

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES (“ICSID”) ARBITRATION (ADDITIONAL FACILITY) RULES**

BETWEEN:

MERCER INTERNATIONAL INC.

Claimant

AND

CANADA

Respondent

PROCEDURAL ORDER NO. 8

ICSID Case No. ARB(AF)/12/3

18 June 2015

TRIBUNAL:

**Mr V.V. Veeder (President)
Professor Francisco Orrego Vicuña
Professor Zachary Douglas**

I. PROCEDURAL BACKGROUND

1. In accordance with Procedural Order No. 7, the pre-hearing organisational meeting took place on 15 June 2015 at 11 AM (Washington, D.C. time) by telephone conference. The meeting was conducted by the Presiding Arbitrator acting on behalf of the Arbitral Tribunal, with the consent of his Co-Arbitrators and the Parties.

2. The following persons participated in the conference:

For the Tribunal

Mr V.V. Veeder, President of the Tribunal

For ICSID

Ms Alicia Martín Blanco, Secretary of the Tribunal

For the Claimant

Mr Michael Shor

Ms Gaela Gehring Flores

Ms Catherine Kettlewell

Mr Andrew Treaster

Mr Kelby Ballena

Ms Aimee Reilert

Ms Bailey Roe

Mr Kim Moller

For the Respondent

Mr Michael Owen

Mr Adam Douglas

Ms Krista Zeman

Mr Louis-Philippe Coulombe

Mrs. Lori Di Pierdomenico

Ms Diane Kissick

Mr Stephen Kurelek

Mr Andrew Mason

Mr Jonathan Eades

Ms Vicki B. Antoniadis

Mr Nathaniel Gosman (Mr Gosman ended his participation on the conference call prior to any discussion of Exhibit R-531)

3. The Respondent's applications of 8 June 2015 as well as various procedural issues for the upcoming Hearing were the principal matters discussed during the meeting.

4. On the basis of: (i) Procedural Order No. 1 and the Confidentiality Order; (ii) the Respondent's applications of 8 June 2015 and the Claimant's response of 12 June 2015; (iii) the Parties' joint

proposal on the Hearing's timetable of 11 June 2015; and (iv) the Parties' submissions during the meeting, the Tribunal (having deliberated together after the meeting) orders as follows:

II. THE TRIBUNAL'S ORDER

The Respondent's Application regarding Mr McLaren

5. The Claimant states, unequivocally, that Mr McLaren is presented only as a factual witness. Although he has been retained as a specialist expert consultant advising the Claimant privately, he is not presented to the Tribunal as an expert witness; and the Claimant will not examine him as such.

6. Accordingly, the Tribunal finds that this is not a case of a hybrid witness (*i.e.*, both fact and expert witness), but rather only a factual witness who also privately advises the Claimant as a consultant on certain other expert issues in the arbitration.

7. In these circumstances, the only relevant issue is whether Mr McLaren qualifies as an "independent" consultant under section 10(c) of the Confidentiality Order. In the Tribunal's view, he does. He is not an employee or officer of the Claimant; and as a retired pensioner, he is not "dependent" on the Claimant. Moreover, Mr McLaren puts the matter beyond doubt with paragraph 9 of his witness statement. There is no sign of any misconduct by him or the Claimant; nor of any actual prejudice to the Respondent or third persons.

8. Therefore, the Respondent's application with regard to Mr McLaren is dismissed.

The Respondent's Application regarding Exhibit R-531

9. The Tribunal decides that the greyed out passages in the version of Exhibit R-531 annexed as Attachment C to the Claimant's written submissions of 12 June 2015 may be redacted, within double brackets, as "restricted access information" under Article 4 of the Confidentiality Agreement. As for the remainder of the document (not including the blacked-out passage redacted on the ground of legal privilege), the Tribunal is still considering the Parties' submissions and will announce its decision at the Hearing, subject to further clarification by the Parties.

Procedure for the Hearing

10. The Tribunal confirms the agreements reached by the Parties in their joint proposal of 11 June 2015, save as specified below.

11. Closing statements: Each Party shall have a right of rebuttal of no more than 20 minutes each, in addition to the 2 hours per Party of maximum time allocated for closing statements, not including Tribunal's questions.

12. Allocation of Time: Having considered the large number of witnesses and experts that will appear at the Hearing, as well as the limited overall time available, the Tribunal decides that the Parties should assume not more than 5 hours of actual work per day, producing 45 hours over 9

days, with no more than 40 hours to be shared between the Parties (for all purposes) and no more than 5 hours to be allocated to the Tribunal (for its own and other purposes).

13. Based on the above, the Parties shall confer and submit in writing a new joint proposal for the Hearing's timetable by Thursday, 2 July 2015.

14. Electronic Hearing Bundle: The Parties shall provide the Tribunal with an electronic hearing bundle in a USB key containing all pleadings (including witness statements and expert reports), exhibits and legal authorities submitted by the Parties to date, accessible from hyperlinked indices. The USB keys containing the electronic hearing bundle shall be delivered to the Tribunal and to the Tribunal's Secretary as soon as possible, well ahead of the Hearing. The Secretary will follow up with the Parties in this regard.

15. Scope of examination: The scope of direct, cross- and re-direct examination shall be governed by section 67 of Procedural Order No. 1 and as further discussed during the meeting.

16. Mr John Allan: The Claimant has offered to make its best efforts to have Mr Allan available for the Hearing by videoconference for cross-examination. The Tribunal invites the Claimant to provide an update on Mr Allan's situation as soon as practicable, but no later than Monday, 13 July 2015.

17. Mr Peter Ostergaard: The Tribunal considers that there are valid reasons for Mr Ostergaard not to attend the Hearing for cross-examination.

18. Mr Michael MacDougall: The Respondent has expressed a possible interest in calling Mr MacDougall for direct examination at the Hearing. The witness not having been called for cross-examination by the Claimant, the Tribunal invites the Respondent, in accordance with Procedural Order No. 1, to submit a written proposal containing a reasoned application, in which case the proposal should be submitted by Thursday, 25 June 2015.



Mr V.V. Veeder, President