

SR&ED Court Process and Procedures

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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

https://www.tcc-cci.gc.ca/tcc-cci_Eng/Process/practice22.html

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2/28/2020

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c. new matters.

Dated this 11th day of March, 2019.

(Original signed by)

Eugene P. Rossiter

PRACTICE NOTE NO. 23

Preliminary Ruling Docket Procedure

In response to requests from counsel, the Tax Court of Canada is introducing a pilot project called the Preliminary Ruling Docket.

The Court recognizes that parties' costs increase with each step in the litigation process and that, in some appeals, parties may benefit from an expedited process which allows for a less expensive resolution of their dispute. The pilot project will determine whether a Preliminary Ruling Docket is an appropriate means to achieve this result.

Parties whose appeals are accepted into the Preliminary Ruling Docket will receive a non-binding preliminary ruling on their appeals from a Tax Court of Canada judge

The Court intends to operate the pilot project in Toronto and Vancouver for one year, commencing on January 1, 2020. Depending on the outcome of the pilot project, the Court will decide whether to make the Preliminary Ruling Docket, or an altered version thereof, permanent.

The procedure for the Preliminary Ruling Docket is attached.

Any questions or inquiries with respect to the application of the Preliminary Ruling Docket should be addressed to the Executive Legal Counsel of the Tax Court of Canada: sophie.matte@cas-satj.gc.ca

Dated this 12th day of December, 2019.

4. Minimum Criteria: Notwithstanding section 3, an appeal shall only be placed on the preliminary ruling docket if:
- a. the trial of the appeal is expected to last more than two days;
 - b. the preliminary ruling hearing is expected to last no more than two days;
 - c. both parties are represented by counsel;
 - d. the appeal is a general procedure appeal;
 - e. the appeal only involves questions of fact or of mixed fact and law;
 - f. in the case of an appeal under the Income Tax Act, either:
 - i. the aggregate amount of all amounts in issue is greater than \$25,000 and less than or equal to \$300,000 per taxation year; or
 - ii. the amount of the loss that is determined under subsection 152(1.1) of the Income Tax Act and that is in issue is greater than \$50,000 and less than or equal to \$600,000 per taxation year; and
 - g. in the case of an appeal under Part IX of the Excise Tax Act, the amount in dispute is greater than \$50,000 and less than or equal to \$300,000 per reporting period.