and thus the eligibility date for the filing of a claim with the Tribunal. The earliest eligible date for the presentation of claims to the Tribunal may, in most cases, be October 16, 2011. The SCB had advised that there are currently 225 claims that have not been accepted for negotiation. Of these, 140 arise in British Columbia, 24 in Ontario and 16 in Quebec. Claims arise in all Provinces except Newfoundland, Labrador and Prince Edward Island.

These claims, together with accepted claims that have been in negotiation for longer than three years, would appear to qualify for filing with the Tribunal.

A total of 541 claims have a deemed filing date of October 16, 2008.

The demands on the Tribunal, and hence its resource needs (including the number of judicial members) will be better known in the months following October, 2011.

Funding

If there are a large number of claims filed this Fall, we may not have sufficient resources to operate for the current fiscal year. It seems probable that we will require additional funding in 2012-13 when case management conferences and hearings are held in various parts of the country.

We are reviewing our Ottawa office requirements with several objectives;

1. To ensure the physical separation of administrative and adjudicative personnel to protect the confidentiality of the adjudicative process.
2. To avoid inadvertent contact between tribunal members and the parties to the claims, including counsel.
3. To enhance the utility of the available space.
4. To achieve operational cost savings by releasing space excess to Tribunal and Registry needs.

Any changes will require capital expenditure not provided for in the present vote of funds.

Future Appointments

Speeches of government Ministers in both Houses of Parliament, made in the course of Parliament's consideration of the Act while in the form of Bill C-30,

revealed the assumption that judicial members of the Tribunal would remain located in their resident courthouses in the provinces and territories.

Concurrent amendments to the *Judges Act* made three additional Superior Court Judges available to the British Columbia Court, two to the Ontario Court, and one to the Quebec Court.

As the provinces provide the courthouses and support staff for the Superior Court Judiciary, agreements with the provincial ministries of the Attorneys General are needed to support the use of these resources by Tribunal members. No such agreements were in place when the present members of the Tribunal were first appointed in November 2009. Mr. Chartrand, Registrar, commenced discussions with the provinces immediately following his appointment. There are no concluded agreements as of the present date. It is hoped that agreements will be concluded in the near future.

Thanks to the support of the Chief Justices of the British Columbia, Ontario and Quebec Courts, and the accommodation extended to members of the Tribunal from these Courts, it is not anticipated that the case management and hearing of Claims will be compromised pending the conclusion of these agreements.

Respectfully submitted,

Justice Harry A. Slade
Chairperson, Specific Claims Tribunal