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PRACTICE NOTE NO. 22

EXPERTS' PANEL (HOT TUBBING)

The following is the Protocol the Tax Court of Canada will follow in the “Hot Tubbing” Process for Experts.

1. The Judge shall:
 - a. review the pleadings;
 - b. define the issue;
 - c. determine if experts are required or to be presented;
 - d. determine if reports have been exchanged and the Rules followed;
 - e. determine if there is any contest in qualifications;
 - f. if there is a contest in qualifications, determine what is the nature thereof; and
 - g. determine if there is a possible exclusion from the hot tubbing process.
2. The Judge shall determine if the experts are qualified to speak to the issue at hand either by consent and judicial assessment or a voir dire on the issue.
3. If the qualifications are acceptable to the Judge, the Judge shall determine if there is any dispute on the report or challenge to same. If so:
 - a. what are the challenges and disputes?
 - b. do they go to weight?
 - c. do they go to credibility?
 - d. is it a substantive issue?
4. The presiding Judge shall read the experts reports with the written consent of the parties.
5. Before the hot tubbing panel is set, the Judge shall order the experts to meet pre-trial for them to see if they can narrow the issues, discuss the points of disagreement and explore common areas. The lawyers and parties may attend the meeting.
6. The Judge shall set the panel only after all factual evidence has been put on the record by the parties.
7. The Judge shall:
 - a. prepare the questions for the panel; and
 - b. present the questions to each panel member – same question in turn, back and forth between the panel for a full comprehensive explanation and expansion on answers to allow the Judge to comprehend and compare in real time the answers of each expert to each question.
8. Once the judicial questions are answered and complete, each counsel in turn may examine their expert and conduct cross-examination of the other expert but such examination/cross-examination is limited to:
 - a. clarification;
 - b. answer expansion; and

c. new matters.

Dated this 11th day of March, 2019.

(Original signed by)

Eugene P. Rossiter

Chief Justice